



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2020

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

W.P. (MD) No.14614 of 2011

and

M.P(MD) .Nos.1 and 2 of 2013

WEB COPY

D.Kumarasamy

... Petitioner

Vs.

The Director of Public Health and
Preventive Medicines,
359, Anna Salai,
Chennai-600 006.

... Respondent

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to promote the petitioner notionally with effect from 22.11.1993 with retrospective date on par with the date of promotion of his Junior Thiru.S.Radhakrishnan with consequential monetary and pensionary benefits.

For Petitioner : Mr.P.Veerabaku
For Respondent : Mr.G.Arumugam
Government Advocate

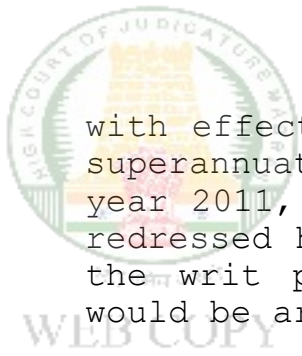
ORDER

The relief sought for in the present writ petition is for a direction to promote the petitioner notionally with effect from 22.11.1993 with retrospective date, on par with the date of promotion of his Junior Thiru.S.Radhakrishnan.

2.The petitioner was appointed as Lower Division Clerk and thereafter, appointed as Computer. The petitioner served about 36 years in the Department and retired from service on 30.09.1999 on attaining the age of superannuation.

3.The claim of the writ petitioner is that he was promoted as Superintendent with effect from 29.06.1996 and further promotion was not granted due to non-regularization of his service in the post of Assistant, with effect from 15.07.1981.

4.The relief sought for in the present writ petition after a lapse of about 12 years from the date of retirement, is absolutely misconceived. The prayer itself in the writ petition reveals that the direction is sought for to promote the petitioner notionally



with effect from 22.11.1993. The writ petitioner attains the age of superannuation in the year 1999 and filed the writ petition in the year 2011, and the claim is a lapsed one and the petitioner has not redressed his remedy for a long time. Even at the time of filing of the writ petition, the petitioner was about 70 years and now he would be around 79 years.

5.The learned Government Advocate appearing on behalf of the respondent consolidated the attention of this Court, regarding the facts narrated in Paragraph Nos.4 to 7 of the counter affidavit, which are extracted hereunder:

"4.With regard to para 4 it is submitted that as per the orders of Government in G.O.Ms.No.1771 Health and Family Welfare Department, dated 13.10.1978, the service of the Malaria Ministerial Staff was regularized only with effect from 13.10.78 in the post held by them on that date. The petitioner Thiru.D.Kumarasamy was working as computer in Tamil Nadu Medical Subordinate Service on 13.10.78. However, as per the Government Order, his services were regularised with effect from 13.10.1978, in the post Junior Assistant, as he had not acted as Assistant on 13.10.78. His service were regularised in the post of Assistant with effect from 24.12.1992 as in the case of his junior who has acted as Junior Assistant on 13.10.78 and as Assistant with effect from 24.12.92. Further, instructions were given to recover the excess pay and allowances paid to the individuals by way of awarding Selection Grade status prior to 13.10.88. Accordingly, the Deputy Director of Health Services, Tirunelveli, has issued orders refixing the pay in the post of Junior Assistant with effect from 13.10.78 and upto 13.10.88 and refixing his pay in the post of Assistant with effect from 24.12.92 and also ordered that excess pay and allowances paid to the individual should be recovered.

5.Against the above orders, the petitioner filed Original Application 7556/93 and 3952/93 to regularize his services in the post of Assistant with effect from 13.10.78 and to issue stay orders for the recovery of excess pay and allowances.

6.It is submitted that the Honurbale Tamil Nadu Administrative Tribunal had allowed the prayer and directed to regularize his service in the post of Assistant with effect from the actual date of his joining duty as Assistant(ie) 15.07.1981.

7.It is submitted that the Honourable High Court upheld the orders of the tribunal in its orders dated 13.10.07 in Writ Petition No.27529/2007 and 27530/07 and WP(MD)No.33480 and 33481 of 2007."



6. In view of the facts and circumstances, the relief as such sought for cannot be granted, after this length of time and the petitioner has slept over his right for a long time and therefore, now he cannot wake up and knock the doors of the Court.

7. Thus, the writ petition is devoid of merits. Accordingly, the writ petition stands dismissed both on the ground of laches and on merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar(CS)

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To

The Director of Public Health and
Preventive Medicines,
359, Anna Salai,
Chennai-600 006.

+1 CC to Spl GP (SR-19784[F] dated 12/10/2020)

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