



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.9271 of 2020

K.Sekar

... Petitioner

Vs.

1.Government of Tamil Nadu,
rep. by Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai 600 009.

2.The Director of Public Health
and Preventive Medicine,
Chennai 600 006.

... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to apply the ratio laid down by this Court in the Judgment dated 06.12.2018 in WP (MD).Nos.13354 and 13555 of 2013 and pass appropriate orders on my claim for retrospective appointment as Junior Assistant and to grant consequential promotion to the higher posts with retrospective effect.



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For Petitioner : Mr.P.Kumaravel
For Respondents : Mr.T.Chezhiyan
Additional Government Pleader

ORDER

The writ petition has been filed seeking mandamus, to direct the respondents to apply the ratio laid down by this Court in the judgment dated 06.12.2018 in W.P.(MD).Nos.13354 and 13555 of 2013 and pass appropriate orders on the claim of the petitioner for retrospective appointment as Junior Assistant and to grant consequential promotion to the higher posts with retrospective effect.

2. The learned counsel for the petitioner states that the petitioner has been appointed as Cook cum Waterman on 22.05.1985 on compassionate ground. However, the claim of the petitioner is that according to his educational qualification he ought to have been given appointment for the post of Junior Assistant and the respondents did not complied the guidelines of the compassionate appointment scrupulously.



3. The relevant portions of the order dated 06.12.2018 made in

W.P.(MD).Nos.13354 and 13555 of 2013 are extracted hereunder:

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“4. It is submitted that unaware of the Government Regulation, the petitioner's accepted the employment as a Record Clerk on Compassionate Ground even though both of them had passed S.S.L.C which was the qualification prescribed for the post of Junior Assistant. In this connection, they referred to para 2(iii) of G.O.(Ms).No.1499, dated 03.08.1989, which reads as under:

“The appointing authorities under no circumstances should appoint a dependant to a lower post when the dependent possess the qualifications required for the post of Junior Assistant/Typist on the ground of non availability of vacancy in the office or department or the dependants not willing to work in other departments. In such circumstances they should follow the existing procedure of approaching the collector of District for providing a suitable vacancy as suggested in G.O.(Ms).No.1179, P&AR, dated 14.10.1979.”

5. The learned counsel for the petitioners



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submitted that under similar circumstances, the one of the employee like the petitioners had filed W.P.(MD).No.69 of 2010 and had obtained an order dated 22.04.2019 for treating his initial date of appointment as Junior Assistant with consequential relief.

6. Against the order, the respondents also preferred an appeal before the Division Bench. Disposed of the same without back wages vide order, dated 21.02.2011 in W.A.(MD).No.908 of 2010. Similar relief was also granted to another employee in W.A.(MD).No.641 of 2010.

7. Similar reliefs has also been given by implementing G.O.(Ms).No.95, Commercial Tax and Registration (A2) Department, dated 11.07.2013 and G.O.(Ms).No.99, Commercial Tax and Registration (A2) Department, dated 11.07.2013, wherein, Juniors have been given the benefits of being appointed as Junior Assistant from the date of their initial appointment. Since benefit of G.O.(Ms).No.1499, Labour and Employment (Q1) Department, dated 03.08.1999 has been extended to persons similar to the petitioners also, the petitioners should also be



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given the same benefits. Accordingly, these Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petition is closed.”

4. In fact the above order has relied the earlier order of the Hon'ble Division Bench of this Court of Madurai Bench made in W.P.(MD).No.908 of 2010 and the W.A.(MD).No.641 of 2010. All these matters, pertains to the fringe upon the guidelines for compassionate appointment issued under paragraph 2(iii) of the G.O.Ms.No.1499 dated 03.08.1989.

5. All these guidelines have come into effect from 03.08.1989 and the petitioner has been appointed as early as on 22.05.1985. Hence, the above guidelines are not applicable to the case of the petitioner. Since the respondents have not passed any order by considering the representation of the petitioner, the respondents are directed to consider the representation of the petitioner in accordance with law and other guidelines, if any applicable to the facts of the case of the petitioner and pass appropriate orders within a period of eight (8) weeks from the date of receipt of a copy of this order.



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6. Accordingly, this Writ Petition stands disposed of. No costs.

29.11.2023

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

To

1.The Principal Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Secretariat,
Chennai 600 009.

2.The Director of Public Health
and Preventive Medicine,
Chennai 600 006.



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R.N.MANJULA, J.

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