



W.P(MD)No.11196 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11196 of 2022

S.Kosal Ram

... Petitioner

Vs.

1.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-600 009.

2.The Director of Local Fund Audit,
Integrated Finance Department Complex,
4th Floor, Nandanam,
Chennai-600 035.

3.The District Collector,
Tirunelveli District,
Tirunelveli.

4.The Block Development Officer (BPT),
Kalakad,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent i.e., the Principal Secretary to Government, Rural Development and Panchayat Raj Department, Chennai relating to Government Letter No.5802/PaA5(2)/2022-3 date 11.03.2022 and communicated by the 4th



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respondent i.e., the Block Development Officer (BPT), Kalakad in his Endorsement No.A1/1627/2021 date 25.04.2022 and quash the same and consequently direct the 1st respondent to ratify the promotion of the petitioner as Male Nursing Assistant in the Selection Grade for the period from 11.06.1988 to 06.01.1993 and Special Grade for the period from 07.01.1993 to 31.03.2013 and directing the third respondent ie., the District Collector, Tirunelveli to send revised pension proposals to the second respondent ie., the Director of Local Fund Audit, Chennai, within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam
For R1 to R3 : Mr.N.Satheesh Kumar
Additional Government Pleader
For R4 : Mr.M.Sarangan
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The writ petitioner retired from service on 31.03.2013 as Male Nursing Assistant. Copy of the proceedings of the Commissioner, Kalakad Panchayat Union, permitting the petitioner to retire from service has been enclosed in the typed set of papers.

3. The case of the petitioner is that he joined service as Male Nursing orderly on 07.01.1973 and that he underwent the training course for Male



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Nursing Assistant during 1974-75 and that he was promoted as Male Nursing Assistant on 01.06.1988 and he retired in the said post in the year 2013. The grievance of the petitioner is that he is being paid pension in the grade of a Male Nursing orderly. My attention is drawn to the proceedings dated 18.10.2019 issued by the Commissioner, Kalakad Panchayat Union whereby the petitioner has been placed in the grade of Male Assistant Grade-I. However, the proposal sent by the subordinate officials was not accepted by the first respondent. Questioning the impugned rejection order dated 11.03.2022, the present writ petition has been filed.

4. The learned counsel appearing for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition and contended that the impugned communication must be quashed and the petitioner's promotion as Male Nursing Assistant in the selection grade for the period from 11.06.1988 till date must be ratified and that the revised pension proposals must be sent and sanctioned within a time frame.

5. The respondents have filed a detailed counter affidavit and the petitioner's averments have been controverted.



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6. I carefully considered the rival contentions and went through the materials on record.

7. Before I deal with the merits of the matter, I must make one specific observation. The writ petitioner filed W.P.(MD)No.11278 of 2019 for directing the Commissioner of Panchayat Union, Kalakad for taking action on his representation for making entry in his service register recording his service as Male Nursing Assistant Grade-I with effect from 01.06.1988 and to send the revised pension proposals. The writ petition was disposed of on 30.04.2019 as follows:-

4. The learned counsel appearing for the respondent, on instructions, submitted that the representation of the petitioner would be considered on merits and appropriate orders be passed by the respondent.

5. In view of the above submission, this Court without going into the merits of the case, directs the respondent to consider the petitioner's representation dated 12.03.2019 and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner.

8. Even though a mere direction to consider the petitioner's case on merits alone was issued, then, the Commissioner, Kalakad Panchayat Union chose to treat as positive direction. I consciously refrain from rendering a finding as to whether the manner of understanding of the then Commissioner,



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Kalakad Panchayat Union was naïve or otherwise. However, the communication dated 18.10.2019 sent by her to the District Collector, Tirunelveli reads that the Hon'ble Madurai Bench of the Madras High Court in W.P.(MD)No.11278 of 2019, dated 30.04.2019 had directed that the writ petitioner should be treated as Male Nursing Assistant Grade-I with effect from 01.08.1988. Probably, the other authorities did not bother to verify the order passed by this Court in W.P.(MD)No.11278 of 2019. The proposals were also prepared on the understanding that this Court had directed the conferment status as Male Nursing Assistant Grade-I with effect from 01.08.1988. The petitioner thereafter filed one more writ petition in W.P.(MD)No.144 of 2020. The Writ Petition was also disposed of on 18.06.2021 with a direction to the District Collector, Tirunelveli. Pursuant to the said direction, the District Collector, Tirunelveli forwarded the proposal originally submitted by the Commissioner of Kalakad Union to the Government. Fortunately, the first respondent was alert and chose to reject the proposal to ratify. The question that arises for my consideration is whether the stand taken by the first respondent is justified.

