



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.6754 of 2013

S.Jayakumar

... Petitioner

Vs.

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai 600 009.
2. The Director of Public Health and
Preventive Medicine,
Chennai-6.
3. The Project Director and
Member Secretary,
Tamil Nadu State Aids Control Society,
Chennai 600 008.

... Respondents

Prayer: This writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of certiorarified Mandamus or any other appropriate Writ to call for records relating to the Government Letter No.29385/EAPI/2/2008-23 dated 12.02.2013 issued by the first respondent, the Secretary to Government, Health and Family Welfare Department, Secretariat, Chennai-9, in rejecting the representation of the petitioner dated 15.06.2012 to absorb the petitioner in Health and Family Welfare Department, quash the same and direct the respondents to absorb the petitioner in the first respondent department as done for similarly placed persons by issuing necessary Government order and grant pension and the terminal benefits to the petitioner on attaining superannuation on 31.03.2013, within short date fixed by the court.

For Petitioner : Ms.G.Sridevi

For Respondents : Mr.S.Thangavel, Spl. Gov.Pleader
(for R1 and R2)
Mr.M.Loganathan for R3



O R D E R

This petition has been filed to quash the Government Letter No.29385/EAPI/2/2008-23 dated 12.02.2013 issued by the first respondent and direct the respondents to absorb the petitioner in the first respondent department as done for similarly placed persons by issuing necessary Government order and grant pension and the terminal benefits to the petitioner on attaining superannuation on 31.03.2013.

2. The case of the petitioner in nutshell is as follows.

The petitioner was initially appointed as District Training Officer, Salem in DANIDA Health care project on 01.07.1982 through employment exchange and he completed the probation period on 04.07.1984. As per the G.O.Ms.No.625 Health and Family Welfare Department dated 25.03.1987, " the General and Special Rules applicable to the holders of the permanent posts in Class-I of Branch I Medical of the Tamil Nadu Medical Service shall apply to the holder of the temporary post of District Training officer " . Thereafter, the petitioner was transferred to Cuddalore to the post of District Communication Officer w.e.f. 01.11.1987 and then again transferred to the post of District Training Co-ordinator, Cuddalore on 30.11.1989. Thereafter, he was transferred and appointed as Faculty (Educational Technology), Villupuram under the DANIDA project on 04.04.1990.

2.1 As per G.O.Ms.No.916 Health and Family Welfare Department dated 19.12.1994, the DANIDA project was wound up. Thereafter, as per the letter No.21403/IPP.V/95-8 Health and Family Welfare Department dated 30.03.1995, the petitioner has been observed to the office of the Project Director, State AIDS Project w.e.f. 31.03.1995.

2.2. The petitioner made representation dated 15.04.2008 through proper channel to the first respondent to pass order on his service matter including his terminal benefits, as the Public Health and Preventive Medicine is his parent department. Again he gave another representation dated 04.06.2008 and the same was forwarded to the first respondent through the 2nd respondent .

2.3. The 2nd respondent by ref.No.3949/A1/TANSACS/2008 dated 29.11.2008 sent a request to the first respondent by quoting the G.O.D.No.315 Health and Family Welfare Department dated 21.04.2005 and G.O.Ms.No.140 Health and Family Welfare Department to issue suitable orders to observe the petitioner in the Department of first respondent, similar to that of his junior , so as to enable



him to get the pensionary rules.

2.4. In the meanwhile, vide order dated 24.02.2009, the petitioner has been deputed to the Institute of Public Health, Poonamallee. However, no order was issued by the first respondent to observe the petitioner in its department. Since the petitioner had to attain superannuation on 31.03.2013, he filed a writ petition in W.P.No.16349 of 2012 and obtained an order, directing the first respondent to consider the representation of the petitioner dated 15.06.2012 and pass appropriate order within four months. The first respondent vide order dated 12.02.2013 rejected the claim of the petitioner to absorb him in the first respondent department. Hence this writ petition.

