

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.27371 to 27375 of 2013

Dr.K.Punithavalli	.. Petitioner in WP.27371/2013
Dr.P.Mythili	.. Petitioner in WP.27372/2013
Dr.S.Surekha	.. Petitioner in WP.27373/2013
Dr.C.Baby Ramona	.. Petitioner in WP.27374/2013
Dr.M.V.Malathi	.. Petitioner in WP.27375/2013

vs.

- 1.The Secretary to the Government
Municipal Administration & Water Supply Department,
Fort. St. George,
Chennai 600 009.
- 2.The Commissioner,
Corporation of Chennai,
Chennai 600 003. Respondents in all WPs.

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for all the records relating to the Impugned Communication Lr.No.2671/Maa.Na.3/2012-2 dated 24.06.2013 issued by the Secretary to the Government, MAWS Department, Chennai-9, the first respondent herein, and quash the same, and consequentially directing the respondents herein to notionally reckoning the petitioners date of appointment i.e. 19.01.1994 and 05.01.1995 in WP.no.27373/2013, and 06.05.1994 in WP.NO.27374/13 and 12.01.1994 in WP.27375/13 as the date of regularization /movement to time scale of pay and also to reckon their seniority from the said date of appointment.

In all WPs.

For Petitioner : Mr.I.Thilagaraj

For Respondent(s): Mr.S.Thangavel, Spl.G.P for R1

: Mrs. Karthika Ashok for R2

ORDER

The petitions have been filed by the petitioners to call for all the records relating to the Impugned Communication Lr.No.2671/Maa.Na.3/2012-2 dated 24.06.2013 issued by the Secretary to the Government, MAWS Department, Chennai-9, the

first respondent herein, and quash the same, and consequentially directing the respondents herein to notionally reckoning the petitioners date of appointment i.e. 19.01.1994 as the date of regularization /movement to time scale of pay and also to reckon their seniority from the said date of appointment.

2. The case of the petitioners is that they joined the services of the Chennai Corporation as Medical Officer in the FW & MCH Department in the year 1994 and their appointments were in pursuance of the resolution of the S.O.(Council) No.103 of 1994 dated 12.01.1994, and thereafter all the petitioners were moved to the time scale of pay with effect from 1996 onwards. However the grievance of the petitioners is that their services under the consolidated wages were not calculated for the purpose of notional benefit in terms of G.O. Ms. No.408, Finance (Pension) Dept., dated 25.08.2009. Aggrieved over the same the petitioners made representation to the second respondent, which was forwarded by the Corporation. However, after considering the letter of the Commissioner dated 30.04.2012, the concerned respondent, by its impugned order dated 24.06.2013, informed the petitioners that their request could not be accepted in the light of the G.O.Ms.No.408, dated 25.08.2009, as the said G.O. lays down that half of the period of service on consolidated salary alone shall be taken into account for reckoning the pension and, therefore, their request cannot be considered. Aggrieved by the said order, present petitions have been filed.

3. Learned counsel appearing for the petitioners submitted that though the similarly placed doctors who were appointed on consolidated pay in the Health Department, were granted regularization from the date of their initial appointment, however the petitioners services were regularized from the date of their joining and they should also be granted equal treatment. Hence this Court may extend the benefits prescribed in the G.O.Ms.NO.408, dated 25.09.2009 to the petitioners as well.

4. On the above contention, this Court heard the submissions made by the learned Standing Counsel for the respondent corporation and also perused the detailed counter affidavit filed by the respondents.

5. The matter in issue pertains to regularization of the service of the petitioners. By the present petition, the petitioners claim regularization from the date of their initial appointment, while their services have been regularized from the date of the Government Order. The question put before the Court is whether the regularization ought to be from the date of initial appointment or from the date of the order.

6. When the matter is taken up for consideration, learned standing counsel appearing for the respondents brought to the notice of this Court that the issue raised in the present case

is covered by the order passed by the learned single Judge of this Court in the case of T.Renganathan - Vs - Secretary to Govt., Government of Tamil Nadu & Ors. (W.P. No.23587/2013, etc. - Dated 18.2.2020) and, therefore, pray that similar order may be passed in the present petition as well.

7. This Court heard the learned counsel on either side and perused the materials available on record as also the decision relied on.

8. Learned single Judge of this Court, in T.Renganathan's case (supra), had occasion to consider similar circumstances as raised in the present petition and referring to the decision of the Hon'ble Supreme Court in the matter of regularization, held as under :-

"9. At this juncture, it is useful to extract the relevant portion of the decision rendered by the Honourable Supreme Court in Secretary to Government, School Education Department, Chennai Vs. R.Goindaswamy and others in Civil Appeal Nos.2726 to 2729 of 2014 (arising out of SLP (C) No.681 to 5684 of 2014) @ C.C.No.19326 to 19329 of 2013)

"7. This court in State of Rajasthan and others V.Daya Lal and others. AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part time appointment in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. the same are as under. 8(i) The High Courts in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause containing in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible

candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or adhoc or daily wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be litigious employment". Even temporary, adhoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right."

In the above said decision, the Honourable Supreme Court has given some directions to regularise the service of the employee.

10. Here in this case, initially the petitioner was appointed under daily wages on consolidated pay and thereafter, his service was regularised on 23.02.2006, as per the G.O.Ms.No.21 dated 23.02.2006. Further, the petitioner has not made any representation to regularise his service, after completion of 10 years of service as NMR. Now, after a lapse of several years, the petitioner has come forward with this writ petition, which is not maintainable. Therefore, there is no merits in this writ petition and the same is liable to be dismissed."

9. The petitioners in the present case are identically placed as the petitioner in the above writ petition. Therefore, the order passed above stands squarely attracted to the case of the petitioners herein. In such view of the matter, this Court is of the considered opinion that these writ petitions are liable to be dismissed in the light of the order passed in T.Renganathan's case (supra).

10. Accordingly, these writ petitions are dismissed in the light of the order passed in T.Renganathan's case (supra). There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jrs

To

1.The Secretary to the Government
Municipal Adminstration & Water Supply Department,
Fort. St. George,
Chennai 600 009.

2.The Commissioner,
Corporation of Chennai,
Chennai 600 003.

+5ccs to Mr.I.Thilagaraj, Advocate SR.No. 37709

+5 ccs to Government Advocate Sr.No. 37754

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A.SK(10.03.2021)



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