

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.15357 of 2014

E.Mahalakshmi

..Petitioner

vs.

1. The State of Tamilnadu,  
By its Secretary to the Government,  
Health department,  
Government of Tamilnadu,  
Fort St. George,  
Chennai 600 009.
  2. The Director of Medical Educations,  
E.V.R. Periyar Salai,  
Kilpauk, Chennai 600 010.
  3. Govt. K.G. Hospital for Women and Children  
represented by its Director,  
Triplicane, Chennai 600 005.
- ....Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 3<sup>rd</sup> respondent to forward the correct qualifying years of service of the petitioner to the AGS office for the purpose of pension, in line with G.O.Ms.No.408 dated 25.08.2009, and pay the consequential benefits.

For Petitioners : M/S.L.Damodharan  
For Respondent(s) : Mr.S.Thangavel, Spl.G.P

ORDER

This writ petition has been filed by the petitioner, to direct the 3<sup>rd</sup> respondent to forward the correct qualifying years of service of the petitioner to the AGS office for the purpose of pension, in line with G.O.Ms.No.408 dated 25.08.2009,

and pay the consequential benefits.

2. According to the petitioner, he had joined the services of the 3<sup>rd</sup> respondent hospital as a substitute worker, sponsored by the District Employment Office, on the daily wage basis, in the year 1977, vide letter of the Superintendent of the 3<sup>rd</sup> respondent dated 25.04.1977. Thereafter in the year 1981, she was temporarily appointed as Lascar, from substitute daily wagger, in the same hospital and later her services were regularized in the year 1984. It is the averment made by the petitioner that in the year 1986, she was appointed as Women Nursing Assistant Grade II on regular basis with effect from her date of joining and thereafter in the year 1993, her probation was declared as completed as on 29.11.1992. The grievance of the petitioner is that though she was permitted to retire after attaining the age of superannuation, she continued as Women Nursing Asst. Grade II, under the 3<sup>rd</sup> respondent till her retirement on 31.03.2010, twenty days prior to her retirement, i.e., on 03.03.2010, she had given representation to the 3<sup>rd</sup> respondent to take into account G.O.Ms.No.408 for the purpose of accounting the number of service of years rendered as senior assistant from the year 1977 to 1984. Since no order was passed, the present petition came to be filed.

3. Learned counsel for the petitioner submitted that the Government issued G.O.Ms.No.408, dated 25.08.2009 stating that the persons who rendered services as daily rated and provincialized service for calculating 50% for the pension. In the present case, though the petitioner entered into service in the year 1977, her services were regularised only in the year 1984, however the said services were not taken into account for calculation of pension as per the G.O.Ms.No.408, dated 25.08.2009. Therefore, in order to avail such benefits, she made a representation on 03.03.2010, prior to her retirement, the 3<sup>rd</sup> respondent who orally said that the pension papers were submitted 3 months in advance and therefore her representation as regards G.O.Ms.No.408 could not be taken into consideration. Further added that steps will be taken to rectify the qualifying service in line with G.O.Ms.No.408. He further submitted that even after a period of one year, there was no change in the pension paid to her and she gave a representation in April 2020. However till filing of the writ petition, she has not received any orders from the respondents. Hence, it is submitted that this Court may issue a direction to the respondents to consider the petitioner representation in line with G.O.Ns., No.408, dated 25.08.2009 and pass appropriate orders.

4.Learned Special Government Pleader appearing for the respondent filed a detailed counter affidavit and referred paragraph No 5, submitted that she was working on daily wages i.e. as substitute worker only but there was no records to show as to whether she worked continuously without any break in service since the petitioner has stated that she was working beyond three decades, i.e. 1977 the records are not (readily available) traceable in this office as stated that by the Female Nursing Assistant Grade II who is the competent authority of maintenance of attendant in respect of last grade government servants including substitute worker, more so, she has represented the request only after 4 years of retirement Government service. In such view of the above, the respondents are bound to calculate her temporary services available during the period from 1977 to 1984 for the purpose of calculating daily wage services in terms of G.O.Ms.No.408, dated 25.08.2009. In the absence of original records or the proof for having worked during the substitute period the request of the petitioner could not be complied with. Accordingly he prays for dismissal of the petition.

5.This Court heard the submission made by either side learned counsel and also perused the material available on record.

6.The facts in the present in the present case is not disputed one. This Court perused the appointment order dated 25.04.1977, the petitioner and other persons were sponsored by the District Employment Exchange and they were selected and appointed substituted in the leave vacancy. This Court considered the submission made by the learned Special Government Pleader appearing for the respondent, that records were not available/traceable one, hence without records or proof available in the official respondent organization to calculate the temporary services rendered by the petitioner on leave vacancy is difficult one and the petitioner is appointed as substitute worker to work in the leave vacancies of Female Nursing Asst. Gr. II, Lascars (Women), and Stretcher Bearers (Women) etc., not engaged as daily wages. Further it is noticed that the petitioner retired from service in the year 2010, however the G.O. referred by the petitioner was issued in the year 2009 and she filed this petition only in the year 2014, after a lapse of so many years and there is no proper explanation from the petitioner. Hence without taking any immediate steps for getting her reliefs, merely filing this petition is not sufficient one for claiming her rights. Hence on the both grounds, this petition is liable to be dismissed

7.In such view of the above backdrops, this Petition is dismissed on devoid of merits. There shall be no order as to costs. The petitioner is at liberty to work out his remedy in the manner known to law.

Sd/-  
Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Secretary to the Government,  
The State of Tamilnadu,  
Health department,  
Government of Tamilnadu,  
Fort St. George,  
Chennai 600 009.
2. The Director of Medical Educations,  
E.V.R. Periyar Salai,  
Kilpauk, Chennai 600 010.
3. The Director,  
Govt. K.G. Hospital for Women and Children  
Triplicane, Chennai 600 005.

+lcc to The Government Advocate, SR37934  
+lcc to M/S.L.Damodharan, Advocate, SR38021

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BDL/06/01/2021

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