



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.13223 of 2018

and

W.M.P (MD) No.12056 of 2018

R.Arulraj

... Petitioner

Vs.

1. The Director of Public Health and Preventive Medicine.
Annasalai, Chennai-6.

2. The Deputy Director of Health Services,
Nagercoil,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, to call for the records on the file of the first respondent pertaining to its proceedings in R.No.5749/MP2/S1/2014, dated, 25.01.2018 and to quash the same and consequently direct the respondents grant the benefit of absorption to grant to the post of Multipurpose Health Supervisor from 04.01.1988 and Block Health Supervisor from 2003 and Technical Personal Assistant from 2008 by considering the representation of the petitioner, dated, 30.11.2017 within a time frame that may be fixed by this Court.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.S.Kameshwaran

Government Advocate(Civil Side)

ORDER

This writ petition has been filed to quash the impugned order, dated, 25.01.2018 and consequently direct the respondents to grant the benefit of absorption to the post of Multipurpose Health Supervisor from 04.01.1988 and Block Health Supervisor from 2003 and Technical Personal Assistant from 2008 by considering the representation of the petitioner, dated, 30.11.2017.

2. The brief facts of the case are that the petitioner completed 12th standard during 1983. Subsequently joined the course of Sanitary Inspector during the academic year 1983-84 at Gandhigram University. He had completed the course and registered his name in the District Employment Exchange, Nagercoil. On



31.12.1985, a Health Assistant post fell vacant, due to the retirement of incumbent, namely, Augustin. The petitioner's name was sponsored through the Employment Exchange for being appointed in the post of Health Assistant. After conducting interview, the petitioner was appointed as a Health Assistant on 13.01.1986 and posted in the Government Primary Health Centre, Arudesom and he was also posted to birth and death registration office, Eludesam. The petitioner's service was regularized with effect from 17.01.1986 as Health Assistant. The contention of the petitioner is that there are 56 posts of Health Assistant available in Kanyakumari District and 6 at Senkottai Taluk. As such total 62 Health Assistant posts were there. The petitioner was appointed in one among the sanctioned post. The Government issued G.O.Ms.No.1936, dated, 29.09.1982 revealed that the Health Assistant post is considered under Group B. Considering the same, the petitioner's probation was declared by order, dated, 12.05.1988. Consequently, by communication, dated, 22.09.1988, the District Health Officer issued an order of cancellation of the petitioner's probation and also the increment sanctioned by the respondents without notice and opportunity. The petitioner approached the respondents and requested them to pass confirmation order.

3. Thereafter, by order, dated, 03.05.1991, the second respondent passed an order stating that the petitioner's services were regularized in the post of Health Assistant with effect from 17.01.1986, wherein it is also declared that the petitioner has satisfactorily completed the period of probation of two years within a continuous period of three years in duty in the post of Health Assistant from 16.01.1988. Thereafter, the respondent posted the petitioner in the post of Multipurpose Health Assistant without any basis and the post of Multipurpose Health Assistant was created only from 04.11.1988. On 01.08.1992, G.O. Ms. No. 550 was passed, wherein the salary for Health Assistant was fixed in as Rs.825-1200 till 01.06.1988 and from 04.11.1988, the salary is fixed as Rs.1350-2200. The petitioner was paid only basic of Rs.610 without even implementing the said Government Order. Hence, the petitioner approached the second respondent. In the meanwhile, the petitioner was promoted as Health Inspector Grade-I on 09.12.2005 and then promoted as Block Health Supervisor from 20.10.2009. However, the benefits were not granted to the petitioner. The petitioner submitted his representation to the respondents by comparing himself with one Ramakrishnan. The first respondent by order, dated, 11.12.2012, rejected the case of the petitioner stating that the petitioner's appointment was made to the post of Health Assistant after the issuance of G.O.Ms.No.1936, Health and Family Welfare Department, dated, 29.09.1982 was irregular. However, the said Ramakrishnan was appointed prior to 1981. The second respondent has regularized the petitioner's



