



W.P.No.24102 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.12.2022

Coram

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.24102 of 2021
and
W.M.P. No.25404 of 2021

Dr.P.Nellaiappar

.. Petitioner

Vs

1.The Secretary to Government of Tamil Nadu
Health & Family Welfare Department,
Fort St.George,
Chennai – 600 009.

2.The Director of Medical and Rural Health Services,
D.M.S.Compound, Chennai – 600 006.

3.The Director of Medical Education,
Kilpauk, Chennai – 600 010.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the proceedings of the 1st respondent dated 29.06.2021 issued in Letter No.22021/A1/2020-2 Health and Family Welfare (A1) Department and quash the same and consequently to direct respondents to allot Civil Medical List (CML) number to the petitioner after taking into account of his past temporary service rendered as Assistant Surgeon for the period from 04.04.1990 to 13.06.1991 in Primary Health Centre along with regular service made



W.P.No.24102 of 2021

by TNPSC with all consequential service and monetary benefits in terms of the orders of this Court dated 06.07.2010 passed in W.P.No.41500 of 2006.

For Petitioner : Mr.P.I.Thirumoorthy
For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader

ORDER

1. The writ petitioner has challenged the impugned order dated 29.06.2021 issued by the first respondent rejecting his request to take into account his past temporary services rendered as Assistant Surgeon for the period from 04.04.1990 to 13.06.1991 in the Primary Health Centre.

2. Admittedly, the writ petitioner was appointed on 31.03.1990 under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services. The relevant part of the same is extracted hereunder:-

“Rule 10(a)(i) (1) where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and



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W.P.No.24102 of 2021

there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualification prescribed for the post otherwise than in accordance with the said rules.

.....

(v) A person appointed under clause (i), (ii) or (iv) shall not be regarded as a probationer in such service, class or category or be entitled by reason only of such appointment to any preferential claim to future appointment to such service, class or category. The services of a person appointed under clause (i), (ii) or (iv) shall be liable to be terminated by the appointing authority at any time without notice and without any reason, being assigned."

3. As seen from above referred Rule, it is clear that, appointment made under the said Rule is only an emergency appointment. Whenever a need has arisen to fill up an immediate vacancy, appointment under Rule 10(a)(i) is made. It has also been categorically clarified that the service of the person appointed under clause (i), (ii) or (iv) of Rule 10(a) shall be liable to be terminated by the appointing authority without issuance of any notice and without



W.P.No.24102 of 2021

any reason being assigned. But the claim of the petitioner that absorption into Tamil Nadu Medical Service should be from the date of initial appointment in the Local Body Services and not from the date of provincialisation is not correct since his appointment was not under the Panchayat Union Dispensary whereas the appointment of Dr.M.Sridharan was in the Panchayat Union Dispensary who was later absorbed into Tamil Nadu Medical Service due to provincialisation of Panchayat Union Dispensaries as Primary Health Centres.

4. Admittedly, the petitioner was appointed as Medical Officer in the Tamil Nadu Medical Services under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services and as per the said Rule, the said appointment is made on emergency basis and is purely temporary.

5. Learned counsel for the petitioner had relied upon the judgment of Hon'ble Supreme Court in the case of *The Mahatma Gandhi University and Ors v Rincymol Mathew* rendered on 10.11.2022 in Civil Appeal No.8031 of 2022. That judgment did not deal with Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services and did not deal with the case of emergency



W.P.No.24102 of 2021

appointment as in the present case. Therefore, the said judgment is not applicable, to the facts of the instant case.

5.1 The decision relied upon by the learned counsel for the petitioner in the case of *Rajbir Singh and others vs Union of India and others reported in AIR 1991 SC 518* deals with the case of appointment made on adhoc basis and subsequently regularized. It did not deal with an emergency appointment, as in the instant case, under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services. Admittedly, the appointment made is only an emergency appointment where the rule makes it clear that termination can be done even without issuance of any notice to the appointees. Therefore, this Court is of the view that the aforesaid decision relied upon by the learned counsel for the petitioner has also got no bearing to the facts of the instant case.

6. Admittedly, the writ petitioner was subsequently selected by the Tamil Nadu Public Service Commission and based on the said selection, appointment order was issued only on 13.06.1991. The appointment order dated 13.06.1991 issued by the Office of the Director of Medical and Rural Health Services, Madras - 6 in favour of



W.P.No.24102 of 2021

the writ petitioner also does not refer to the past service of the writ petitioner on temporary basis with effect from 04.04.1990 when the writ petitioner was appointed temporarily on emergency basis as per Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services. When it has been made clear to the writ petitioner that he was appointed only temporarily that too on emergency basis as Assistant Surgeon in the Primary Health Centre on 31.03.1990 and that he was appointed under the Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services, it is understood that the said appointment is only on temporary basis and the said appointment can be terminated without issuance of any prior notice. Admittedly, in the selection conducted by the Tamil Nadu Public Service Commission for the year 1989 – 1990, the writ petitioner's name was only found in the reserved list and his name did not find a place in the original selection list. Only in the year 1991, i.e. on 13.06.1991, the writ petitioner was finally selected by the Tamil Nadu Public Service Commission. Having been appointed temporarily on 04.04.1990 that too on emergency basis under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services, the writ petitioner is not having any vested right to claim seniority from the date of his temporary appointment i.e. 04.04.1990 but can claim



W.P.No.24102 of 2021

seniority only from 13.06.1991 when he was appointed pursuant to the selection conducted by the Tamil Nadu Public Service Commission.

7. The first respondent has rightly rejected the writ petitioner's request in the impugned order dated 29.06.2021. Therefore, this Court does not find any merit in this writ petition and accordingly it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.12.2022

Index:Yes/No
ssm

To

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W.P.No.24102 of 2021

ABDUL QUDDHOSE,J.

ssm

W.P.No.24102 of 2021

06.12.2022