



W.P.No.10216 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.10.2022

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.No.10216 of 2011

M.Gopalakrishnan

... Petitioner

Vs.

1.The Govt. of Tamil Nadu rep. by the
Principal Secretary to the Government,
Handlooms, Handicrafts, Textiles and
Khadi Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Sericulture,
Foulke's Compound,
Anaimeedu, Salem-636 001

3.The Assistant Director of Sericulture,
Krishnagiri Main Road,
Near Four Road,
Dharmapuri-636 701,
Dharmapuri District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India
for issuance of a Writ of Certiorarified Mandamus to call for the records

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relating to the impugned order of the first Respondent in G.O.Ms.No.173, Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 30.12.2010 (the impugned order) and quash the same and direct the first respondent to regularize the Petitioner's services from the date of his initial appointment i.e from 21.12.1981 and to treat the period from 25.01.1984 to 25.10.1984 and 15.11.1997 to 02.02.2000 as duty period and grant him all consequential benefits.

For Petitioner : Mr.P.Manoj Kumar
For Respondents : Mr.M.Bindran
Additional Government Pleader

ORDER

The writ petition is filed challenging the order of the first respondent declining to regularise the services of the petitioner from the date of his initial appointment i.e from 21.12.1981 and to treat the period from 25.01.1984 to 25.10.1984 and 15.11.1997 to 02.02.2000 as duty period and consequential benefits thereof.

2. The case of the petitioner is that, he joined the office of Assistant Director of Sericulture, Salem. as Demonstrator on 21.12.1981 and his



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services were regularized vide proceedings dated 13.12.1983 with effect from 21.12.1981 by the Assistant Director of Sericulture, Salem. The petitioner's services were terminated vide order dated 25.01.1984 on the ground that the petitioner had not passed 10th Standard examination, which was the requisite educational qualification for the post of Sericulture Demonstrator. According to the petitioner, he produced his SSLC certificate, which reflected that he had failed the SSLC exam and therefore there was no suppression of facts by him. The petitioner challenged the termination order dated 25.01.1984 before the Hon'ble High Court in W.P.No.1235 of 1984. On 28.02.1984, an interim order of stay was passed by this Court and in pursuance thereof, the petitioner was reappointed as Sericulture Demonstrator under Rule 10(a) (i) of the Tamil Nadu State and Subordinate Service Rules vide order dated 11.05.1984. Meanwhile, the writ petition filed by the petitioner was transferred to the Tamil Nadu Administrative Tribunal, Chennai, numbered as T.A.No.1025/89 and was dismissed for non-prosecution. In view of the dismissal of the T.A.No.1025/89 vide order dated 17.09.1997, the third respondent dismissed the petitioner from service vide proceedings dated 25.11.1997.



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The petitioner filed M.A.No.8516/1997 before the Tamil Nadu Administrative Tribunal, Chennai for restoration of the T.A.No.1025/89, which was allowed on 09.01.1998 and T.A.No.1025/89 was restored. The petitioner filed O.A.No.2247/98, challenging the dismissal order dated 25.11.1997 and on the strength of interim order dated 25.11.1997, the petitioner got reposted as Junior Inspector of Sericulture, Salem vide order dated 03.08.1999. Meanwhile the Transferred Application No.1025/1989 was taken up for hearing on 06.06.2002 and the Hon'ble Tamil Nadu Administrative Tribunal, Chennai directed the respondent to send proposals to the Government for relaxation of rules. It seems that the Government issued G.O.Ms.No.310 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 07.11.1987, merging the post of Sericulture Demonstrator with that of the Junior Insepector of Sericulture. The Government on merger of the posts issued two G.O's in G.O.Ms.No.46 dated 03.03.1997 relaxing the educational qualification with effect from 07.11.1987 for 159 employees and in G.O.Ms.No.185 dated 20.10.2006 relaxing the educational qualification in favour of 59 persons including the petitioner. The Original Application No.2247/1998 filed by the petitioner, challenging the



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termination order dated 25.11.1997 was transferred to the Hon'ble High Court and renumbered as W.P.No.34563 of 2006. On 02.09.2009, the writ petition was dismissed as Infructuous, on the statement made by the petitioner's counsel that general relaxation was granted in G.O.Ms.No.310 dated 07.11.1987. Thereafter based on the recommendation of the 2nd respondent dated 20.02.2003, the order dated 06.06.2002 passed by the Tamil Nadu Administrative Tribunal in T.A.No.1025/1989 and the order dated 02.09.2009 in W.P.No.34563 of 2006 of this Hon'ble Court, the Principal Secretary to Government (First respondent herein) passed the impugned order in G.O.Ms.No.173 dated 30.12.2010 which is the subject matter of the present writ petition.

