



W.P.No.36416 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>10.01.2023</i>
<i>Pronounced on</i>	<i>27.01.2023</i>

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.36416 of 2016
and W.M.P.No.31362 of 2016

1.P. Sundar

2.K. Devan

3.Kamaraj

4.S. Kanakasabapathy

... Petitioners

Vs.

1.The State of Tamil Nadu
Rep. by the Principal Secretary,
Health & Family Welfare Department,
Fort St. George, Chennai – 600 009.

2.The Director of Health Services,
Public Health & Preventive Medicine,
DMS Compound, Chennai – 6.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records to G.O.Ms.No.325, Health and Family Welfare Department dated 13.12.2006 insofar as the date of regularization being made from the said



W.P.No.36416 of 2016

date instead of 2001 and the first respondent's Letter No.591/AB1/2014-10 dated 11.12.2015 which came to be communicated by the second respondent in R.No.5068/VM/A3/2015 dated 23.01.2016 to quash the same and to consequently direct the respondents to forthwith extend all service accrual by regularizing the services of the petitioners w.e.f. 2001 instead of the date of Government Order i.e., 13.12.2006 and that of pension and other pensionary benefits arising thereto.

For Petitioner : Mr.L. Chandrakumar

For Respondents : Mr.M. Shajahan,
Special Government Pleader

ORDER

1.1 In accordance with G.O.Ms.No.396, Health and Family Welfare Department, dated 23.08.1999, 39 drivers were appointed. The first petitioner was appointed on 18.08.2001; the second petitioner was appointed on 18.06.2001; the third petitioner was appointed on 22.08.2001; and the fourth petitioner was appointed on 10.01.2002, on daily wages/contract basis in the Primary Health Centers of the Health and Family Welfare Department, to implement the scheme of 24 hours delivery care services.

1.2 On completion of the Phase-I project, their services were



W.P.No.36416 of 2016

terminated with effect from 21.11.2005, 22.11.2005, 23.11.2005 and 30.11.2005 respectively.

1.3 When the petitioners had approached this Court challenging their termination in WP.No.3285 of 2006, this Court by its order dated 07.02.2006 had directed to consider the petitioners' representation in this regard. Consequently, the Government in G.O.Ms.No.325, Health and Family Welfare Department dated 13.12.2006, had passed orders appointing the terminated petitioners as Drivers in the time scale of pay in the existing vacancies of the Primary Health Centers, by relaxing the guidelines in G.O.Ms.No.91, P&AR (P) Department dated 06.07.2006, which was an impediment in appointing them as drivers. Thus, the petitioners were absorbed in the respective Primary Health Centers and brought into time scale of pay, with effect from the date of the Government Order in G.O.Ms.No.325 dated 13.12.2006 onwards.

1.4 When the petitioners had sought for regularizing their services with effect from the date of their initial appointment, this Court in its order dated 16.04.2015 passed in WP.No.41 of 2014, had directed the



W.P.No.36416 of 2016

WEB COPY

respondents to consider their representation, within the stipulated time, consequent to which, the impugned order dated 11.12.2015, came to be passed by observing that Rule 11(4) of Tamil Nadu Pension Rule 1978, would be applicable only to those employees who were absorbed to the Government service on or before 01.04.2003 and since the services of the petitioners herein, were regularized with effect from 13.12.2006, they cannot seek for counting of their past services from the date of their initial appointment. Challenging the same, the present Writ Petition has been filed.

2. The learned counsel for the petitioner submitted that when the Government had relaxed the conditions in G.O.Ms.No.91 P&AR (P) Department dated 06.07.2006 and accordingly, issued G.O.Ms.No.325 dated 13.12.2006, ordering that the services of the petitioners be absorbed in the time scale of pay in Primary Health Centers, the second respondent herein, has no authority to pass an order which is less favourable to them. More particularly, when regularization has been granted, in view of Section 58 of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016. He further placed reliance on a decision of this Court in the case of



W.P.No.36416 of 2016

WEB COPY

'K. Govindaraj Vs. The Secretary to the Government, Commercial Taxes and Registration (A1) Department' passed in **WP.(MD).No.13157 of 2011** dated **05.06.2012**, in which, this proposition was upheld and the regularization was granted from the date of the initial appointment of that employee.

3. Per contra, the learned Special Government Pleader appearing for the respondents, submitted that the benefits under Rule 11(4) of the Tamil Nadu Pension Rules 1978, would be applicable only to the persons who were appointed on or before 01.04.2003 and therefore, there is no infirmity in the impugned order. In support of such a contention, the learned Special Government Pleader also placed reliance on the decision of the Hon'ble Supreme Court in the case of **'Surendra Kumar & others Vs. Greater Noida Industrial Development Authority & others'** passed in **Civil Appeal No.4916 of 2015** dated **02.07.2015** as well as the decision of the Hon'ble Division Bench of this Court in the case of **'S. Dhanasekaran & others Vs. Government of Tamil Nadu, Municipal Administration and Water Supply Department & others'** passed in **WP.(MD).No.1083 of 2012** dated **29.11.2013**, and submitted that since the Government had taken a policy



W.P.No.36416 of 2016

decision to regularize the services of these drivers through G.O.Ms.No.325 dated 13.12.2006, they will not be entitled for regularization on a retrospective date.

