



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.4171 and 11819 of 2015

W.P. (MD) .No.4171 of 2015

1.R.Jeyaraman

2.S.Chandran

3.R.Seenivasan

... Petitioners

Vs.

1.The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Rural Development Department,
Fort St. George, Chennai -9.

2.The Commissioner,
Rural Development and Panchayatraj
Department, Panagal Building,
Saidapet,
Chennai -15.

3.The Accountant General,
(Accounts & Entitlements Tamil Nadu),
361, Anna Salai,
Chennai -78.

4.The District Collector,
Office of the Collectorate,
Virudhunagar District.

... Respondents

W.P. (MD) .No.11819 of 2015

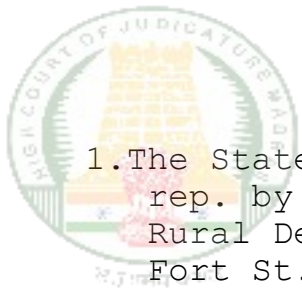
1.R.Bagirathan

2.T.Alagarraj

3.S.Shanmugam

4.R.Parthasarathy

... Petitioners



Vs.

1.The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Rural Development Department,
Fort St. George, Chennai -9.

2.The Commissioner,
Rural Development and Panchayatraj
Department, Panagal Building,
Saidapet,
Chennai -15.

3.The Accountant General,
(Accounts & Entitlements Tamil Nadu),
361, Anna Salai,
Chennai -78.

4.The District Collector,
Office of the Collectorate,
Virudhunagar District.

5.The District Collector,
Madurai District,
Madurai.

6.The District Collector,
Office of the Collectorate,
Ramnad District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents by counting the services rendered by the petitioners in the post of Special Temporary Post Rural Welfare Officer Grade-I for the purpose of further promotion and grant notional benefits and consequently pay arrears of salary and other pensionary benefits to the petitioners based on G.O.(Ms.).No.123, Rural Development and Panchayatraj (E6) Department, dated 07.03.2012 in the light of petitioners' representation dated 10.02.2015.

For petitioners in
both the petitions

: Mr.A.P.Muthu Pandian

For respondents

1, 2, 4 to 6 in

W.P. (MD).No.11819/2015

& for respondents 2 & 4

in W.P. (MD).No.4171/2015

: Mr.D.Muruganandham,

Additional Government Pleader

For 3rd respondent in
both the petitions

: Mr.P.Gunasekaran



COMMON ORDER

Both the writ petitions have been filed by the petitioners for a direction to the respondents to count their services rendered in the post of Special Temporary Rural Welfare Officer Grade-I for the purpose of further promotion and grant notional benefits, and consequently pay arrears of salary and other pensionary benefits to the petitioners, based on G.O.(Ms.).No.123, Rural Development and Panchayatraj (E6) Department, dated 07.03.2012 and in the light of their representation dated 10.02.2015.

2. The learned counsel for the petitioners submitted that the petitioners are retired employees of Rural Welfare Department. All the petitioners were initially joined in the post of Rural Welfare Officer (Grama Sevak) Grade II post. After serving various posts, such as Special Temporary Post of Rural Welfare Officer Grade I, Rural Welfare Officer Grade I/Assistant, Extension Officer, Deputy Block Development Officer, Block Development Officer, Assistant Director, P.A. to Collector, etc. they were retired from service on attaining the age of superannuation. The grievance of the petitioners is that though in G.O.Ms.No.487, P & AR Department, dated 18.04.1979, it is stated that the service of Special Temporary Post of Rural Welfare Officer Grade I will count as qualifying service for the purpose of promotion to the further higher post, their seniorities in the cadre of Rural Welfare Officer Grade I / Assistant were reckoned from the date of their actual promotion as Assistant. When a similarly placed person filed writ petitions in W.P.Nos.15194 of 2006 seeking the very same relief, this Court, by order dated 04.02.2008, allowed the same and the same was subsequently implemented by the State by G.O.Ms.No.123, Rural Development and Panchayat Raj Department, dated 07.03.2012. Based on the said order of this Court and G.O.Ms.No.123, a group of similarly placed persons filed W.P.No.10993 of 2013. This Court, by order dated 04.09.2014, has allowed the said writ petition and directed the respondents therein to grant notional promotion as Assistants from 01.10.1978, if they are otherwise eligible for further promotion to the higher post and also fix their pay notionally in the higher post and pay the revised pension. As the petitioners are similarly placed persons, they are also entitled to the said benefit and therefore, the respondents ought to have extended the same to them also. Thus, he prayed to allow the writ petitions.

3. The learned counsel appearing for the respondents submitted that the petitioners have come up with this writ petition belatedly and therefore, their case cannot be considered. He would further submit that the order passed by this Court in W.P.No.10993 of 2013 cannot be equated with the case of the petitioners' herein, as they were not qualified to be included in the Assistant Panel and hence, they cannot maintain the writ petition. Thus, he prayed to dismiss this writ petitions.



4. Heard the learned counsel for both sides and perused the records carefully.

5. Admittedly, in this case, it is not in dispute that the petitioners were served in the Special Temporary Post of Rural Welfare Officer Grade I from 01.10.1978, though they were not qualified to be promoted to the next level. After extracting the service, now the respondents cannot say that the service rendered by the petitioners without fully qualified for promotion cannot be counted as qualified service. Though it is stated by the respondents that the petitioners have come up with this writ petition belatedly, it is seen that the similarly placed persons have been granted the benefit of G.O.487 only as per the order of this Court dated 04.09.2014 made in W.P.No.10993 of 2013 and this writ petition has been filed in the year 2015. More over, they have come to this Court seeking their right, which has been omitted to be extended/given by the respondents.