3. The respondents filed a counter affirming the facts as regards the various orders passed by the respondents and the orders passed by the Hon'ble Tribunal and this Hon'ble Court. The respondent's case was that the initial appointment of the petitioner was itself illegal in as much as the petitioner had failed 10th Standard examination, whereas, the educational qualification for the post of Sericulture Demonstrator was a pass in 10th



Standard. As the petitioner's initial appointment was itself illegal a proposal was sent by the second respondent to the first respondent requesting the first respondent to regularise the services of the petitioner with effect from 15.10.1985 (date of passing 10th Std.), ratifying his appointment and retention in Government service upto 26.12.1998 and to regularise the period of absence from 25.01.1984 to 25.10.1984. The first respondent passed the impugned order rejecting the proposal for regularisation of the petitioner's service with effect from 15.10.1985 (Date of passing 10th Standard new pattern) but allowed the same from 07.11.1987, as stipulated in G.O.Ms.No.185 dated 20.10.2006. The proposal for regularisation of the petitioner's service for non-duty period from 25.01.1984 to 25.10.1984 and 25.11.1997 to 02.02.2000 was also rejected, on the ground that the removal of the petitioner from service was not on the basis of any disciplinary proceedings but, was based on his not possessing the requisite educational qualification. The first respondent ratified the petitioner's appointment from 26.10.1987 to the date of relaxation of educational qualification i.e. 07.11.1987. The respondent therefore submitted that the writ petition was bereft of merits and the same deserved to be dismissed.



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4. I have heard both the counsel and perused the materials on record.

5. The learned counsel for the petitioner reiterating the contentions raised in the writ petition submitted that by relaxing the petitioner's service from 07.11.1987, the petitioner has been deprived of 6 years of service and the same is unjust and unfair and therefore prayed to allow the writ petition. The counsel for the respondent on the other hand supported the impugned order relying on the submissions made in the counter and prayed for dismissal of the writ petition.

6. The issue in the writ petition is whether the respondents are justified in regularising the services of the petitioner from 07.11.1987 instead of 21.12.1981 (Initial date of appointment of the petitioner). It is an admitted fact that the petitioner did not possess the requisite educational qualification of a pass in 10th Standard, required for the post of Sericulture Demonstrator at the time of his initial appointment. The respondents terminated the services of the petitioner for want of requisite educational



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qualification vide order dated 25.01.1984, which was challenged in W.P.No.1235/1984 and by virtue of interim order in W.M.P.No.1941 of 1984 dated 28.02.1984, the petitioner was reappointed as Sericulture Demonstrator under Rule 10(a)(i) vide order dated 11.05.1984. It is therefore seen that the reappointment of the petitioner was on temporary basis and that too in pursuance of the interim order passed by this Hon'ble Court. When the main case which was transferred to the Administrative Tribunal in T.A.No.1025/1989 was taken up, the petitioner did not appear and the same was dismissed for Default. As the T.A was dismissed, the respondents passed a fresh dismissal order on 25.11.1997, which came to be challenged in O.A.No.2247/1998 and again on the basis of interim orders, the petitioner was permitted to join duty vide order dated 02.02.2000. Meanwhile T.A.No.1025/89 which was restored on an application filed by the petitioner was taken up for final disposal and the same was allowed with directions to the respondents to send proposals to the Government for relaxation of Rules in favour of the petitioner. During the intervening period, the O.A.No.2247/1998 which was filed challenging the termination order dated 25.11.1997 and which was transferred to the High Court in



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W.P.No.34563 of 2006, was heard by this Hon'ble Court and the same was dismissed as Infructuous, in view of the general relaxation granted in G.O.Ms.No.310 dated 07.11.1987. Thereafter the first respondent passed the impugned order, rejecting the petitioner's request for relaxation of educational qualification from the date of his appointment as Sericulture Demonstrator.

