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W.P.No.4996 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.4996 of 2008

C.Periyaswamy

.... Petitioner

vs

1. The Government of Tamil Nadu

Rep by its Secretary to Govt.,
Health and Family Welfare Department,
Fort St.George, Chennai-0.

2. The Director of Public Health and Preventive Medicines,
Chennai.

.. Respondents

Writ petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in G.O.Ms.No.353, dated 11.10.2000 and the consequential order of the 1st respondent in Letter No.25242/N1/2006-4, dated 24.08.2007, and quash the same and direct the 1st respondent to regularise the services of the petitioner with effect from 01.03.1963 by counting his entire services and to grant the consequential service benefits and all other monetary benefits including the grant of appropriate pensionary benefits.

For Petitioner : Mr.B.Divakaran

For Respondents : Mr.S.Arumugam
Government Advocate



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ORDER

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2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

3. (i) The petitioner was employed as Vaccinator in National Small Pox Eradication Programme on 01.03.1963 and worked in different places. He underwent Sanitary Inspector Course from 01.08.1968 to 26.06.1969 and on completion of the said course, he was appointed as Health Assistant in Pallavaram Municipality and worked from 06.04.1970 to 20.08.1970. Later from 21.08.1970 to 14.06.1976, the petitioner was transferred from Pallavaram Municipality to Velacherry Primary Health Centre as Health Inspector (Family Planning) and then, he was transferred to Porur Primary Health Centre from 15.06.1976 to 07.08.1976. In the year 1976, he appeared before the Tamil Nadu Public Service Commissioner (TNPSC) for regularizing his service as Health Inspector and he was not selected. Therefore, he was reverted back to the post of Health Assistant in the Panchayat Union, Sriperumbudur, Chengalpattu District. For all the Health



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Inspectors, who were directed to report before the TNPSC and who were not selected and reverted and absorbed as Health Assistants in Panchayat Union, the Government passed orders regularising their services from the date of their 1st appointment. The case of the petitioner is that inspite of regularising several employees in the post of Health Assistants from the date of 1st appointment, his name was not considered. Therefore, he made representation for regularizing his service from the date of initial appointment i.e., 01.03.1963 onwards, but there was no response.

(ii) In the year 1982, the Government proposed a scheme to bring the various health services under one umbrella and formed a Multipurpose Health Worker's Scheme. In the said scheme, the Health Assistants were merged together with Government side as well as Panchayat side and absorbed by changing their nomenclature as Health Supervisors vide G.O.Ms.No.1936 Health dated 29.09.1982. Accordingly, the petitioner was absorbed as Health Supervisor and posted in the Primary Health Centre during 1982 and thereafter, he continued in the Primary Health Centre till he attains the age of superannuation and retired on 30.04.1997. Since his absorption was not treated to be promotion, the respondent passed orders directing recovery of excess pay from the petitioner. Aggrieved by the same he filed O.A.No.5234 of 2002 before the Tamil Nadu Administrative Tribunal. At the time of revision of petitioner as Health Assistant, he had crossed



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the age limit, therefore, the Government relaxed the age in respect of the petitioner as was done in the case of other employees and direction was issued to regularise the services of petitioner from the date of issuance of G.O.Ms.No.729 dated 09.09.1987.

(iii) The case of the petitioner is that several other juniors to the petitioner viz., N.Kothandam, G.Kannan, P.Somasundaram, R.Venkataraman and S.Sivaraman, were regularized from the date of initial appointment, whereas the petitioner was discriminated. When the above anomaly was pointed out to the Government, the Government issued G.O.Ms.No.353 dated 11.10.2000 regularising the services of the petitioner with retrospective effect from 0.08.1977 with monetary benefits from 09.09.1987. According to the petitioner, the said order amounts to discrimination. Hence, he has filed this writ petition challenging the said G.O.

(iv) On the contrary, the learned Government Advocate would submit that the other vaccinators viz., N.Kothandam, G.Kannan, P.Somasundaram, R.Venkataraman and S.Sivaraman, were working regularly as vaccinators since their first appointment and only after completion of 8 years of service, proposals had been sent to the Government for regularisation of service of those vaccinators and accordingly, their services have been regularised vide G.O.Ms.No.2324 Health and Family Welfare Department dated 27.10.1977, but their services have been



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erroneously regularised by the sub-ordinate officers of the first respondent from their initial appointment and subsequently, the same had been ratified by G.O.Ms.No.1771 Health and Family Welfare Department, dated 13.09.1988. Therefore, the prayer of the petition seeking retrospective regularization from his initial appointment i.e., 01.03.1963 is not feasible for compliance.

4. This Court, considered the submissions made on either side and perused the materials available on record.

5. It is seen that the petitioner was appointed as a Vaccinator with effect from 01.03.1963 under the National Smallpox Eradication Programme and thereafter, he worked as Health Assistant and Health Supervisor in the Primary Health Centre continuously till he attains the age of superannuation and retired from service on 30.04.1997. When several other juniors to the petitioner viz., N.Kothandam, G.Kannan, P.Somasundaram, R.Venkataraman and S.Sivaraman, were regularized from the date of initial appointment, the petitioner was not regularised. Thereafter, on his request, the Government issued G.O.Ms.No.353 dated 11.10.2000 regularising the services of the petitioner with retrospective effect from 20.05.1977 with monetary benefits from 09.09.1987 only. As per G.O.Ms.No.1771, Health and Family Welfare Department, dated 13.09.1988, it is seen that petitioner's juniors were regularised on completion of 8 years of service from the date of initial appointment, whereas the petitioner was regularised only



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with effect from 20.05.1977. Therefore, this Court is of the opinion that the petitioner is also entitled for the same benefit. The petitioner is entitled for retrospective regularisation on completion of 8 years of service from the date of initial appointment i.e., with effect from 01.03.1971. However, the said benefit is granted to the petitioner for pensionary benefits alone and not for any other purpose.

6. In view of the reasons stated above, G.O.Ms.No.353, dated 11.10.2000 and the consequential order of the 1st respondent in Letter No.25242/N1/2006-4, dated 24.08.2007 are quashed and the 1st respondent is directed to regularise the service of the petitioner retrospectively with effect from 01.03.1971. It is made clear that the petitioner is granted retrospective regularisation with effect from 01.03.1971 for pensionary benefits alone. Accordingly, the Writ Petition is disposed of. No costs.

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Index:Yes/No
Speaking/Non-speaking order

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To
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Rep by its Secretary to Govt.,
Health and Family Welfare Department,
Fort St.George, Chennai-0.
2. The Director of Public Health and Preventive Medicines,
Chennai.

J.NISHA BANU,J.



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Vsi/sts

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