



W.P.No.5533 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2022

PRONOUNCED ON : 21.02.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.5533 of 2015
and M.P.Nos.1 and 2 of 2015

R.Krishnaveni

..Petitioner

Vs.

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

2.The Superintendent
Government T.B.Hospital,
T.B.Sanitorium, Chennai – 600 047.

..Respondents.

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of certiorarified mandamus calling for records, relating to the first respondent in G.O.(4D).No.8 Health and Family Welfare (F.2) Department dated 31.07.2008 and that of the 2nd respondent's order made in Na.Ka.No.2744/No/3/2009 dated



W.P.No.5533 of 2015

07.05.2010 to quash the same in so far as the same regularizes the services w.e.f.31.07.2008 instead of 18.10.1993 and to consequently direct the respondent to extend all benefits of regularization w.e.f. 18.10.1993 including pension and other retiral benefits forthwith.

For petitioner : Mr.L.Chandrakumar

For respondents : Mr.A.M.Ayyadurai, Government Advocate

ORDER

This Writ Petition is filed seeking regularization as per the Government Order issued by the first respondent in G.O.(4D).No.8 Health and Family Welfare (F.2) Department dated 31.07.2008 and quash the proceedings of the 2nd respondent made in Na.Ka.No.2744/No/3/2009 dated 07.05.2010 in so far as the same regularizes the services w.e.f. 31.07.2008 instead of 18.10.1993 and to consequently direct the respondent to extend all benefits of regularization w.e.f. 18.10.1993 including pension and other retiral benefits forthwith.



W.P.No.5533 of 2015

2. The petitioner was appointed as Badli Worker on 18.10.1993

through Employment Exchange in the 2nd respondent Hospital and thereafter, posted as Sanitary Worker from 1996, in which post, she continued and reached the age of superannuation on 31.12.2012.

3. Since there was a discrepancy in the date of birth of the petitioner, she was terminated from service by the 2nd respondent. The petitioner filed O.A.No.483 of 1998 before the Tamil Nadu Administrative Tribunal. The said O.A., was transferred to this court after abolition of the tribunal and this court by order dated 12.06.2009, held that in view of the fact that the petitioner has got only two more years left to attain superannuation and that the petitioner has put in more than 16 years of service and also the post which she holds is a last grade post, following the principle laid down by the Supreme Court in the case ***B.C.Chaturvedi Vs. Union of India [AIR 1996 SC 484]***, set aside the impugned order of termination and modified the punishment as one of stoppage of increment for 4 years with cumulative effect.



W.P.No.5533 of 2015

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4. In the counter filed by the respondents, it is submitted that the Director of Medical Education has sent proposal to the Government for regularizing the services of the Sanitary Workers. The petitioner was one among them in the said proposal. In G.O.(4D) No.8, Health and Family Welfare department, dated 31.07.2008, the services of certain basic servants including the petitioner in the post of Sanitary worker has been regularized from 31.7.2008 by relaxing the relevant rules relating to said post and monetary benefits were allowed from the above said date. It is further submitted that in the said Government Order, it has also been ordered that the action of the Director of Medical Education in having appointed the petitioner without obtaining prior permission of the Government has been ratified.

5. Heard both sides and perused the records.

6. The grievance of the writ petitioner is that the similarly placed persons were granted regularisation with effect from the date of initial



W.P.No.5533 of 2015

appointment. Contrarily, the benefit of regularisation is granted to the writ petitioner only with effect from the date of Government Order and not from the date of initial appointment. The learned counsel for the petitioner has submitted that when the benefit of regularisation was granted with effect from the date of initial appointment to other employees who are all similarly placed then the same benefit to be granted to the petitioner also. The petitioner alone cannot be discriminated.

7.The learned Government Advocate would submit that subject to relaxing Rule 5(1) of the Tamil Nadu Basic Services Rules, the petitioner was eligible to get the benefits prospectively i.e., only from the date of the Government Order.

8. In the considered opinion of this court, there was no justification to restrict the relaxation prospectively. If the Government order passed in G.O.(4D).No.8 Health and Family Welfare Department dated 31.07.2008 is strictly applied and the similarly placed workers got their



W.P.No.5533 of 2015

regularisation from the date of their initial appointment, the petitioner's valuable service of 15 years ie, from 1993 to 2008 cannot be denied.

When the petitioner already approached this court challenging the punishment imposed on her, the learned Judge by order dated 12.06.2009 in W.P.No.32613 of 2009, held that for the discrepancy of the birth date that is actually a minor discrepancy entered as 12.12.1954 instead of 22.12.1952, the punishment of termination from service cannot be imposed. This court, thus imposed lesser punishment of stoppage of increment for 4 years with cumulative effect. As such, the respondents regularizing 36 workers who were all appointed through employment exchange in the year 1993 and leaving the petitioner and other person alone and regularizing them prospective from the date of G.O. i.e. 31.07.2008 was not right.

9. In the light of the above discussions, this Writ Petition is allowed. The impugned proceedings passed by the 2nd respondent dated 06.11.2008 in so far as restricting the regularisation of petitioners' services from the date of the Government



W.P.No.5533 of 2015

Order in G.O.(4D).No.31.07.2008, is set aside and the first respondent is directed to pass orders regularising the services of the petitioner from the date of her initial appointment and pay arrears of salary and retiral benefits to the petitioners. Necessary orders shall be passed by the respondents within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

21.02.2023

Index:Yes/No

Speaking/Non-speaking order

nvsri

To

1.The Secretary,

Health and Family Welfare Department

Fort St.George, Chennai-600 009.

2.The Superintendent

Government T.B.Hospital,

T.B.Sanitorium, Chennai – 600 047.



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W.P.No.5533 of 2015

J.NISHA BANU, J.

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W.P.No.5533 of 2015

21.02.2023