



W.P.(MD)No.3467 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.03.2022

Pronounced on : 21.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.3467 of 2016

and

W.M.P.(MD)No.3064 of 2016

- 1.D.Joseph Benjamin
- 2.K.Ramanujam
- 3.R.Arumugam
- 4.R.Dhanavelu
- 5.T.Selvaraj
- 6.R.Karunanithi
- 7.N.Asokan
- 8.M.Duraipandian
- 9.M.Chellasamy
- 10.Loganathan
- 11.M.Chellasamy
- 12.M.Kathigaisamy
- 13.A.Lakshaman

... Petitioners

vs.

- 1.The Director of Public Health and
Preventive Medicine,
Chennai – 600 006.
2. The Deputy Director of Health Services
Ramanathapuram,
Ramanathapuram District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the entire records which culminated in issuing the proceedings in Na.Ka.No.1554/A3/2010, dated 12.10.2015, on the file of the second respondent, to quash the same and consequently, to direct the respondents to confer Special Grade pay to the petitioners on completion of 20 years of service on 19.04.2015 with all consequential benefits.

For Petitioners : Mr.V.Panneerselvam

For Respondents : Mr.S.Kameswaran
Government Advocate (Civil side)

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the entire records which culminated in issuing the proceedings in Na.Ka.No.1554/A3/2010, dated 12.10.2015, on the file of the second respondent and consequently, to direct the respondents to confer Special Grade pay to the petitioners on completion of 20 years of service on 19.04.2015 with all consequential benefits.

2. The 13 petitioners have filed this writ petition. The petitioners are



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working as Field Worker (Mazdoor) in Ramanathapuram Health Unit. The service of the petitioners was regularized by virtue of G.O.Ms.No.257, Health and Family Welfare Department, dated 02.08.2004, thereby regularizing their service retrospectively from 19.04.1995. However, the monetary benefits were restricted from the date of Government order and then they were conferred with selection grade during 2005. Now, the petitioners have completed 20 years of service and they are entitled to Special Grade. However, the second respondent has issued an order, dated 12.10.2015, thereby, restricting the date of regularization of their service from 20.05.1997 instead of 19.04.1995 without any valid reasons and without jurisdiction.

3. The contention of the petitioners are that the petitioners were appointed in a non-cadre post of Seasonal Mazdoors through employment exchange in Health Department on 18.04.1995 and 19.04.1995 respectively for the purpose of carrying out spraying operation under National Malaria Eradication Programme. To implement the said program, the Government issued G.O. Ms. No. 278 Health and Family Welfare Department, dated 02.02.1977, through which 28 posts of Superior Field Worker and 70 Field Workers have been



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created. The Government also created several other posts, in total 160 persons were appointed under the said programme. However, even after more than 10 years of service, the petitioners were allowed to continue in the non-cadre post, i.e., on temporary basis without their service being regularized. Therefore, the petitioners were constrained to approach the Tamil Nadu Administrative Tribunal by filing O.A.No.619 of 1995. The Tribunal directed the respondents to appoint the applicants therein (26 in number) in existing post of Malaria Mazdoors by way of direct recruitment by taking note of their long number of years of service.

4. Thereafter, the Government has issued G.O.Ms.No.294, Health and Family Welfare Department, dated 21.06.1996, ordering that the petitioners and others shall be absorbed as Mazdoors in the Public Health Department. Thereafter, the probation of the petitioners was declared on 20.06.1997. However certain persons were not regularized because of their overage and the Government did not grant relaxation in respect of age in spite of repeated representations. Ultimately, the Government issued G.O.Ms.No.257, Health and Family Welfare Department, dated 02.08.2004, giving age relaxation and to regularize their service with effect from 19.04.1995. Even though the service of



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the petitioners were regularized from 19.04.1995, the monetary benefits were restricted from the date of issuance of the Government order, dated 02.08.2004. Since the service of the petitioners was regularized from 19.04.1995, the petitioners were conferred with selection grade in the year 2005 and hence they are entitled to Special Grade in the year 2015. However, when the petitioners were expecting Special Grade, through the impugned order, dated 12.10.2015, restricting the date of regularization of service from 21.06.1996 as against the order of regularization on 19.04.1995. Aggrieved over the said order, the present writ petition is filed.