6. The issue involved in this writ petition has already been gone into by the learned Single Judge of this Court in the decision in W.P.No.10993 of 2013, dated 04.09.2014 (K.Radhakrishnan and others Vs. Government of Tamil Nadu and others). The relevant portion is extracted hereunder:

"13.Para 8 of the counter affidavit states that one should have passed the test for further promotion. It is not the case of the petitioners that without passing test they should be promoted. Hence, the averment contained in para 8 of the counter affidavit has no relevance to the issue raised by the petitioner.

14. The case of the petitioners is as to whether the service rendered by them from 01.10.1978 as Rural Welfare Officer Grade I / Assistant shall be counted or not.

15. Para 20 of the counter affidavit is also not the answer the issues raised by the petitioner in Ground (d). In para 20 of the counter affidavit, it is stated that it cannot be reckoned as regular service rendered in the cadre of Rural Welfare Officer Grade I for the purpose of promotion. But, such a stand is contrary to No.487 and the same makes it clear that the period shall be counted from the date of advertisement to the Special Temporary Post. Therefore, I am of the view that the impugned letter of the Principal Secretary to Government is contrary to G.O.Ms.No.487. It is well settled that the G.O. issued by the Government would prevail over the letters fo the Principal Secretary to Government.....



16.It is not in dispute that the similarly situated person Mr.Senthilvel filed W.P.No.15194 of 2006 and this Court allowed the same on 04.02.2008 directing the respondent therein to count his service rendered in the Special Temporary post with effect from 01.10.1978 in the cadre of Rural Welfare Officer Grade -I and the same was also complied with by the Government by issuing G.O.Ms.No.123.

17. Now, it is stated in the impugned letter that the order of this Court dated 04.02.2008 in W.P.No.15194 of 2006 and implementation of G.O.Ms.No.123 cannot be cited as precedent. It is not able to understand as to why the petitioners cannot claim similar benefit as given to Mr.Senthilvel, particularly this Court granted the relief as sought for and the same has also attained finality. Furthermore, the petitioners have placed reliance on G.O.Ms.No.107 and therefore, they are entitled to succeed in their claim.

18. The learned counsel for the petitioners has submitted that the petitioners want to count the service for notional promotion alone in the higher post and consequential notional fixation so that they could get the revised pension and they are not claiming any monetary benefits for actual promotion.

19.The learned counsel for the petitioners relied on a judgment of the Hon'ble Supreme Court in Maharaj Krishan Bhatt and another Vs. State of Jammu and Kashmir and others, [2008 (9) SCC 24], in support of his submission. Paras 21 to 23 of the said judgment are extracted hereunder:

"21.It was no doubt contended by the learned counsel for the respondent State that Article 14 or 16 of the Constitution cannot be invoked and pressed in service to perpetuate illegality. It was submitted that if one illegal action is taken, a person whose case is similar, cannot invoke Article 14 or 16 and demand similar relief illegally or against a statute.

22. There can be no two opinions about the legal proposition as submitted by the learned counsel for the State. But in the case on hand, in our opinion, there was no illegality on the part of the learned Single Judge in allowing the Writ Petition No.519 of 1997 instituted by Abdul Rashid Rather and in issuing necessary directions. Since the action was legal and in connection with law, the Division Bench



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confirmed it and this Court did not think it proper to interfere with the said order and dismissed Special Leave Petition. To us, in the circumstances, the learned Single Judge was wholly right and fully justified in following the judgment and order in writ petition No.519 of 1987 in the case of present writ petitioners also.

23. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State Authorities ought to have gracefully accepted the decision by granting similar benefits to present writ petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed Letters Patent Appeal by affirming the order of the Single Judge. The Letters Patent Appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored."

20. In the said circumstances, particularly taking into account G.O.Ms.No.487 and also the order of this Court dated 04.02.2008 in W.P.No.15194 of 2006, which was also implemented by the Government in G.O.Ms.No.123, I am of the view that the writ petition deserves to be allowed.

21. Accordingly, the impugned order is quashed and the direction is issued to count the services of the petitioners from 01.10.1978 as Assistants and grant them notional promotion, if they are otherwise eligible for further promotion to the higher post and also fix their pay notionally in the higher post and pay the revised pension. The first respondent is directed to undertake the aforesaid exercise within a period of four months from the date of receipt of a copy of this order.

22. The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed."

7. Following the above order, the first respondent is directed to count the services of the petitioners from 01.10.1978 as Assistants and grant them notional promotion, if they are otherwise eligible for further promotion to the higher post and also fix their pay notionally in the higher post and pay the revised pension. The first respondent is directed to complete the above said exercise



within a period of eight weeks from the date of receipt of a copy of this order.

8. Both the writ petitions stand disposed of accordingly. No costs.

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Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal Secretary to Government,
Rural Development Department,
Fort St. George, Chennai -9.

2.The Commissioner,
Rural Development and Panchayatraj
Department, Panagal Building,
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Madurai.

6.The District Collector,
Office of the Collectorate,
Ramnad District.

+2 CC to Mr.A.P.MUTHU PANDIAN, Advocate (SR-3697,3698[F] dated 29/01/2020)

+2 CC to Mr.P.GUNASEKARAN, Advocate (SR-3932,3931[F] dated 30/01/2020)

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29.01.2020

VB(11.03.2020) 7P 11C

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