BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.06.2019
CORAM:
THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P.(MD)No.11577 of 2013 and
W.P.(MD)No.10014 of 2009
and
M.P.(MD)Nos.1 and 2 of 2013

W.P.(MD)No.11577 of 2013

M.S.Jagannathan ... Petitioner

Vs

1.The Secretary to Government,
Hindu Religious and Charitable
Endowments Department,
Fort St.George,
Chennai- 600 009.

2.The Special Commissioner and Commissioner
Hindu Religious and Charitable Endowments Department,
Chennai- 600 034.

3.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Thanjavur,
Thanjavur District.

4.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nagapattinam,
Nagapattinam District.

5.The Principal Accountant General,
(Accounts and Entitlements)
261, Anna Salai,
Chennai- 600 018. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the G.O.Ms.No.403, Commercial Taxes and Religious Endowments Department dated 07.04.1984 on the file of the first respondent and the follow up order passed by the second respondent in Na.Ka.No.57968/07/L2 dated 20.01.2009 (specifically treating the period from 21.03.1976 to 18.10.1983 as leave on loss of pay) and G.O.Ms.No.158 Tamil Development, Religious Endowments and Information (A.Ni.21) Department dated 11.05.2010 on the file of the first respondent in so far as declaration of completion of probation as on 18.10.1983 A.N., in the post of Executive Officer Gr.3 and quash the same and consequently direct the respondents to treat the period from 21.03.1976 to 18.10.1983 A.N., as duty, declare successful completion of probation of the petitioner in November 1977 and grant all the service, increment, promotion, monetary and other attendant benefits as well as the revised pensionary benefits to the petitioner within a time limit to be fixed by this Court.

For Petitioners : Mr.S.Kumar

For R1 to R4 : Mr.S.Dhayalan
Government Advocate

For R5 : Mr.P.Gunasekaran

W.P.(MD)No.10014 of 2009

M.S.Jagannathan ... Petitioner

Vs

1.The State of Tamilnadu,
Represented by the Secretary,
Hindu Religious and Charitable
Endowments Department,
Fort St.George,
Chennai- 600 009.

2.The Special Commissioner and Commissioner
Hindu Religious and Charitable Endowments Department,
Chennai- 600 034.

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in Na.Ka.No.57968/07/L2 dated 20.01.2009 passed by the second respondent and quash the same and direct the respondents to regularise the petitioner's services for the period from 21.03.1976 to 18.10.1983 as E.L.W.A. As per G.O.Ms.No.430 dated 07.04.1984 and the period from 22.10.1996 to 29.12.1998 as earned leave and consequently to re-fix the petitioner's pension and pay the difference of pension with interest and with all other consequential benefits.

For Petitioners : Mr.S.Kumar

For Respondents : Mr.S.Dhayalan
Government Advocate

COMMON ORDER

The writ petitioner in both the writ petitions, is one and the same. W.P.(MD)No.10014 of 2009 was filed to quash the order passed by the second respondent dated 20.01.2009 and to regularize the service of the writ petitioner for the period from 21.03.1976 to 18.10.1983 as E.L.W.A., as per G.O.No.403, Commercial Taxes and Religious Endowments Department, dated 07.04.1984 and the period from 22.10.1996 to 29.12.1998 as Earned Leave and consequently refix pay and the pension of the writ petitioner. W.P.(MD)No.11577 of 2013 was filed to regularize the period in which the writ petitioner was not in service.

2.The writ petitioner was appointed as Executive Officer in the Hindu Religious and Charitable Endowments Department and he had not passed the requisite department examinations and the writ petitioner was discharged from service on account of not possessing the requisite qualification.

3.The learned counsel for the writ petitioner states that the petitioner passed the departmental test during the year 1977. However, there was a delay on the part of the respondent in reinstating the writ petitioner. The writ petitioner was reinstated into service by relaxing the relevant Rules in the year 1994 and thereafter the petitioner was allowed to continue service and attained the age of superannuation in the year 1999 and retired from service. Now the writ petitioner is a pensioner and receiving pension.

4.W.P(MD).No.10014 of 2009 is filed to regularize the service for the period from 21.03.1976 to 18.10.1983 as E.L.W.A., as per G.O.Ms.No.430 dated 07.04.1984 and the period from 22.10.1996 to 29.12.1998 as earned leave, for the purpose of reckoning the service for grant of pension. The writ petitioner thought that without challenging the order of reinstatement, such a relief of regularization cannot be granted. Thus another writ petition was filed in W.P.(MD)No.11577 of 2013 to quash the order of reinstatement passed in G.O.No.403, Commercial Taxes and Religious Endowments Department, dated 07.04.1984 and consequential order dated 20.01.2009 by treating the period from the period from 21.03.1976 to 18.10.1983 as leave on loss of pay and further to direct the respondents to treat the period from 21.03.1976 to 18.10.1983 as duty.

