



W.P.No.5588 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.5588 of 2017
and W.M.P.No.5951 of 2017

S.Nepolian

.. Petitioner

VS

1.The State of Tamilnadu

Rep. By its Principal Secretary to Govt.,
Social Welfare and Nutrients Food Dept.,
Fort St.George, Chennai – 600 009.

2.The Director,

Public Health and Preventive Medicine,
DMS Compound, No.359, Anna Salai,
Chennai – 600 006.

3.The Deputy Director of Health Services,

Mettivelaikara Street,
Near Fire Service Police Station,
Old GH Compound, Thiruvavur – 610 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the 2nd respondent having Ref.R.No.85604/E4/S4/2009, dated 28.09.2016 and quash the same and consequently direct the respondents to pay the Time Scale pay from 10.07.2005 to the petitioner in pursuance of G.O.Ms.No.151, dated 16.10.2008.

For Petitioner : Mr.R.Venkatavarathan

For Respondent : Mr.K.Surendharan
Additional Government Pleader



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ORDER

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The petitioner is a physically challenged person and was appointed as Junior Assistant by G.O.(Ms).No. 83 dated 04.07.2003 under the third respondent office.

2. The name of the petitioner had been sponsored by the employment exchange. The petitioner was appointed on consolidated pay of Rs.3500/- per month. The petitioner had joined duty on 11.07.2003.

3. It had been contended by the petitioner that the Association of Physically Disabled Persons had submitted a representation to the Government requesting them to regularize the services of those who have been physically disabled after completion of two years of service. After examining the said representation, the Government had passed G.O.(Ms).No.151 dated 16.10.2008.

4. It is contended by the learned counsel for the petitioner that, according to the said Government Order, those who have been in consolidated pay and had put in continuous service for a



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minimum of two years should be brought into regular service on completion of such two years. It is therefore contended that the petitioner had a legitimate expectation that he would be brought into a regular service within a period of two years from the date of initial appointment, namely, on 11.07.2005 since the initial employment was on 11.07.2003.

5. It had been however contended that an order had been passed by the respondents in this regard and the petitioner had been brought into regular service in the third respondent office from the date of joining of time scale of pay on 25.10.2010 and the date of regularization was also determined as 25.10.2010. Holding that the date of regularization should be 11.07.2005, the writ petition has been filed questioning that particular decision taken by the respondents.

6. The counter affidavit had not been filed but learned Additional Government Pleader, on instructions, stated that based on the representations given by the petitioner herein, the second respondent had addressed the first respondent to consider the request of the petitioner herein. It is however stated that the first respondent had, by letter dated 24.03.2016 in letter



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No.43372/AB1/2016 stated that there was no provision to retrospectively regularize the services in the order in G.O(Ms).No.151, Social Welfare and Nutritious Meal Programme Department, dated 16.10.2008 and, therefore, had stated that the date of regularization as stated in the earlier letter was correct and reiterated.

7. Heard the arguments and carefully perused the records.

8. It is a fact that the petitioner herein had joined on 11.07.2003 under the third respondent office. It is also a fact that the petitioner herein is physically challenged. It is also a further fact that the Association of Physically Challenged Employees had approached the Government and placed a request that those who are in consolidated pay should be brought into regular service. It is also a fact that consequent to such representation, G.O.(Ms).No.151 dated 16.10.2008 had been passed. The relevant portion of the said G.O. is extracted below :-

"2. முதன்மை செயலாளர் ஊனமுற்றோருக்கான மாநில ஆணையரின் கருத்துருவை கவனமாகப் பரிசீலித்த பின்னர் தமிழக அரசின் பல்வேறு துறைகளில் இரண்டாண்டுகளுக்கு மேல் தொகுப்பூதியத்தின்கீழ் பணியாற்றி வரும் ஊனமுற்றோருக்கு காலமுறை ஊதியம் வழங்க ஆணையிடுகிறது."



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9. A clear reading of the said G.O shows that on completion of two years of continuous service those who have been in consolidated pay should be brought into regular service. There cannot be any further interpretation. There is no ambiguity in the order. The Government Order is clear and the wordings are straight forward.

10. However, it is seen from the impugned order, which is challenged in the present writ petition that the petitioner had been brought into regular service only on 25.10.2010. There is no rationale behind that particular aspect. Even if it has to be considered that they cannot be brought into regular service on and from issuance of G.O.(Ms).No.151, it is seen that the petitioner had been brought into regular service on and from 16.10.2008. That is prejudicial to the petitioner herein since the petitioner had completed two years of service in the year 2005.

11. The wordings in the Government Order is that those who are physically challenged and those who had completed two years of service on consolidated pay should be regularized if there are no other adverse remarks. There is no stand taken by the



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respondents that there are any adverse remarks against the the petitioner herein.

12. In view of the same, the writ petition stands allowed and the impugned order is set aside. A direction is given that the respondents should consider the petitioner as having been brought into regular service on 11.07.2005 and necessary monetary and terminal benefits should be extended to the petitioner herein. The proceedings should be issued within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

23.08.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

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C.V.KARTHIKEYAN,J.

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