4. I have given careful consideration to the submissions of the respective counsels.

5. The background on which the petitioners were originally inducted as Drivers in the Department of Public Health and Preventive Medicine is that, the ban to fill up the vacant posts in Government Department was lifted through G.O.Ms.No.179, Personnel and Administrative Reforms (S) Department dated 02.06.2006. On lifting of the ban, G.O.Ms.No.91, P&AR (P) Department, dated 06.07.2006, was issued for preparation of the estimated vacancies for filling up of posts by direct recruitment, as well as by other methods. In the said G.O., it has been ordered that the Personnel from the Tamil Nadu Ex-servicemen Corporation Limited (TEXCO) on contract appointment as Drivers may be followed.



W.P.No.36416 of 2016

WEB COPY

6. In this background, when this Court in its order dated 07.02.2006 passed in WP.No.3285 of 2006, directed the respondents to consider the petitioners' representation seeking for cancellation of the termination and reinstating them into service, the Government had relaxed the condition in G.O.Ms.No.91 P&AR (P) Department, dated 06.07.2006 and had passed orders appointing these petitioners who were among 38 terminated drivers and absorbed them in the respective Primary Health Centers, by bringing them into time scale of pay. The absorption and regularization was brought with effect from the date of the Government Order in G.O.Ms.No.325, Health and Family Welfare (EAP-II-1) Department dated 13.12.2006. The petitioners now seek for regularization of their services with effect from their respective date of joining in the year 2001 and not from 13.12.2006.

7. An Hon'ble Division Bench of this Court in the case of '*V. Perumal Vs. Commissioner and Secretary to the Government, Health and Family Welfare Department, Chennai*' reported in '*(2006) 2 M.L.J. 339*', had held that once the Government relaxes the qualification in favour of the petitioner and orders for regularization, after a considerable time from the date of their initial appointment, such a regularization at a later stage



W.P.No.36416 of 2016

would obliterate the valuable services of such Government servants and deny their annual increments and other benefits. By holding so, the action of prospective regularization was held to be unreasonable and arbitrary in exercise of power.

8. Following the decision of the Hon'ble Division Bench in *V.Perumal's case (supra)*, a learned single judge of this Court in the case of '*K. Govindaraj*' (*supra*), had also held that relaxation of certain qualifications are granted by the Government, the benefit would revert to the date of their initial appointment and not from the date on which the relaxation is granted. The relevant portion of the order reads as follows:-

.... "12.Furthermore, while granting relaxation in respect of certain qualifications to five persons, their services were regularised with effect from the date of their initial appointment in the G.O.Ms.No.20 referred to above. But, in the impugned G.O., while granting relaxation in respect of certain qualifications, the regularisation is made only from the date of issuance of the order. It is held by His Lordship Justice N.Paul Vasanthakumar in two decisions that whenever, relaxation is made in respect of qualification and the employees' regularisation, the regularisation shall take



W.P.No.36416 of 2016

WEB COPY

effect from the date of initial appointment. The relevant para 4 of the judgment in Perumal V. V. Commissioner and Secretary to the Government, Health and Family Welfare Department, Chennai reported in (2006) 2 M.L.J. 339, is extracted hereunder:

"The grievance of the petitioner is that there is no justification to restrict the relaxation applicable prospectively and not from the date of petitioner's passing the Nursing Assistant test from 30.08.1975. The Government have relaxed the qualification in favour of the petitioner and having regard to the appointment of the petitioner as Hospital Servant on regular basis with effect from 19.03.1965 and having appointed the petitioner as Nursing Assistant Grade II temporarily and the petitioner having completed training on 30.08.1975, there is no justification on the part of the Government to restrict the relaxation only from the date of the order. The relaxation is granted by the Government for the purpose of regularisation of petitioner's service. The regularisation of service cannot be made after 20 years of the petitioner's service. If the impugned Government Order is applied strictly, the petitioner's valuable service of 20 years will get obliterated and the petitioner will not be in a position to get annual increments and other benefits. Hence, the action of the first respondent in restricting the relaxation only from 27.06.1995 is unreasonable and arbitrary in exercise of power."

13.Likewise, para 5 of the judgment in R.Mohan V. Special Commissioner and Commissioner for Revenue



W.P.No.36416 of 2016

WEB COPY

Administration, Chepauk and another reported in 2006 Writ L.R.480, is also extracted hereunder:

"I have heard the learned counsel on either side. The decision in W.P.No.6605 of 1988 and the Supreme Court decision cited supra squarely apply to the facts of this case. Petitioner having been appointed in the year 1973, assuming his appointment is irregular, following the proposition laid down in the Supreme Court in the above cited decision, I hold that in this case only a formal ratification is required, but instead, the reversion order now made is totally unwarranted. The irregular appointment, if is ratified, will definitely confer a right on the petitioner to get his appointment ratified from the date of initial appointment. Therefore, the impugned order is liable to be set aside."