service as Health Assistant from 17.01.1986, even though the petitioner is not eligible to be regularized. Aggrieved over the said stand of the respondents, the petitioner preferred W.P. (MD) No.15302 of 2013. When the matter was taken up for hearing, a counter affidavit was filed on behalf of the respondent, wherein it has been stated that the petitioner was regularized with effect from 17.01.1986. Recording the same, the said writ petition was closed on 07.07.2015. However, the benefits in consequent to the same was not granted. Thereafter, the petitioner filed Cont.P. (MD) No.1435 of 2016. When the matter was taken up for hearing on 13.11.2017, having regard to the aforesaid disputed facts and contentions, the learned counsel for the petitioner submits that the petitioner would make a representation to the second respondent on or before 30.11.2017. If such representation is made to the second respondent, the same shall be dispassionately considered and a reasoned order shall be passed. Pursuant to the same, the petitioner submitted his representation on 30.11.2017 and the present impugned order is passed and hence the writ petition has been filed.

4. The learned counsel for the respondents filed a counter stating that the petitioner cannot compare him with the said Ramakrishna. The said Ramakrishna was appointed in the year 1981 and the G.O.Ms.No.1936 came into effect from 29.09.1982 and the petitioner was appointed on 31.01.1986. Since the appointment of the petitioner is subsequent to the Government Order, the petitioner cannot compare with the said Ramakrishna and the petitioner's appointment is illegal and against the said G.O. Ms. No. 1936. The claim of multipurpose Health Assistant was introduced through G.O.Ms.No.1936, wherein one male nurse and one female nurse will be allotted to the village and thereafter, the petitioner cannot claim any benefits. Hence, the respondent prayed for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner as well as the respondents and perused the records.

6. It is an admitted fact that the petitioner was appointed in the year 1986 and prior to that, G.O.Ms.No.1936 was issued. On perusing the said Government Order, it is seen that the scheme has been formulated by the Central Government by introducing the concept of Multipurpose Health workers, wherein, one pair of male and female health workers will carry out all the health activities, including family welfare in the health sub-centers of rural areas covering a population of 3,000 in hill areas and 5,000 in plain areas as against the uni-purpose health workers now attending to certain health functions only for a larger population of 10,000 to 20,000 under various vertical health programmes. Under this scheme, the integration of various activities of health



services and training will be an important pre-requisite for the implementation of the scheme of Multipurpose Health Workers. The scheme has also introduced the applicable scale of pay. The stand of the respondents is that since the petitioner was appointed in 1986, he is not entitled to the said claim. The scheme is formulated to give a progressive health service to the people in the rural areas and the scheme specifically says that one pair of male and female health workers were allotted to the village. By implementing the new scheme, the Government should adhere to the old scheme by taking into consideration the existing scheme and the health workers, who are in the field. Rightly or wrongly, already some of the health workers have been appointed. They have been appointed as per the Government Order. The respondents ought to have appointed the petitioner and allow him in some village in rural area along with any female worker so that the petitioner comes under the specific scheme. Since the petitioner is working as a Health Assistant, he can very well bring under the new scheme by re-designated his post as Multipurpose Health Worker. The respondents being a responsible employee ought to have formulated the scheme by taking into the fact of existing employee and accommodating the said employees in the new scheme.

7. Therefore this Court is of the considered opinion that the petitioner is entitled to the relief. Moreover, the petitioner is on the verge of his retirement. Therefore, the respondents ought to consider the petitioner's service from the year 1986 and he should be re-designated as Multipurpose Health Supervisor from 04.01.1988 and thereafter, Block Health Supervisor from 2003 and then Technical Personal Assistant from 2008. The impugned order is set aside and the respondents are directed to confer the benefits to the petitioner. The respondents submitted that the petitioner had approached belatedly and this Court is of the considered opinion that the petitioner is entitled only to the 50% benefits, since the petitioner has knocked the door belatedly. Therefore, this Court is directing the respondents to disburse the 50% of the backwages.

8. With the above said directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

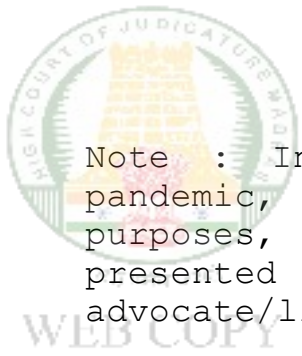
Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Director of Public Health and Preventive Medicine.
Annasalai, Chennai-6.
2. The Deputy Director of Health Services,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.SPL.GP (SR-19395[F] dated 19/04/2022)

W.P. (MD) .No.13223 of 2018

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USK/01.06.2022/5P/4C