5. The first respondent has filed a counter affidavit stating that one K.Ramanujam and 26 others (including all the writ petitioners) had filed O.A.No. 619 of 1995 and the same was allowed. Based on the order of the Tribunal, the Government issued G.O.Ms.No.294, Health and Family Welfare Department, dated 21.06.1996 and absorbed K.Ramanujam and 26 others (including all the writ petitioners) in the regular vacancies with time scale of pay. The services of 12 Mazdoors, who were within the age limit, have been regularized with effect from 21.06.1996, i.e., from the date of issuance of G.O. However in respect of



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other 15 Mazdoors, including all the writ petitioners who were overage, a proposal was sent to the Government for relaxation of overage. Based on the proposal, the Government issued G.O.Ms.No.257, Health and Family Welfare, dated 02.08.2004, to regularize the service of 15 Mazdoors duly the relaxing the age with effect from the date of appointment indicated against their names. However, there was a mistake in the said Government order, where it has been stated the candidates were regularized from 18.04.1995 and 19.04.1995 instead of 21.06.1996. Based on the above said date of regularization, one V. Porchezian, who was one among the 12 Mazdoors, who were within the age limit and whose services were regularized with effect from 21.06.1996 had filed the writ petition in W.P.(MD)No.3276 of 2009 and this Court, vide order, dated 18.04.2009, has directed the Department to consider the representation of the Association and pass suitable orders. Thereafter, a proposal has been submitted to the Government and amendment to the date of regularization in respect of 15 Mazdoors had been obtained in G.O.Ms.No.309, Health and Family Welfare (AB.1) Department, dated 28.10.2010, i.e., the date of regular appointment in respect of 15 Mazdoors with effect from 21.06.1996 instead of 18.04.1995 and 19.04.1995. The respondents submitted G.O.Ms.No.278, Health and Family Welfare Department,



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dated 02.02.1977, quoted in para 4 of the writ petition is not connected with this case.

6. The petitioners were appointed as Seasonal Mazdoors temporarily. In G.O.Ms.No.294, Health and Family Welfare Department, dated 21.06.1996, orders were issued to absorb K. Ramanujam and 26 others with effect from 21.06.1996. The said G.O. is applicable to the petitioners herein as well. But while relaxing the age of the petitioners and others, there was a mistake and subsequently, the mistake was rectified with a necessary amendment issued through G.O.Ms.No.309, Health and Family Welfare (AB.I) Department, dated 28.10.2010. The petitioners have not challenged the G.O.Ms.No.309, Health and Family Welfare (AB.1) Department, dated 28.10.2010 but has challenged the subsequent communication. Hence, the first respondent prayed to dismiss the petition.

7. Heard Mr.V.Panneerselvam, learned Counsel appearing for the petitioners and Mr.S.Kameswaran, learned Government Advocate appearing for the respondents.



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8. It is seen from the records that the 27 persons including K.Ramanujam had approached the Tribunal and had obtained an order. Based on that order, the Government has come forward to regularize the said 27 persons and the petitioners are one among the said 27 persons. The said 27 persons was granted regularization 21.06.1996 i.e. from the date of issuance of G.O. Ms. No. 294, Health and Family Welfare Department, dated 21.06.1996. However, in the said 27 persons, 15 persons were overage and a separate order is necessary to relax their age. Therefore, the Government has issued order of regularization to the said 12 persons who are within the age limit and the date of regularization was fixed as 21.06.1996 the date of issuance of the G.O.Ms.No.294, Health and Family Welfare Department, dated 21.06.1996. For the remaining 15 persons while passing the G.O.Ms.No.257, Health and Family Welfare, dated 02.08.2004, to grant relaxation of age, it was mentioned that the date of regularization is 18.04.1995 and 19.04.1995 instead of 21.06.1996. This mistake was brought out by one person among the 12 persons who are within the age limit. Thereafter, the Government has passed G.O.Ms.No.309, Health and Family Welfare (AB.1) Department, dated 28.10.2010, by correcting the date of regularization as 21.06.1996. By correcting this date in the said G.O., the Government has granted



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regularization for all the 27 persons including K.Ramanujam and the present writ petitioners on 21.06.1996.

