



W.A.(MD) No.1459 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.(MD) No.1459 of 2023

N.Murugeswari

... Appellant/Writ Petitioner

-vs-

1.The Principal,
Government Medical College (Siddha),
Murugankurichi, Palayamkottai,
Tirunelveli District.

2.The Director,
Directorate of Indian Medicine and Homeopathy,
Arumpackam, Chennai-106.

3.The Secretary to Government,
Health and Family Welfare IM 2(2) Department,
Chennai-9. ... Respondents/Respondents

PRAYER: Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 30.03.2023 made in W.P.(MD)No.16510 of 2020 on the file of this Court.

For Appellant : Mr.S.Govindan



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For Respondents : Mr.M.Lingadurai
Special Government Pleader

JUDGMENT

[Judgment of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

This Writ Appeal is directed against the order of the learned Single Judge dated 30.03.2023 made in W.P(MD)No.16510 of 2020. By the said order, the learned Single Judge dismissed the writ petition filed by the appellant for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 28.09.2020 and consequently directing the respondents to regularize the service of the appellant on 13.07.2000 instead of 10.07.2007 upon completion of 10 years of service from the date of her initial appointment with effect from 13.07.1990 in terms of G.O.Ms.No.22 dated 28.02.2006 notionally, without back wages and consequently to extend the benefit of Old Pension Scheme instead of New Pension Scheme which came into effect from 01.04.2003.

2. The prayer itself would reveal the case of the petitioner. The petitioner was initially appointed as Hospital Worker on consolidated basis with effect



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from 13.07.1990. Thereafter, the petitioner's services were however regularised by G.O.(2D)No.80 dated 10.07.2007. The said Government Order categorically says that the appellant is regularised only from the date of the issue of the said Government Order ie., with effect from 10.07.2007. Therefore, by treating the appellant as having borne into the cadre only with effect from 10.07.2007, the appellant was admitted into the New Pension Scheme. Aggrieved by the same, the appellant made a representation to include her in the Old Pension Scheme which was rejected by the second respondent by an order dated 28.09.2020. Challenging the same, the present writ petition was filed.

3. When the persons who were in consolidated services were regularised, a question arose as to whether their earlier services should be taken into account and whether the Old Pension Scheme should be applied to them. In view of two different views, the matter has been referred to the Full Bench of this Court in ***The Government of Tamil Nadu Vs. R.Kaliyamoorthy***¹ and the Full Bench of this Court has authoritatively decided the issue holding that those of the employees who are regularised into service before coming into the force of the New Pension Scheme ie., before 01.04.2003 alone will be placed under the Old Pension Scheme and those of the employees who are

¹ W.A.Nos.158 of 2016 etc., batch, dated 03.12.2019



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regularised in service after the said cut off date will be placed only under the New Pension Scheme. Therefore, the learned Single Judge has rightly rejected the claim of the petitioner.

4. However, it is the contention of the learned counsel for the appellant that as per G.O.Ms.No.22, dated 28.02.2006 the appellant ought to have been regularised in service upon completion of 10 years of service ie., with effect from 13.07.2000. Therefore he would pray that in similar matters including in the judgment of this Court in ***M.Shanmugam and others Vs. Government of Tamil Nadu and others*** reported in (2023) 1 LLJ 696, the respondents were directed to regularize them as per the Government Order. We have gone through the said judgment relied upon by the learned counsel for the appellant. In that case after engaging the services of the writ petitioners for more than 22 years, they were not regularised. As a matter of fact, even as of the year 2000 they filed original application before the Tamil Nadu Administrative Tribunal which was thereafter, transferred to the High Court in the year 2006 in which, the Government was directed to consider their representation for regularization. Even thereafter they were not regularised and therefore, they were directed to be regularised upon completion of 10 years of service as per the Government order. However, in this case, the



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regularization is already done by G.O.(2D)No.80, dated 10.07.2007. The said Government order clearly and categorically regularised the services of the petitioner with effect from the date of the Government Order. The petitioner has not chosen to challenge the same. However, 13 years after the same, the present writ petition is filed in the year 2020 by making a belated representation and challenging the order rejecting the representation. Therefore, once the date of regularization of the appellant has become final, there is no question of considering her case for retrospective regularization at this point of time and accordingly, we find no error in the conclusion reached by the learned Single Judge in dismissing the writ petition filed by the appellant.

5. In the result, the Writ Appeal is dismissed. However, there shall be no order as to costs.

[S.S.S.R., J.] [D.B.C., J.]

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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