5.The fact remains that the writ petitioner was appointed as Executive Officer, Grade-3 during the year 1965 and did not possess the requisite qualification of department test. In view of the fact that the writ petitioner has not passed the test, he was discharged from service during the year 1976. On completion of the departmental test during the year 1977, the petitioner made a representation to the Government. The Government passed orders in G.O.No.403, Commercial Taxes and Religious Endowments Department, dated 07.04.1984, reinstating the writ petitioner. The order of reinstatement categorically states as follows:

> *"4.In exercise of the powers conferred by rule 48 of the General Rules in Part II of the Tamil NaduState and Subordinate Services contained in Volume-I of the Tamil Nadu Services Manual 1977,the Governor of Tamil Nadu hereby relaxes rule 26(b) read with rule 28(a) the said rules in favour of Thiru.M.S.Jaganathan and extends his period of probation in the category of Executive Officer, Grade-III, for a further period from 21.03.1976 till 18.10.83. During the extended period of probation, his increment will be withheld without cumulative effect.*
>
> *5.In exercise of the powers conferred under Rules 5-A of the Fundamental Rules, the Governor of Tamil Nadu hereby relaxes Rule 18 of the Fundamental Rules in favour of Thiru.M.S.Jaganathan so as to grant him E.L.W.A. From 21.03.76 to 18.10.83 which exceeds 5 years."*

6.On a perusal of the Government order issued, it is clear that by invoking the power of relaxation granted under Rule 48 of the Government Rules, the Government relaxed the Rules in favour of the writ petitioner and extended the probation of the writ petitioner. The relaxation of Rule granted in favour of the writ petitioner in the year 1984 itself was a concession granted to the writ petitioner. Relaxation of Rule is granted only on an exceptional circumstances. Thus, the case of the writ petitioner was considered for the purpose of reinstating him in service and therefore, the Government relaxed the service Rules in his favour and extended the probation in the category of Executive Officer, Grade-III, for a further period from 21.03.1976 till 18.10.1983.

7.The said Government Order issued in G.O.403, dated 07.04.1984, was accepted by the writ petitioner and he joined the service and served till the year 1999. The writ petitioner was allowed to retire from service and after the settlement of pensionary and terminal benefits, he filed the present writ petition during the year 2013, to regularize the period of duty. Such claims cannot be entertained after a lapse of so many years. Mere submission of representation to the claim would not confer any right or save the period of limitation. The writ petition was filed belatedly. The cause of action arose in the year 1994. The Rule was relaxed in favour of the writ petitioner and the period of probation was extended. Thus, the writ petitioner if at all aggrieved ought to have challenged the Government Order during the relevant point of time. Contrarily, he served till the date of his retirement and therefore he filed the writ petition, after a lapse of 13 years from the date of retirement. Thus, the writ petitions are belated and liable to be rejected on account of laches.

8.This apart, the relaxation of Rules was granted by way of concession to the writ petitioner. Once the concession is extended by the Government for the purpose of reinstatement, the employee cannot seek any other concession and such a claim itself cannot be accepted. When the writ petitioner was not qualified for the post of Executive Officer, Grade-3, the Government relaxed the Rule in his favour. This is the another concession shown by the Government. The present writ petition seeking regularization of the period in which the writ petitioner had not at all worked is certainly impermissible and accordingly the both writ petitions are liable to be dismissed on merits and as well as on the ground of laches.

9.Accordingly, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Hindu Religious and Charitable
Endowments Department,
Fort St.George,
Chennai- 600 009.

2.The Special Commissioner and Commissioner
Hindu Religious and Charitable Endowments Department,
Chennai- 600 034.

3.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Thanjavur,
Thanjavur District.

4.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nagapattinam, Nagapattinam District.

+1cc to M/S SPECIAL GOVERNMENT PLEADER, Sr.No.68450
+1cc to M/S.P.GUNASEKARAN, ADVOCATE,Sr.No.68571
+1cc to M/S.S.KUMAR , ADVOCATE,Sr.No.68199

W.P.(MD)No.11577 of 2013 and
W.P.(MD)No.10014 of 2009
and
M.P.(MD)Nos.1 and 2 of 2013
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BUC(05/07/2019)6P/8C