



W.P.(MD) No.22384 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 19.09.2023

ORDERS PRONOUNCED ON : 03.10.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.22384 of 2016

Meenakshi

... Petitioner

Vs.

1.The Director of Health and Preventive Medicine,
Mount Road,
Chennai-6.

2.The Deputy Director of Health Services,
Krishnankovil, Nagercoil-1,
Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for all the connected and relevant records relating to the impugned order in Na.Ka.No. 29370/pa/thoo.3/eru 2/2016 dated 18.04.2016 passed by the first respondent and quash the same and consequently direct the respondents to sanction and to pay petitioner the pension and pensionary benefits of the petitioner's father late E.Madan from 01.12.1991 onwards.



W.P.(MD) No.22384 of 2016

For Petitioner : Mr.S.Ramakrishnan
for Mr.D.Christenson Jugunu

For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

Heard Mr.S.Ramakrishnan, learned counsel for Mr.D.Christenson Jugunu, learned counsel on record for the petitioner and Mr.P.Subbaraj, learned Special Government Pleader appearing for the respondents.

2. The case of the petitioner is that her father worked as Sweeper in Former Travancore Cochin State and was transferred to Kanyakumari District. The present Kanyakumari District had been a part of the erstwhile Travancore Cochin State prior to the enactment of the State Reorganisation Act, 1956. The Health Administration of the erstwhile Travancore-Cochin State was manned by full time regular Sweepers, Field Workers and Assistants. Consequent on the reorganisation of the State, Kanyakumari District got amalgamated with the State of Tamil Nadu. Consequently, the village level staff of the erstwhile Travancore Cochin State employed in



W.P.(MD) No.22384 of 2016

Kanyakumari District were absorbed into the service of Tamil Nadu Government. The Government has issued G.O.Ms.No.984, Health, dated 31.05.1966 directing the Director of Public Health to bring to the notice of the Government with respect to the personnel persons transferred from former Travancore Cochin State as full time Sweepers and Filed Workers for anomalies or factual mistake for rectification immediately. The father of the petitioner was appointed in the Health Centre in Travancore Cochin State and after reorganisation of the State, he was appointed as Sweeper in Primary Health Centre, Chenbagararamanputhur and he retired from service on 30.11.1990.

3. The Government has issued G.O.Ms.No.581, Health and Family Welfare Department, dated 25.11.1995 stating that 16 employees from among the group of employees who worked in elephantiasis disease preventive scheme at Kulitharai, Kanyakumari District and who completed 5 years of service prior to 01.04.1977 may be posted on the post created by the Government *vide* G.O.No.231, Health and Family Welfare Department, dated 18.04.1995, and from 01.04.1977, the benefit of service may be



W.P.(MD) No.22384 of 2016

extended to them. The petitioner's father has sent a representation to the 2nd respondent on 24.09.1991. On 10.02.2006, the 2nd respondent sent a letter to the first respondent to regularise the services of the father of the petitioner from 01.04.1977 as per G.O.Ms.No.52, Finance M.R.(11), dated 14.01.1977. Though the petitioner's father was eligible for pension and other retirement benefits, as he continued in Government Service from 17.09.1945 to 30.11.1990, no steps were taken by the respondents on that aspect. The petitioner's father died in the year 2010. The petitioner's mother also died on 26.06.2009. The petitioner has submitted several representations to the respondents requesting to pay the family pension and other retirement benefits of her father.

4. As there is no response from the respondents, the petitioner filed W.P.(MD) No.4507 of 2016 before this Court. While disposing of the said writ petition, this Court by order dated 07.03.2016, directed the respondents to consider the representation of the petitioner within three weeks. The petitioner has sent a copy of the order of this Court to the respondents. Consequently, the 1st respondent by letter in Na.Ka.No.



W.P.(MD) No.22384 of 2016

29370/pa.thoo.3/eru2/2016, dated 18.04.2016, informed the petitioner that as per letter dated 06.09.2000, Health and Family Welfare Department, the official who retired from service on 30.11.1990 could not be brought to the permanent post as per G.O.No.581, dated 25.11.1995 and it is also informed that only permanent employees are entitled for pensionary benefits and the father of the petitioner is not eligible to get pensionary benefits. The said letter dated 18.04.2016 issued by the 1st respondent is impugned in the present writ petition.

