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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2021

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE Mr. JUSTICE KRISHNAN RAMASAMY

W.A.No.1069 of 2019
and C.M.P.Nos.7861 of 2019 & 1528 of 2020

1. The Secretary to Government,
Health and Family Welfare Department,
Chennai.
2. The Director,
Directorate of Medical Education,
Kilpauk, Chennai-10. .. Appellants/Respondents

Vs.

B.Thangaraj .. Respondent/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 04.06.2018 made in W.P.No.1636 of 2013.

Prayer in W.P.No.1636 of 2013: To issue a writ of Certiorarified Mandamous to call for the records in impugned Letter No. 44067/ EAPII (2)/12-1 dated 31.7.2012 issued by the 1st respondent to the 2nd respondent informing the rejection of petitioners claim and consequential impugned order in Ref. No. 4025/ E4/ 3/2010 dated 31.7.2012 of the 2nd respondent communicating the order of the 1st respondent to the petitioner and quash the same and consequently direct the respondents to issue orders modifying/canceling the conditions stipulated in the posting orders and grant continuity of service attendant service and monetary benefits and back wages to the petitioners from the year 2000 onwards when the Judgment in W.P.No.8872 of 1992 dated 29.9.1999 became final.

For Appellants : Mr.C.Jayaprakash
Government Advocate

For Respondent : Mr.N.Krishna Kumar



JUDGMENT

PUSHPA SATHYANARAYANA, J.

The instant Intra-Court Appeal relates to the plight of the poor Male Attendant in the Department of Health and Family Welfare, who has been tossed from 1992 in fighting for his rights by spending his life in litigation.

2. The respondent, who is the writ petitioner, joined a Non-Government Organization (NGO), namely, Family Planning Association of India on 16.11.1984 as a Male Attendant, Urban Family Welfare Centre, Saligramam, in a Health Project. His services were confirmed on 01.06.1985. The NGO had expressed its unwillingness to continue the project due to the poor performance of the same and requested the Population Project Co-ordinator, Chennai Corporation, to take over the project from 01.03.1992 onwards along with the staff to prevent sudden retrenchment of the staff working in the project.

2.1. Accordingly, another voluntary organization, namely, Association for Community Welfare Education and Development took over the new project and appointed the retrenched staff of the Family Welfare Association of India, who were willing to join in the posts in the new project. Unfortunately, the writ petitioner did not fit in the staffing pattern and hence, he was terminated from the project on 04.05.1992.

2.2. His challenge to the same in W.P.No.8676 of 1992 was allowed by this Court on 29.09.1999 making it clear that "the writ petitioner is not entitled to get any backwages and attendant benefits and he is not entitled to get continuity in service". Thus, this Court had directed the Association for Community Welfare Education and Development to provide a suitable post equivalent to the post held by the writ petitioner previously at the time of his termination. The Government was also ordered not to raise any objection with regard to over-age, as this Court had directed that a supernumerary post has to be created to accommodate the petitioner.

2.3. Challenging the said order, the appellant herein filed W.A.No.157 of 2001, which was dismissed for non-prosecution on 07.12.2006. Thereafter, the writ petitioner made a representation to the appellants on 12.12.2007 to comply with the directions issued by this Court in W.P.No.8676 of 1992. However, the appellants herein filed Review Application No.44 of 2009 against the dismissal of the intra-court appeal, which was also dismissed on 17.06.2009. Despite the same, the order of the learned Single Judge was not complied with and hence, the writ petitioner/ respondent was constrained to file Contempt Petition No.1095 of 2009, pursuant to which, the appellants herein issued an order of appointment to the petitioner on 08.02.2010. The contempt petition was closed, in view of the compliance of the writ Court's order, however, liberty was granted to the writ



petitioner to workout his grievances against the order posting before the appropriate forum.

