



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2020

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THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P (MD)No.20110 of 2015

T.Palaniappan

.. Petitioner

Vs.

1.The Secretary to Government,
Social Welfare and Nutritious Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Social Welfare,
Thiru.Vee.Kaa.Industrial Estate Complex,
SIDCO, Guindy, Chennai - 600 032.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent i.e., the Secretary to Government, Social Welfare and Nutritious Department, Chennai relating to Government letter No.12308/Sa.Na.1(2)/2014-2, dated 01.09.2015 and quash the same and consequently direct the respondents to re-fix the pay of the petitioner in the cadre of Superintendent on par with his junior Tmt.P.Lalitha and refixation of pension within a specified time frame and pass such further or other orders.

For Petitioner

: Mr.S.Visvalingam

For Respondents

: Mr.S.Dhayalan,
Government Advocate

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent i.e., the Secretary to Government, Social Welfare and Nutritious Department, Chennai relating to Government letter No.12308/Sa.Na.1(2)/2014-2, dated 01.09.2015 and quash the same and consequently direct the respondents to re-fix the pay of the petitioner in the cadre of Superintendent on par with his junior Tmt.P.Lalitha and refix the pension.



2.The case of the petitioner is that he was appointed as Junior Assistant in the office of the District Medical Officer of the Medical Department, Pudukottai and joined duty on 22.09.1977. Later, he was deputed to the Social Welfare Department in the cadre of Assistant and joined duty on 01.09.1984 and he gave permanent option to continue in the said Department. He was promoted as Superintendent on 23.11.1994 and then promoted as Assistant Accounts Officer and Accounts Officer and he was allowed to retire on 31.03.2009.

3.According to the petitioner, the panel of Superintendent was released in proceedings No.74906/A3/1996, dated 17.07.1997, of the Director of Social Welfare and Nutritious Meal Programme, Chennai and his serial number is 150. His junior Tmt.P.Lalitha, whose serial number is 169, got regularization of service in the cadre of Superintendent from 19.07.1991, whereas the petitioner's regularization in the cadre of Superintendent is from 23.11.1994.

4.The grievance of the petitioner is that in the Social Welfare Department, the seniority in the cadre of Superintendent and other cadres are state-wise and therefore, he is not able to know how his junior Tmt.P.Lalitha, whose serial number is 169 in the panel for Superintendent approved in the proceedings, dated 17.07.1997, was promoted to the cadre of Superintendent even on 19.07.1991. Therefore, he made a representation in the year 1997, which was forwarded by the Child Development Project Officer to the Director of Social Welfare, Chennai in R.C.No.807/97, dated 02.12.1997. Thereafter, the petitioner made similar representation in the year 1999, which was forwarded by the Director of Health Services, Nagapattinam to the Commissioner of Social Welfare, vide his proceedings in Roc.No.5100/E1/99, dated 08.03.2001. The petitioner's similar representation dated 25.08.2005, was considered by the Project Officer, District Rural Development Agency, Thanjavur, and he addressed the same to the Special Commissioner and Commissioner of Treasuries and Accounts, Chennai, in his letter in RC.No.8576/2005/A1, dated 29.08.2005. Again, the petitioner made a representation on 25.08.2005 to the Commissioner of Social Welfare, Chennai. The Commissioner and Commissioner of Treasuries and Accounts, Chennai, informed the Project Officer, District Rural Development Agency, Thanjavur that the similar cases of junior getting more pay, are pending in the Court and therefore, the request of the petitioner cannot be considered at present and the service register of the petitioner was sent by the Director of Treasuries and Accounts, Chennai, in proceedings in RC.No.57462/07/A4, dated 16.06.2008 to the Director of Social Welfare, Chennai and again the Director of Social Welfare, Chennai in his letter No.9873/2(3)/2008, dated 17.03.2008, has requested the District Rural Development Project Officer, Pudukottai to send back the Service Register of the petitioner for considering his request for regularization of pay on par with his junior Tmt.P.Lalitha.



Thereafter, the petitioner made a representation dated 25.04.2014, to the 1st respondent praying notional promotion and refixation of pension in the cadre of Superintendent on par with his junior Tmt.P.Lalitha, with effect from 19.07.1991. Since, there was no response, he filed W.P(MD)No.13374 of 2014 seeking to dispose of the same, which was allowed directing the 1st respondent to consider and dispose of the the representation, within a period of 3 months from the date of receipt of a copy of the order. But, the 1st respondent rejected his request on the grounds that the request was made belatedly; after knowing the destruction of records in the fire accident and similar requests were rejected by this Court in W.P(MD) Nos.16944 to 16948 of 2014. Against which, the present writ petition has been filed.

5.The learned counsel for the petitioner submitted that the petitioner's serial number in the approved list of panel of Superintendent is 150 and his junior Tmt.P.Lalitha, whose serial number is 169, got regularization of service in the cadre of Superintendent from 19.07.1991. Therefore, the impugned order passed by the 1st respondent is liable to be set aside.

6.The learned Government Advocate appearing for the respondents submitted that the petitioner was retired from service on 31.03.2009 and he made representation seeking notional promotion and refixation of pension in the cadre of Superintendent on par with his junior, belatedly.

7.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

8.Perusal of records shows that the petitioner's serial number in the approved list of panel of Superintendent is 150 and his junior Tmt.P.Lalitha, whose serial number is 169, got regularization of service in the cadre of Superintendent from 19.07.1991. From 1997 onwards, the petitioner had been continuously sending representations and the Service Register has been returned stating that the similar matters are pending before this Court. Now it is well settled that the pay of the seniors has to be fixed on par with the juniors as the juniors cannot get more pay than the seniors unless and until there are disciplinary proceedings initiated against the seniors. In this case, it is not so. Therefore, the reasonings given that the petitioner has made representation belatedly is without any application of mind and therefore, this Court is inclined to interfere with the impugned order passed by the 1st respondent. Accordingly, the impugned order, dated 01.09.2015, passed by the 1st respondent, is quashed and the 1st respondent is directed to refix the salary of the petitioner on par with his junior namely Tmt.P.Lalitha, in the cadre of Superintendent and also refix the pension. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.



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W.P(MD)No.20110 of 2015

The writ petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Social Welfare and Nutritious Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Social Welfare,
Thiru.Vee.Kaa.Industrial Estate Complex,
SIDCO, Guindy, Chennai - 600 032.

+1 CC to M/s.S.SIVALINGAM, Advocate (SR-21[F] dated 02/01/2020)

+1 CC to M/s.SPL.GP (SR-104[F] dated 03/01/2020)

**ORDER MADE IN
W.P (MD) No.20110 of 2015
02.01.2020**

JMN(20.01.2020) 4P : 5C