14.For all the aforesaid reasons, the writ petition is allowed and the impugned G.O is quashed insofar as not granting regularisation in respect of the petitioner from the date of his initial appointment. A further direction is issued to regularise the service of the petitioner from the date of his initial appointment with all monetary benefits as in the case of others....."

9. The aforesaid extract is self-explanatory. Thus, when the Government had thought it fit to consider the petitioners' request for reinstatement into service and bring them into regular time scale of pay, by relaxing the existing impediments in appointing them, such an action should



W.P.No.36416 of 2016

revert back to the date of their original appointment, otherwise the petitioners would lose their service from 2001 onwards and would thereby be deprived of all the consequential service benefits as held in the aforesaid decision of the Hon'ble Division Bench, as well as the learned single Judge of this Court.

10. This apart, Section 58 of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016, empowers the Governor to deal with a case of any Government servant for appointment to a service in such manner as may appear to him to be just and equitable. The proviso to Section 58 states that, where any provision of the Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that Rule.

11. The Government Order in G.O.Ms.No.325 dated 13.12.2006, which is by an order of the Governor, had taken into consideration the background under which the petitioners were terminated and the orders passed by this Court to consider their cases for reinstatement. Since there was an impediment in absorbing them into service in view of the decision to



W.P.No.36416 of 2016

appoint drivers only through TEXCO, as stipulated in G.O.Ms.No.91 dated 06.07.2006, the Governor thought it fit to relax such a condition to enable these 38 drivers to be appointed and brought them under time scale of pay in relaxation of the rule relating to age, wherever necessary. When the proviso to Section 58 specifies that the case of the Government servants cannot be dealt with in any manner less favourable to them than that provided by that Rule, ignoring the fact that the petitioners were appointed in the year 2001 and were constrained to be terminated with effect from 2005 onwards when the project was completed, the period between their termination in the year 2005 and their appointment through G.O.Ms.No.325 dated 13.12.2006, could only be termed as a 'compulsory wait', in the light of proviso to Section 58 of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016. For such a proposition, this Court also places reliance on the earlier decision of the Hon'ble Division Bench of this Court in the case of '*V.Perumal*' (*supra*) and '*K. Govindaraj*' (*supra*).

12. The learned Special Government Pleader placed reliance on the decision of the Hon'ble Supreme Court in the case of '*Surendra Kumar*'



W.P.No.36416 of 2016

WEB COPY

(*supra*), as well as the decision of the Hon'ble Division Bench of this Court in the case of '**S. Dhanasekaran**' (*supra*) and submitted that since the petitioners were appointed after 01.04.2003, they would not be entitled for the benefits under Rule 11(4) of the Tamil Nadu Pension Rules 1978.

13. Both the decisions relied upon by the learned Special Government Pleader are clearly distinguishable from the facts involved in the present case.

14. In the case of '**V.Perumal**' (*supra*), the Government had taken a policy decision to grant regularization to its contractual employees and the Hon'ble Supreme Court in '**Surendra Kumar's case**' (*supra*) had referred to a decision in the case of '**Secretary, State of Karnataka & others Vs. Uma Devi & others**' reported in (2006) 4 SCC 1 and had held that when the regularization is done owing to the policy decision of the Government, the contractual employees cannot seek for regularization with retrospective effect.



W.P.No.36416 of 2016

WEB COPY

15. It was not a case that relaxation was granted for the sake of regularizing the contractual employees who were already under the service of the respondents and the benefit conferred under Section 58 of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016, was also not a subject matter. So also, in the other decision of the Hon'ble Full Bench of this Court in the case of **'S. Dhanasekaran & others Vs. Government of Tamil Nadu, Municipal Administration and Water Supply Department & others'** passed in **WP.(MD).No.1083 of 2012** dated **29.11.2013**. Thus, these decisions relied upon by the learned Special Government Pleader may not be of any assistance to them.

16. In the light of the above findings, the impugned order in G.O.Ms.No.325 dated 13.12.2006, insofar as it fixes the date of regularization as 13.12.2006, is quashed. Consequently, there shall be a direction to the respondents to forthwith pass orders, regularizing the services of the first petitioner with effect from 18.08.2001, the second petitioner with effect from 18.06.2001, the third petitioner with effect from 22.08.2001 and the fourth petitioner with effect from 10.01.2002, which are their respective dates of initial appointment and extend all the service



W.P.No.36416 of 2016

benefits therefrom. Such orders shall be passed atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

17. With the above directions, this Writ Petition stands allowed. No costs.

27.01.2023

Speaking Order
Neutral Citation: Yes
Index : Yes
Internet: Yes

Sni

To

- 1.The Principal Secretary to State of Tamil Nadu,
Health & Family Welfare Department,
Fort St. George, Chennai – 600 009.
- 2.The Director of Health Services,
Public Health & Preventive Medicine,
DMS Compound, Chennai – 6.



WEB COPY



W.P.No.36416 of 2016

M.S.RAMESH,J.

Sni

Pre-delivery Order in
W.P.No.36416 of 2016

27.01.2023