2.4. Thereafter, the writ petitioner made a request to the appellants to grant him the service benefits for the period from 29.09.1999, i.e., from the date of disposal of W.P.No.8676 of 1992 till 09.02.2010 and also consequential promotional benefits to him. Once again, the appellant did not consider the same driving the petitioner to this Court in W.P.No.20336 of 2010 seeking a Mandamus, directing the appellant to consider his representations and modify the conditions stipulated in the order of appointment. The said writ petition was disposed of, directing the appellants to consider the representation dated 24.04.2010 on its merits and as per law within a period of four weeks. Pursuant to the said order, the writ petitioner was directed to furnish certain documents for taking further action in the matter. Though the writ petitioner had complied with all the requirements, there was no action taken by the appellants and hence, once again the writ petitioner filed Contempt Petition No.586 of 2012.

2.5. On receipt of the notice in the said petition, the appellants herein treated the appointment of the petitioner as a new appointment on 08.02.2010 and communicated the same in Letter No.44067/EAP-II(2)/12-1, dated 31.07.2012 and also informed him about the rejection of his claim. Based on the above said order, the contempt petition was closed giving liberty to the petitioner to challenge the said rejection order.

2.6. Subsequently, W.P.No.1636 of 2013 came to be filed by the writ petitioner contending that the benefits of the order dated 29.09.1999 was not given to him within the time stipulated and the appellants had taken their own time to comply with the same and only after the notice in the contempt petition was served, the order of appointment was issued and thus, the petitioner would be entitled to benefit of backwages and continuity of service from the date of disposal of the writ petition, dated 29.09.1999 or January, 2000, instead of considering his service as the new appointment. Even presuming that the new appointment is given, by creating a supernumerary post in terms of the directions issued in W.P.No.8676 of 1992, the petitioner would be entitled for the benefit from January, 2000 onwards.

3. Heard the learned counsel on either side and perused the materials placed before the Court.

4. The parties are not in conflict on facts. Even according to the appellants, after the contempt petition was filed, they decided to implement the order dated 29.09.1999 and necessary instructions were given to the Director of Medical Education on 06.02.2010 to give appointment to the writ petitioner in any of the posts such as Hospital Worker/Sanitary



Worker/Office Assistant in the Group D Services under the control of the Directorate of Medical Education temporarily on a condition that (a) he is not entitled for any backwages and attendant benefits; (b) he is not entitled to continuity of service for any purpose; and (c) this case shall not be treated as precedent in future for any appointment. Accordingly, the petitioner was given appointment to serve at the Government Hospital for Thoracic Medicine, Tambaram, on 08.02.2010 and the contempt petition was closed. Thereafter, his claim for backwages and other attendant benefits, etc., were considered and rejected, as it was clearly indicated in his appointment order.

5. No doubt, it is the supernumerary post that has been created to accommodate the petitioner after he was terminated from his original post, pursuant to the order passed in W.P.No.8676 of 1992. The said writ petition was disposed of, after seven years holding that he will not be entitled for any backwages. If the appellants had immediately considered the order and given him an appointment, the ordeal of knocking at the doors of this Court at every instance would not have arisen for the writ petitioner. From the facts, it is clear that the authorities only in order to harass him did not comply with the order and allowed the writ appeal to go for default and out of fear of punishment in the contempt petition, the order of appointment was issued to the writ petitioner in the year 2010. Already this Court had held that the petitioner will not be entitled to backwages and attendant benefits and get continuity of service and directed the authorities to create supernumerary posts within a period of three months. The order of learned Single Judge was not complied with by the authorities for more than a decade. The procrastination is purely by the appellants. The order of appointment issued to the petitioner, in response to the contempt petitions, based on which, the contempt petitions were closed will not take away the right of the writ petitioner of the benefits, for which, he is entitled to from January 2000.

