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W.P.No.4683 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.4683 of 2019

A.Vincent Jagaraj

.. Petitioner

VS

1.Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George,
Chennai – 600 009.

2.The Director of Medical and Rural Services (ESI)
DMS Campus, 7th Floor,
Chennai – 6.

3.The Medical Officer (ESI Dispensary)
Pudunagar,
Tirumanagalam – 625 706.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st Respondent relating to the impugned letter No.13126/ C1/ 2018 dated 12.06.2018, quash the said impugned letter dated 12.06.2018 and consequentially direct the respondents to regularize the service of the Petitioner herein from the date of his Joining duty in the office of the 3rd Respondent and grant the petitioner herein pensionary and other benefits accruing



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therefrom from the date of his initial appointment in the Boat Building yard, Tamil Nadu Fisheries Development Corporation.

For Petitioner : Mr.R.Jeyaram

For Respondents : Mr.V.Nanmaran
Additional Government Pleader

ORDER

Writ petition has been filed in the nature of a Certiorarified Mandamus seeking records of the first Respondent relating to the letter No.13126/ C1/ 2018 dated 12.06.2018, interfere with the same and direct the respondents to regularize the service of the Petitioner from the date of his Joining duty in the office of the 3rd Respondent and grant pensionary benefits from the date of his initial appointment in the Boat Building yard, Tamil Nadu Fisheries Development Corporation.

2. In the affidavit filed in support of the writ petition, it has been stated by the petitioner that he was originally appointed as Semi-skilled Carpenter in the Boat Building Yard of Tamil Nadu Fisheries Department Corporation on 16.02.1968. He served in the said Corporation till 19.10.1982. Due to the closure of the Boat Building Yard, he was retrenched from service. Thereafter, G.O.(Ms).No.204, Forest and Fisheries Department dated



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23.02.1983 was passed, whereby the Heads of Department were requested to absorb the retrenched workers of the Boat Building Yard on temporary basis initially. Thereafter, the Heads of Department were required send proposals to the Administrative Department, seeking relaxation of age limit and educational qualifications, if required, on the basis of merit in each case. The petitioner was accordingly appointed as Office Assistant in the office of ESI Dispensary, Sathur, temporarily and joined duty on 15.11.1984.

3. A proposal was sent by the 2nd respondent in accordance with the directions in G.O.Ms.No.204, as stated above, on 17.11.1987, after a period of three years. The Government then regularized the service of the petitioner by relaxing Rules 4(a), 5(1) and 5(2) of Special Rules for Tamilnadu Basic Service, relating to education, qualification, date and method of appointment. However, that particular order was issued on 10.11.1989 with prospective effect. Seeking such regularization to be effected from the date on which he joined as Office Assistant / 15.11.1984, the petitioner has forwarded a representation, which was rejected and the present writ petition has been filed.



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4. The learned counsel for the petitioner pointed out that G.O.Ms.No.204 dated 23.02.1983 itself provided for accommodation of those, who have been retrenched on closure of Boat Building Yard on temporary basis to various departments. Heads of Department were directed to take them on board and thereafter, examining their merits to forward proposals for relaxation of age or qualification or such other aspects. It has been pointed out by the learned counsel for the petitioner that the proposal was forwarded only after three years and after two further years, the communication was issued with prospective effect.

5. It is therefore contended that the petitioner shall also be considered as having come into regular service on and from 15.11.1984. The learned counsel for the petitioner also pointed out parallel orders passed with respect to another similarly placed individual, whose appointment, age, reservation were all regularized, but he was brought into service from the date of his initial employment as Record Clerk in Commercial Tax Department, where he was accommodated after being retrenched owing to closure of Boat Building Yard.



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6. On the side of the respondents, it has been contended that only prospective effect has been given. It is contended that the petitioner had already gained advantage by relaxation of the age and by relaxation of the qualification and therefore, he cannot seek further relief. It is stated that he had been brought into regular service and this itself was a beneficial and welfare act extended by the Government to retrenched workers to place them in other departments. It had been contended that the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 specifically provided under Section 28 (2) that monetary effect would come into place only from the date, when the relaxation of the rules were actually passed by the Government, but however, the petitioner had joined duty as Office Assistant on 15.11.1984. The Heads of Department had forwarded the proposals for regularization only after nearly two years on 17.11.1987. Thereafter, the G.O.Ms.No.2082, Health Indian Medicine, Homeopathy and Family Welfare Department was passed on 10.11.1989 and the petitioner was regularized only on and from that particular date. One of the fundamental principles of service rules is that there should be parity between two similarly placed employees.



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7. As pointed out by the learned counsel for the petitioner the other employee, who was also similarly retrenched, had been taken into service in the Commercial Tax Department and his services have been regularized after relaxing, practically every condition of appointment on and from the date when he was taken into service in the Commercial Tax Department. The petitioner cannot be singled out and a differential treatment given to the petitioner herein so far as the regularization is concerned.

8. Therefore, the petitioner should also be regularized only from 15.11.1984, when he joined as Office Assistant in the office of ESI Dispensary, Sathur. There are no justifiable reason given by the respondents though the learned counsel on behalf of the respondents strenuously opposed. It is to be noticed that when Government orders are issued, uniformity in its application to all public servants must be ensured. There cannot be one application for one particular public servant and another for the another person. If the regularization is from the date of absorption, then all those have been retrenched from Boat Building Yard must be regularized from the date, when they were absorbed into other Governmental



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9. I would therefore allow the writ petition and direct the respondents to absorb the petitioner and brought him into regular service from 15.11.1984. Necessary proceedings must be issued within a period of sixteen (16) weeks from the date of receipt of a copy of this order. No costs.

01.08.2023

Index:Yes/No
Neutral Citation:Yes/No
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To

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C.V.KARTHIKEYAN, J.

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