9. When the matter was taken up on the earlier occasion, I called upon the learned counsel appearing for the writ petitioner to produce the order



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whereby he was promoted as Male Nursing Assistant Grade-I. Admittedly, the writ petitioner was working only as Male Nursing orderly from the year 1973.

If according to the writ petitioner, he was granted promotion in the year 1988, obviously, there must have been some formal proceedings or written order to that effect. No such order could be produced before me. What is produced before me are the orders and the communications issued in June 2019. As already pointed out, the proceedings made ready in June 2019 proceed on a complete misconstruction of the order passed by this Court in W.P.(MD)No. 11278 of 2019. When the very foundation of the petitioner's case is so shaky, this Court will not be justified in placing reliance on the same. The factual position has been clarified in the counter affidavit filed by the third respondent.

The third respondent has clarified as follows:-

(I) On the resolution passed by the Kalakad Panchayat Union Council, the petitioner herein was appointed and posted as Male Nursing Orderly with effect from the forenoon of 07.01.1973. He was getting salary at the time scale of Rs.130-3-160-4-180-195. His services were regularized with effect from the forenoon of 07.01.1973.

(II) His satisfactory completion of the period of probation was declared with effect from the forenoon of 06.01.1974. On attaining the age of superannuation, he was permitted to retire from service on the afternoon of 31.03.2013. Till his date of retirement, he was serving only as Male Nursing Orderly and as such his pensionary benefits have been sanctioned and paid to him admissible to the cadre of Male Nursing Orderly.



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(III) The respondent herein was only an employee of the Panchayat Union drawing salary from the Panchayat Union funds and not per-se employee of the Government, there were only two posts of Assistants viz., Male Nursing and Women Nursing and both have been paid only the salary entitlement of Nursing Assistants Grade II.

(IV) As per the communication received from the Director of Health Services, Chennai vide letter No.6635-CZ-73-9, dated 13.03.2014 the nomenclature of the post of Nursing Orderlies were changed into Nursing Assistants Grade I and Grade II.

(V) As per G.O.Ms.No.634, Health and Family Welfare Department, dated 18.03.1972, both the Nursing Assistants Grade I and Grade II comes within the category of Superior service and hence the date of retirement of the above two posts are only completion of 58 years and not 60 years as wrongly contended by the petitioner herein.

(VI) The petitioner herein was all along drawing salary only at the rate of Rs.130-3-160-4-180-10-195 and hence at the time of attaining the age of superannuation viz 58 years as on 31.03.2013, he was drawing salary only as the Male Nursing Assistant Grade II and hence pensionary proposals have been set and the petitioner is drawing pension at the rates admissible to the cadre of Male Nursing Assistant Grade II.

10. Since the respondents have clarified before me that the petitioner is entitled to pay and pension that is attached to the post of Male Nursing Assistant Grade II, the petitioner can only claim the said benefit and nothing more. It has been asserted in the counter affidavit that as far as the Kalakad Panchayat Union is concerned, there was no sanctioned post of Nursing



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Assistant Grade I. When there is no such sanctioned post, it is not open to the petitioner to claim the same.

11. In this view of the matter, even while sustaining the order impugned in the writ petition, I make it clear that the writ petitioner is entitled to all the benefits that are attached to the post of Male Nursing Assistant Grade II. The respondents also clarify that pension that is being paid to the writ petitioner has been fixed accordingly. If this assertion turns out to be false, it is open to the petitioner to file a contempt petition before me.

12. With this liberty to the writ petitioner, the writ petition is dismissed.

No costs.

22.09.2022

Index : Yes / No

Internet : Yes/ No

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To

1.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-600 009.

2.The Director of Local Fund Audit,
Integrated Finance Department Complex,



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4th Floor, Nandanam,
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G.R.SWAMINATHAN, J.

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