9. The original regularization order passed in G.O. Ms. No. 294 is applicable to all the 27 persons since the said government order specifically states that the parties in O.A. No.619 / 1995 are regularized and in the list of candidates appended to the said government order, the present petitioners names are mentioned. Therefore, this court is of the considered opinion that the present petitioners were regularized from the date of G.O. Ms. No. 294 dated 21.06.1996. In G.O.Ms.No.257, Health and Family Welfare, dated 02.08.2004, the overage persons were granted relaxation and there is a mistake by stating the date of regularization 18.04.1995 and 19.04.1995. It has been correctly rectified in G.O.Ms.No.309, Health and Family Welfare (AB.1) Department, dated 28.10.2010. If the contraction of the petitioners are accepted, there will be clear violation of Article 14. Since because the said 15 persons were overage, they cannot claim to be regularized from 1995 by citing the mistake committed in G.O.Ms.No.257, Health and Family Welfare, dated 02.08.2004. As rightly pointed out by the respondents, the said mistake was rectified in G.O.Ms.No.309, Health



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and Family Welfare (AB.1) Department, dated 28.10.2010 and the petitioners have not challenged the said G.O.Ms.No.309, Health and Family Welfare (AB.1) Department, dated 28.10.2010. But, they have challenged only the consequential order. At present, the petitioners cannot be granted any opportunity to challenge G.O.Ms.No.309, Health and Family Welfare (AB.1) Department, dated 28.10.2010, because, it is only the corrected order to rectify the mistake of the Government. The Government has taken policy decision issuing G.O.Ms.No.294, Health and Family Welfare Department, dated 21.06.1996, to regularize from the date of the G.O. to all the 27 persons including the present petitioners herein. Therefore, there is no infirmity in issuing the regularization from the date of issuance of G.O.

10. The Full Bench of Madras High Court in ***State of Tamil Nadu Vs. C. Srinivasan case reported in 2022 (1) CTC 833*** has held that the regularization will come into effect from the date of order of Government order passing regularization and not retrospectively. The relevant portion is extracted hereunder:

“42. In view of the above discussion, we proceed to answer the second



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question that has been referred to this Full Bench hereunder:

“We hold that the Division Bench in V. Samy case did not lay down the law correctly and we uphold the law laid in V. Ramachandran case to the extent that there is no deemed upgradation or deemed promotion contemplated in the relevant government orders and the benefit of upgradation / promotion to the next level can be granted / claimed only on completion of the qualifying service in each level / rank as prescribed in the relevant Government Orders. At the risk of repetition, in so far as understanding the expression “retrospective operation” is concerned we hold that the Government Orders operate prospectively but it imposes / grants new results in respect of a past event. In other words, the Government Order operates forward but it looks backward and in that it attaches new consequences for the future to an event that took place before the Government Order was issued. If the Government Orders are understood in this perspective, there is no need to get into the issue of “retrospective operation”. Thus we are of the view that the Division Bench while rendering the Judgment in V. Ramachandran case has dealt with the Government orders in its proper perspective and the Judgment in V. Samy case is hereby overruled.”

Therefore, the petitioners cannot claim any retrospective effect which was rightly rectified through the subsequent G.O. The petitioners are entitled to selection grade and said period shall be calculated from the date of 21.06.1996 alone and the petitioners are not entitled to calculate their service from 18.04.1995 and 19.04.1995. If the petitioners have completed 20 years of service from 21.06.1996, the respondents shall consider their claims and pass orders. The impugned order is legally valid and there is no infirmity. The impugned order is



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passed in consonance with G.O.Ms.No.309, Health and Family Welfare (AB.1)
Department, dated 28.10.2010.

11. Hence, the Writ Petition is dismissed. No costs. Consequently,
connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

21.07.2022

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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,
Chennai – 600 006.
2. The Deputy Director of Health Services
Ramanathapuram,
Ramanathapuram District.

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S.SRIMATHY, J

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Order made in
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