



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.8723 of 2019

and

W.M.P.(MD) Nos.6788 & 6789 of 2019

Dr.T.Udayamarthandan

... Petitioner

-vs-

1.The Principal Secretary to Government,
Health and Family Welfare (IM1-1) Department,
Secretariat, Fort St. George, Chennai-600 009.

2.The Additional Chief Secretary/Commissioner,
Indian Medicines and Homeopathy,
Chennai-600 106.

3.The District Siddha Medical Officer,
Kanyakumari District,
Nagercoil-629 001.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Letter No.656/1M1-1/2018-7 dated 04.02.2019 passed by the 1st respondent and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the respondents to fix the pay with notional effect from 31.12.2008, pensionary benefit for the promoted post of the petitioner, by disbursing the monthly pension to the petitioner for his promoted post of District Siddha Medical Officer from the date of retirement dated 30.04.2017.

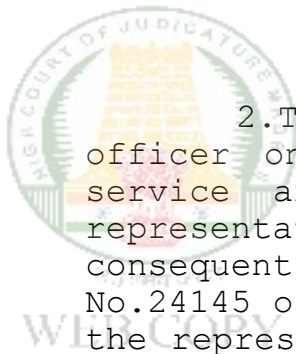
For Petitioner : Mr.N.Mohamed Asif

For Respondents : Mr.D.S.Neduchezhian,
Government Advocate

O R D E R

The order dated 04.02.2019 passed by the 1st respondent is under challenge in the present writ petition.

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2.The petitioner was appointed as Assistant Siddha Medical officer on 16.07.1983. The petitioner has already retired from service and he is a pensioner. The petitioner submitted a representation to the authorities for fixation of pay and grant of consequential benefits. Earlier, the petitioner filed W.P.(MD) No.24145 of 2017 and this Court directed the authorities to consider the representation and pass orders. Pursuant to the direction, the 1st respondent considered the representation and it is clearly stated that as per F.R.27(17), there is no provision to exercise option to fix the pay of the writ petitioner in the higher post after getting increment in the lower post. Therefore, the comparison of junior promoted would not arise, as there is no right to exercise option in such circumstances. G.O.Ms.No.311, Finance (PC) Department, dated 23.10.2017 was issued for fixation of pay on promotion on or after 01.01.2016 for the two methods of option given by the Government employees and this Government Order came into force notionally with effect from 01.01.2016 and with monetary benefits from 01.10.2017. Therefore, the claim of the writ petitioner as on 01.07.2009 with retrospective effect cannot be done.

3.The Government Order relied on by the petitioner, i.e., G.O.Ms.No.311 was passed on 23.10.2017 and the monetary benefit was effected from 01.10.2017. This being the fact, the reliance placed on by the petitioner is not applicable and thus, there is no infirmity as such in respect of the order passed by the 1st respondent.

4.Accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

To

1.The Principal Secretary to Government,
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Secretariat, Fort St. George, Chennai-600 009.

2.The Additional Chief Secretary/Commissioner,
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3.The District Siddha Medical Officer,
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Nagercoil-629 001.

+1 CC to M/s.SPL GP (SR-7085[F] dated 18/02/2022)

+1 CC to M/s.N.MOHAMED ASIF, Advocate (SR-6635[F] dated
16/02/2022)

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