3. The first and second respondents filed counter affidavit, wherein, it is stated as follows.

The petitioner was initially appointed as District Project Training Officer, DANIDA Health Care Project, Salem and lastly, he was appointed as Faculty (Educational Technology) at the Health Man Power Institute, DANIDA project, Villupuram.

3.1. As per G.O.Ms.No.660, Health and Family Welfare Department dated 18.08.1994, the post of Faculty at Villupuram and Salem were abolished and hence, the petitioner was absorbed into the office of the 3rd respondent with effect from 31.03.1995 and he joined duty on 09.04.1995.

3.2. When the representation of the petitioner was under consideration of the Government, the petitioner has filed a writ petition in W.P.No.16349 of 2012. Thereafter, in pursuant to the order dated 28.06.2012 passed by this court in the above said writ petition, the first respondent passed an order dated 12.02.2013, rejecting the claim of the petitioner.

3.3. The petitioner was deputed to the Institute of Public Health and Preventive Medicine Poonamallee, Chennai, which is under the control of Director of Public Health and Preventive Medicine, Chennai and he should draw salary and other allowances from the Tamil Nadu State AIDS Control society. While the DANIJA project was abandoned, the junior one C.Maruthachalam, who was working in the DANIJA project was appointed as Block Extension Educator (Department of Family Welfare) and his service rendered at the DANIJA Project from 01.08.1986 to 19.09.1995 was counted for the purpose of Pensionary benefit only, as per the provisions of the Pension Rules. Whereas, the petitioner without opting his service in Government side, has opted to service in the Tamil Nadu State AIDS Control Society, which is a non pensionary service. Therefore, there is no perverse in the orders passed by the first respondent and the writ petition is liable to be



dismissed, as there is no merits.

4. Heard the learned counsel appearing for the petitioner as well as the respondents. I have perused the materials on record.

5. The learned counsel appearing for the petitioner, in support of his arguments relied on a judgment in G.Periannan Vs. The Government of Tamil Ndu, rep. by the Secretary to Government, Social Welfare and Nutritious Meal Department, Fort St. George, Madras and another reported in 2007(3) CTC 806. But, the above decision will not be applicable to the facts of the present case.

6. In the counter affidavit, it is stated that the petitioner, while abolishing the DANIJA project, he has opted the service in the Tamil Nadu State AIDS Control Society, Egmore, Chennai, which is a non pensionary service and he has not opted service in the Government. It is also clearly stated in the counter affidavit that the above said AIDS Control Society is an autonomous body and neither receives any State nor Central Government Funds for any of its activities. Therefore, since the petitioner has served in the above society, his claim to absorb him in the first respondent Department and to regularise his service rendered in the DANIJA project for pensionary benefits, cannot be countenanced. Therefore, the writ petition is liable to be dismissed. However, the petitioner is entitled to get gratuity and other retirement benefits as per the rule.

7. At this juncture, the learned counsel appearing for the petitioner reported that pending writ petition, the petitioner attained superannuation on 31.03.2013 and the 3rd respondent already submitted a proposal for payment of gratuity and other benefits to the Accountant General Office and the same is pending for sanctioning. Therefore, it is open to the petitioner to make representation to the 3rd respondent for sanctioning the retirement benefits and on such representation being made by the petitioner, the 3rd respondent shall pass appropriate orders to settle the amount due to the petitioner, in accordance with law.

8. With the above observation, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst



To

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai 600 009.
2. The Director of Public Health and
Preventive Medicine,
Chennai-6.
3. The Project Director and
Member Secretary,
Tamil Nadu State Aids Control Society,
Chennai 600 008.

+1cc to Mr.M.Loganathan, Advocate SR.14612
+1cc to M/s.G.Sridevi, Advocate SR.15557
+1cc to the Government Pleader SR.15663

W.P.No.6754 of 2013

CNR(CO)
CB(27/05/2020)