5. On behalf of the respondents, a counter affidavit has been filed.

6. It is averred in the said counter affidavit that 143 members of contingent Sweeper and 10 numbers of Field Worker were working in Travancore Cochin State services during 1958. They were transferred from Travancore Cochin State to Public Health Department in the Madras State consequent on the reorganisation of States. Most of the contingent Sweepers expired and were on unauthorised absence from their service. Finally, at the time of issuance of G.O.Ms.No.581, Health and Family



W.P.(MD) No.22384 of 2016

Welfare Department, dated 25.11.1997, only 16 persons of contingent Sweepers were alive and in service. It is also submitted that in G.O.Ms.No. 581, dated 25.11.1997, orders have been issued to bring the said 16 temporary Sweepers (on duty) into regular establishment. At that juncture, a proposal has been submitted to the Government *vide* R.No. 219270/E3/98/S2 dated 03.09.1999 by the Director of Public and Preventive Medicine, Chennai to bring the petitioner's father Thiru E.Madan into regular establishment. The Government in Letter No.50095/A3/99-4, Health and Family Welfare Department, dated 06.09.2000 has stated that sine the petitioner's father retired on 30.11.1990, i.e., before the date of issuance of the above Government Order, the petitioner's father could not be brought into regular establishment. Hence, the petitioner's father is not eligible for pensionary benefits.

7. It is also stated in the said counter affidavit that similar representation of one Tmt.M.Madathi has been forwarded to the Government in pursuance of the order dated 06.11.2009 in W.P.No.14220 of 2001 of this Court and on consideration of the same, the Government issued



W.P.(MD) No.22384 of 2016

G.O.Ms.No.291, Health and Family Welfare (AB-1) Department, dated 20.04.2012, wherein it is stated that in G.O.Ms.No.581, Health and Family Welfare Department, dated 25.11.1997, it has been ordered to bring the employees into regular establishment, who were in service at that time. Since Tmt.M.Madathi retired on 30.09.1981, her contingent service could not be brought into regular service.

8. On behalf of the respondents, an additional counter affidavit has been filed, wherein it is categorically stated that out of 16 Sweepers listed as per G.O.Ms.No.581, Health and Family Welfare Department, dated 25.11.1997, 10 Sweepers were working under the control of National Filaria and 6 Sweepers were working under the control of the 2nd respondent. But the petitioner's father's name was not found place in the said list. In view of the same, it is the contention of the respondents that the petitioner's father was not eligible to get pension, as his service was only on contingent basis.

9. On careful perusal of the material available on record, it is an admitted fact that the petitioner's father retired on 30.11.1990, while he was



W.P.(MD) No.22384 of 2016

working on contingent basis. The Government issued G.O.Ms.No.581, Health and Family Welfare Department, dated 25.11.1997 to bring the employees into regular establishment, who were in service at that time. 16 Sweepers were listed at that time, who were in service and they were brought into regular establishment. But due to the reason that the petitioner's father was retired on 30.11.1990 before the date of issuance of the said Government Order, he could not be brought into regular establishment. As such, the contention of the respondents that the petitioner's father was not eligible for pensionary benefits has to be accepted. As such, in our opinion, the 2nd respondent has rightly informed to the petitioner *vide* the impugned letter stating that the father of the petitioner is not entitled to get pensionary benefits.

10. In view of the same, in the considered opinion of this Court, the petitioner failed to make out any case seeking interference of this Court for granting relief sought in this writ petition.



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W.P.(MD) No.22384 of 2016

11. Accordingly, this Writ Petition is dismissed.

12. There shall be no order as to costs.

03.10.2023

Note: Issue order copy by 05.10.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

1.The Director of Health and Preventive Medicine,
Mount Road,
Chennai-6.

2.The Deputy Director of Health Services,
Krishnankovil, Nagercoil-1,
Kanyakumari District.



WEB COPY



W.P.(MD) No.22384 of 2016

BATTU DEVANAND, J.

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Pre-delivery Order made in
W.P.(MD) No.22384 of 2016

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