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W.P.No.10628 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.10628 of 2021

S.Devaraj

/vs/

...

Petitioner

1. State of Tamil Nadu,
Rep. by its Secretary,
Health and Family Welfare Department,
Fort St. George, Secretariat,
Chennai – 600 009.

2. The Director,
Directorate of Medical Examination,
Poonamallee High Road,
Kilpauk, Chennai – 600 010.

3. The Principal,
Coimbatore Medical College,
Coimbatore – 641 014.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the first respondent pertaining to the Impugned order passed in his Letter No.46919/C2/2019-3, dated 16.03.2020 and quash the same and consequently direct the first respondent herein to extend the similar



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benefits given to the Markers Working in the Arts and Science College as per G.O.Ms.No.602, Higher Education (G2) Department dated 04.12.1997 to the petitioner and regularize his service with retrospective effect from 04.12.1997 and confer all the attendant benefits.

For Petitioner ... Mr.M.Vijaya Ragavan
For Respondents ... Mr.G.Nanmaran
Special Government Pleader

ORDER

The petitioner was working as a Marker in the third respondent college from 01.01.1986 on a consolidated pay of Rs.175/- per month by the proceedings in R.No.14679/E1/85 dated 13.01.1986. Despite the petitioner was in continuous service from 01.01.1986, his services were not regularized. Subsequently, the Government has passed an order in G.O.Ms.No.602, Higher Education (G2) Department dated 04.12.1997 and thereby the Markers who are working in Government / Aided Colleges in Tamil Nadu were brought into the regular establishment to get time scale pay. Since the markers working in other colleges were not brought under the fold, a similarly placed person has filed an application in O.A.No.4159/2003 before the learned Central Administrative Tribunal, Chennai and in which an order has been passed on 29.12.2003 by



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directing the Government to issue orders to bring the petitioner and like others into regular establishment. The Writ Petition filed challenging the said order was also dismissed.

2. Mr.M.Vijaya Ragavan, learned counsel for the petitioner submitted that the Government had issued G.O.Ms.No.314 Higher Education (G2) Department dated 02.09.2005 where the Markers who are working in Government / Aided Engineering Colleges and Polytechnic Colleges were also brought into regular establishment and allowed regular time scale pay by virtue of G.O.Ms.No.460, Higher Education (G2) Department dated 09.08.2004; the post of Markers in college education has been created for the purpose of regularization; despite the same, the benefits were not given to the Markers in other colleges which is in violation of Article 14 and 21 of the Constitution of the India.

2.1. In this regard a Writ Petition has been filed by a similarly placed person in W.P.No.6864/2006 and a direction has been given for regularization; the third respondent has sent a letter to the second



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respondent on 19.03.2010 vide letter No.Na.Ka.2076/Ni3/2010 for recommending the petitioners for regularization; since there was no action on the part of the first respondent, a Writ Petition has been filed in W.P.No.34034/2019 and in which the first respondent was directed to consider the petitioner's representation; however, the first respondent without considering the relevant Government Orders, has rejected the representation on 16.03.2020 vide impugned letter No.46919/C2/2019-3.

2.2. The learned counsel for the petitioner further submitted that the principles of equality should be applied to the case of the petitioner and the petitioner should be given with similar benefit of regularization on par with other similarly placed persons working in other colleges like Arts and Science Colleges, Law Colleges and Engineering Colleges.

3. Mr.G.Nanmaran, learned Special Government Pleader submitted that the Markers appointed in Medical Colleges will be governed as per MCI norms as they are attached to Health Department and not Education Department; the post of Marker is not needed in Medical Colleges and no



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such post has been sanctioned so far.

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4. It is seen that even in the other colleges which come under the Education Department, the Marker's post was not sanctioned originally. Only after the Government considered to regularize their services, the Government Orders have been issued from time to time for creating such posts.

5. The learned counsel for the petitioner attracted the attention of the Court to the Writ Petition in W.P.No.6864/2006 filed by a Marker by name J.Gunasekaran who has been appointed in a Law College, seeking regularization on the ground of discrimination. The said writ petition was allowed on 19.02.2008 by passing the following order:

“ 12. When the post of Marker is filled up as a necessary post in the Government Art and Science Colleges, Engineering Colleges and Polytechnics and the Markers working in those colleges were brought under regular establishment with time scale of pay, there is no reason as to why the first respondent has applied a different yardstick discriminating the Markers working in the Law Colleges. G.O.Ms.No.49 is not applicable to the case of the Markers working in the Law Colleges. The impugned order is liable to be set aside on the ground of arbitrariness and violation of Article 14 of the



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Constitution of India. Sports activity is prevalent in all colleges including Law Colleges in the State and there were persons representing the college at the University and higher levels. There is no dispute about the legality of the appointment.

13. As Markers working in Government Law Colleges discharging similar duties and responsibilities as that of others working in Arts and Science Colleges and Engineering Colleges, the first respondent is directed to consider the case of the petitioner, similar to that of others, working in the same capacity and pass appropriate orders. The Government shall also consider the length of service rendered by the petitioner and similarly placed persons in the Government Law Colleges and take appropriate decision within a period of eight weeks from the date of receipt of a copy of this order."

6. It might be on the convenience of the Government to issue Government Orders for each department depending upon the colleges in which Markers were working. Even a Law College does not come under the Education Department but under the Law Department. The Markers who were working in the Government colleges subsequently regularized and they were allowed to get regular time scale of pay. If such is the case, the respondents cannot say that the post of Markers are not required in Medical colleges and the said post is a sanctioned posts.



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7. It is nobody's claim that the Marker's post has been sanctioned and the petitioner has been appointed in a sanctioned post. Had the petitioner be appointed in a sanctioned post, there will not be any necessity for him to file this petition seeking regularization. Since the petitioner has also been appointed as similar as that of other Markers who have been appointed in other Government / Aided Arts and Science colleges, Polytechnic colleges, Law colleges, have filed this writ petition seeking equality.

8. The Government has chosen to regulate similar such services in other departments by issuing government orders every now and then. The petitioner cannot be discriminated on the ground that the medical colleges are attached to Medical Department. Since the petitioner has made out a case that there is no ground to discriminate him from other similarly placed Markers working in other type of colleges, the order passed by the first respondent denying the benefit to the petitioner is discriminatory and is liable to be set aside.



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9. In view of the reasons stated above, this Writ Petition is allowed and the Impugned order passed by the first respondent in his Letter No.46919/C2/2019-3, dated 16.03.2020 is hereby quashed and the first respondent is directed to consider the case of the petitioner as similar as that of other Markers who are working in other colleges like Government / Aided Arts and Science Colleges, Engineering Colleges, Polytechnic Colleges and Law Colleges and pass appropriate orders without allowing the petitioner to come and knock the doors of the Court once again, by taking into consideration of the earlier orders passed in similar fashion. No costs.

21.11.2023

Index: Yes / No
Speaking order / Non-speaking order
bkn



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To:

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