6. The appellants failed to understand that the earlier post, in which, the writ petitioner was appointed in 1984 and was terminated subsequently in the year 1994 was not available. That is the reason why the order in W.P.No.8676 of 1992 directed that the supernumerary post has to be created. Therefore, since it is a new post created, the question of backwages and the attendant benefits including the continuity of service may not arise and such observation was made by this Court, which is correct. However, if the direction of the writ court is complied with in its letter and spirit, the writ petitioner would have been in employment from the year 2000, as the very appointment is a fresh one having no link to any continuity of service or backwages etc.



7. The said argument may be acceptable, if in the writ appeal or the subsequent review petition filed by the appellant, the order of the Writ Court was in any way modified or varied. When the said order was not disturbed and allowed to attain finality, it takes effect from the date on which, it was passed and the appointment should have been given within three months, i.e., in January 2000. Thus, having frustrated the order passed by the writ Court, by filing the appeal after two years and let it go for default, after six years, and the review order was invited after 10 years, the appellants cannot deprive the legitimate and reasonable benefits for which the writ petitioner is entitled to.

8. No doubt, the writ petitioner is entitled to all the actual monetary benefits which a Government servant would get on account of long service. The petitioner is entitled to all the above benefits from January, 2000, though the supernumerary post was created only in the year 2010. The petitioner is also entitled to continuity of service from the year 2000.

9. In the light of the above discussion, the writ petitioner is entitled for his appointment being anti-dated, at least for the purpose of computing the continuity of service. The writ Court has rightly allowed the writ petition, by setting aside the order of rejection and passed the following order :

"8. For the foregoing reasons, the writ petition is allowed. Consequently, the impugned order rejecting the representation of the petitioner vide order dated 31.07.2012 stands quashed. The respondent is directed to antedate the appointment of the petitioner to the last date of the time stipulated in the aforesaid writ petition to comply the order. However, the benefit accruing out of such antedating of appointment shall be notional till the date the petitioner joined in the post in pursuance to the order of appointment given to him in terms of the direction in the aforesaid writ petition. It goes without saying that the petitioner is entitled to continuity in service from the date his present service is antedated. This order be carried out within three months of receipt of the production of the order whichever is earlier before the respondents. No costs."

10. We see no infirmity in the said order. It is also stated that the writ petitioner retired in April 2019 and since an order of interim stay was passed in this appeal staying the operation of the above said order of the Writ Court and the vacate stay application filed by the respondent is pending as on



date, the respondent was not given any benefits till date, the appellants are directed to comply with the directions issued by the learned Single Judge within a period of three months from the date of receipt of a copy of this judgment.

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11. With the above directions, the writ appeal stands dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

12. Before parting with this matter, it has to be stated that because of the delay on the part of the officials in taking decisions on the petitions in accordance with law, the Courts have to issue numerous directions extending certain benefits to the individuals, which will again lead to so many litigations making similar claims. The natural corollary is that there would be a dent in the State exchequer, which was on account of the delay of the officialdom. The entire machinery involved in the administration has to be held responsible. The same reflects badly on the administration, its lethargy is writ large by not taking appropriate action on time.

13. There must be standardized office procedures for every Department, that have to be complied with in time without any inordinate delay, including implementing the orders of the Courts. Why is there no proper system for obeying/implementing the orders of this Court ? When it can be easily managed with diligent application of mind and a follow-up action by the concerned official effectively, it is disheartening to note that there is no such follow-up mechanism available in the Secretariat or in the Departments.

14. As a matter of fact, in our opinion, it is absolutely necessary to have an effective system to comply with the orders of the Court within time. Unless and until, the Government brings out an effective mechanism, the problem would persist and petitions of all sorts will be filed in the Court.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
Health and Family Welfare Department,
Chennai.



2. The Director,
Directorate of Medical Education,
Kilpauk, Chennai-10.

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+1cc to Mr.N.Krishna Kumar, Advocate SR.No. 37500

W.A.No.1069 of 2019
& C.M.P.Nos.7861 of 2019
and 1528 of 2020

AJS (CO)
B.VC (23.08.2021)