7. It is an admitted fact that at the time of initial appointment of the petitioner on 21.12.1981, the petitioner was not eligible for the post of Demonstrator as he had failed in 10th Standard, whereas the rules required a pass in 10th Standard. The petitioner while admitting the same has tried to justify it by stating that he did not suppress the said fact as he had produced his SSLC certificate before the respondents. Whether the petitioner, suppressed or not, the fact remains that he did not have the basic educational qualification for the post on the date of appointment. It is in this backdrop that the claim of the petitioner for regularisation from date of his appointment has to be considered. The series of litigations are not disputed by both sides. The only issue is whether the petitioner's services



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are to be regularised from the date of his initial appointment or from 07.11.1987 the date on which general relaxation of educational qualification was extended to all vide G.O.Ms.No.185 dated 20.10.2006.

8. That G.O.Ms.No.185 dated 20.10.2006 was a general G.O. extending the benefit of relaxation of educational qualification for the post of Demonstrator cum Junior Inspector of Sericulture is not disputed. It is to be noted here that in the order dated 06.06.2002 of the Hon'ble Administrative Tribunal the only direction given was that the Government shall relax the rule in respect of educational qualification for the post of Demonstrator cum Junior Inspector in favour of the petitioner. This Hon'ble Court vide order dated 02.09.2009 in W.P.No.34563 of 2006 dismissed the same as Infructuous on the basis of the submission of the petitioner's counsel that the petitioner was reinstated in service and general relaxation was granted in G.O.Ms.No.310 dated 07.11.1987. It is seen from both the orders that there was no direction to the respondents to consider the regularisation of the petitioner's services by granting relaxation of educational qualification from a particular date, though it was open to the



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petitioner at the time to seek liberty to agitate the same. The petitioner having failed to do so, cannot in my view agitate this issue now.

9. Though relaxation of educational qualification was granted in the petitioner's case, the petitioner's appointment itself was to be ratified, as his appointment was not in conformity with the rules at the inception. Therefore by the impugned order expost facto approval was also granted for ratification of the petitioner's appointment and his retention in service. The contention of the petitioner that he should be regularised from the date of his appointment is liable to be rejected because admittedly the petitioner passed the 10th Standard exam only in October 1985 and hence was not eligible for the post before October 1985. Moreover, when relaxation of educational qualification was granted from 07.11.1987 vide G.O.Ms.No.185 dated 20.10.2006, the petitioner cannot seek regularisation from an earlier date without assailing the G.O. The petitioner cannot approbate and reprobate. The petitioner cannot rely on the G.O for relaxation of educational qualification and at the same time state that it shall not operate from the date stipulated therein unless he challenges the same. It is



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common knowledge that when general relaxation is granted by the Government, the same takes effect only from the date stipulated in the G.O.

Itself. When a particular date (i.e) 07.11.1987 was stipulated by the Government while giving general relaxation vide G.O.Ms.No.185 dated 20.10.2006, it is not open to the petitioner to ask for regularisation from date of original appointment. I am therefore of the view that the petitioner's contention is unsustainable.

10. For the reasons discussed above, I am of the view that the petitioner is not entitled for regularisation from the date of his initial appointment (i.e) 21.12.1981. The petitioner's case is distinguishable from the case of the persons covered by G.O.Ms.No.185 dated 20.10.2006, in as much as in the petitioner's case not only educational qualification was relaxed but also the very appointment of the petitioner was ratified ex post facto.

11. I find no infirmity in the reasoning of the first respondent for not treating the period from 25.01.1981 to 25.10.1984 and 15.11.1997 to



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02.02.2000, as duty period because as rightly pointed out by the first respondent the petitioner was not removed from service on the basis of disciplinary proceedings but was removed from service for want of requisite educational qualification. The respondent has therefore rightly refused to consider the aforesaid period as duty period. On a conspectus of all the facts, I am of the view that the prayer in the writ petition to regularise the petitioner's service from the date of his initial appointment as also other relief's are untenable.

For all the above reasons, I find no merits in the writ petition and therefore the same is dismissed. There shall be no order as to costs.

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N.MALA, J

(dsn)

To

- 1.The Secretary to Government,
Education Department,
Fort St.George,
Chennai-600 009.
- 2.The Secretary,
Tamilnadu Public Service Commission,
No.1, Greems Road,
Chennai-600 006.
- 3.The Commissioner,
Corporation of Chennai,
Chennai-600 003.
- 4.The Joint Commission (Education),
Corporation of Chennai,
Chennai-600 003.

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