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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.11872 of 2012

and

M.P.No.1 of 2012

R.Srinivasan

...Petitioner

-Vs-

1.The Government of Tamil Nadu,
Rep. by the Principal Secretary
to the Government,
Health and Family Welfare
Department,
Fort St.George, Chennai - 600 009.

2.The Director of Public Health and
Preventive Medicine,
359, Anna Salai, DMS Complex,
Teynampet, Chennai - 600 006.

3.The Deputy Director of Health
Services (Leprosy),
Tiruvallur and Kancheepuram
Districts @ Poonamalee,
Chennai - 600 056.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent issued in Letter No.17278/N2/2011-2 dated 19.10.2011 and quash the same and direct the respondents to grant all consequential benefits to the petitioner including revision of pay and revision of pension.

For Petitioner : Mr.Lakshmi Narasimhan
for Mr.P.Rajendran

For Respondents: Mr.Veda Bagath Singh,
Special Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.



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2. The petitioner herein, while holding the post of Leprosy Inspector, which was re-designated into Health Inspector Grade - I, was promoted as a Non-Medical Supervisor on 25.01.1988 and thereafter promoted as Health Educator, in which post, he had retired from service on 30.06.2005.

3. It is the grievance of the petitioner that if he had continued in the lower post of Leprosy Inspector, he might have got higher pay than the higher post of Non-Medical Supervisor, since he would have had the benefit of 5% personal pay therein. For such a claim, the petitioner placed reliance on G.O.Ms.No.57, Finance (Pay Cell - II) Department, dated 28.01.1991, which states that, in instances where the Government employees in a higher post happens to get more pay in the Special Grade of the lower post than the pay in the higher post, re-fixation of the scale of pay of the officiating post at a stage in the substantive post can be ordered. Likewise, in the same Government Order, it was ordered that when a Government servant would have drawn more pay in the revised scale in the lower officiating post, either in the Selection Grade of lower post or in the Special Grade of lower post, had he continued in it than in the higher officiating post or Selection Grade/Special Grade in which he is actually working, his pay in the scale of pay of the higher officiating post should be revised.

4. The respondents have rejected the petitioner's request, on the ground that, since the petitioner was promoted as a Non-Medical Supervisor and Health Educator, he cannot claim that had he continued in the lower post and therefore, he would be entitled for the 5% personal pay.

5. The learned Special Government Pleader for the respondents placed reliance on the counter affidavit in this regard and further submitted that since the petitioner had accepted the promotional post, while he was in service and had questioned the same after 5 years of his retirement, he would not be entitled for such a pay.

6. In normal circumstances, when there is no clarity with regard to the entitlement of a Government employee, this Court may have taken into account the delay and laches on the part of such a pensioner. However, when G.O.Ms.No.57, dated 28.01.1991, takes care of the anomalies of such Government servants, who are deprived of some pay, which they would have been entitled to, had they been continued in the lower post, this Court is of the view that the delay and laches on the part of the petitioner, need not be fatal to him and thereby deny the benefit.

7. In the light of the above observations, the impugned order dated 19.10.2011 is quashed. Consequently, there shall be



a direction to the first respondent herein to reconsider the petitioner's request, in the light of the observations made by this Court and in accordance with G.O.Ms.No.57, Finance (Pay Cell - II) Department, dated 28.01.1991 and pass appropriate orders, within a period of eight (8) weeks from the date of receipt of a copy of this order

8. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

hvk
To

1.The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.

2.The Director of Public Health and
Preventive Medicine,
359, Anna Salai, DMS Complex,
Teynampet, Chennai - 600 006.

3.The Deputy Director of Health
Services (Leprosy),
Tiruvallur and Kancheepuram
Districts @ Poonamalee,
Chennai - 600 056.

+1 cc to Mr.P.Rajendran, Advocate Sr.NO. 10237

+1 cc to Government Pleader Sr.NO. 10727

W.P.No.11872 of 2012

and

M.P.No.1 of 2012

kv (CO)

A.SK(03/03/2022)