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W.P.(MD)No.13585 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.13585 of 2017

K.Subburam

... Petitioner

vs.

1.The Secretary to the Government,
Revenue and Disaster Management
Department,
Fort St.George, Chennai 600 006.

2.The Chief Secretary,
Government of Tamilnadu,
Chepauk, Chennai.

3.The District Collector,
Ramanathapuram District.

4.The Deputy Collector,
Mandapam Camp,
Ramanathapuram.

... Respondents



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PRAAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the 1st respondent in his proceeding in G.O.Ms.No.200 (Revenue and Disaster) Department, dated 12.06.2017 and to quash the same in so far as the effective date of payment of the monetary benefits is concerned, ie., 12.06.2017 and consequently, to direct the first respondent to pay all the monetary benefits in accordance with law.

For Petitioners : Mr.N.Mariappan
For Respondents : Mr.S.R.A.Ramachandran
Additional Government Pleader

ORDER

This writ petition is filed for Certiorarified Mandamus, to quash the impugned order of 1st respondent passed in G.O.Ms.No.200 (Revenue and Disaster) Department, dated 12.06.2017 in so far as the effective date of payment of the monetary benefits is concerned, i.e., 12.06.2017 and consequently, to direct the first respondent to pay all the monetary



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benefits in accordance with law.

2. The brief facts of the case are that the petitioner had served in the Indian Army. Due to medical invalidation, he was discharged from Army service in the year 1984, then he had registered himself in the Ex-Service Employees Association. The said association sponsored the petitioner's name for the post of Goorkha Watchman in Ramanathapuram. Thereafter, the petitioner was appointed on 07.01.1985 in consolidated pay of Rs.400/- per month. The total extent of 294 acres of land belonging to the Mandapam camp ought to be supervised by the petitioner and he has continued his service for the post for 30 years. The prime duty is to check and watch the refugees staying in the said Mandapam which is located in the aforesaid 294 acres every year. The petitioner's service would be renewed by the 4th respondent and the salary would be increased periodically. Even after 30 years, the



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petitioner is drawing the salary of Rs.900/- per month, which is a meagre amount. The 4th respondent during 1993 submitted a proposal to the 3rd respondent to regularize the service of the petitioner as Goorkha Watchman in the 4th respondent office. The 3rd respondent in turn forwarded the same to the Commissioner, Rehabilitation Department, Chennai. The Commissioner instead of approving the proposal of regularization, directed the petitioner to approach the District Collector who is competent to regularize the service. The 3rd respondent sent a similar proposal to the Additional Secretary (Revenue and Administration) Department, and requested to regularize the service. But no action was taken by the respondents. The petitioner submitted several representations to regularize the service.

3. Thereafter, the petitioner filed W.P.(MD)No.14369 of 2015, for writ of Mandamus, directing the respondents to regularize. This Court,



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vide order, dated 21.08.2015, directed to consider the petitioner's representation, dated 06.07.2015 within a period of eight weeks. Since the respondents have not considered the same, the petitioner preferred Cont.P.(MD)No.274 of 2016. Pending contempt application, the 1st respondent passed G.O.Ms.No.200, dated 12.06.2017. However, the respondents have regularized the petitioner's service from the date of issuance of the G.O., i.e., 12.06.2017. The petitioner is aggrieved by the fixation of the date. Hence, the petitioner has preferred this writ petition.

4. The 1st respondent has filed a counter affidavit stating that the Mandapam Refugee Camp is a Transit Camp and in G.O.Ms.No.2082 Revenue Department dated 21.12.1983 sanctioned for the creation of four temporary posts of Gurkha Watchman from the date of employment till 29.02.1984 or till the need ceases as approved by the Government of India, whichever be earlier for the watch and ward duties in the



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Mandapam Transit Camp at a consolidated pay of Rs.300/- per month with a condition that the above posts should be filled up by obtaining a list of qualified candidate from the Local Employment Exchange. Since the said post has ceased from existence on 29.02.1984 there is no sanctioned post. Hence, the petitioner was appointed in temporary basis in unsanctioned post on 18.01.1985 through the proceedings of the Special Deputy Collector (Rehabilitation) Mandapam Camp vide proceedings dated 07.01.1985. Since the petitioner is appointed in an unsanctioned post the petitioner is not entitled to be considered for regularization. Moreover, the petitioner was not sponsored by District Employment Exchange and other recruitment procedures were not followed. Therefore, the petitioner is not entitled to be regularized. When the petitioner filed W.P.(MD)No.14369 of 2015, the said writ petition came to be allowed without giving opportunity to the respondents. Hence in contempt petition, the respondents had passed an order granting



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regularization and the effect was granted from the date of passing the G.O. As per section 28(2) of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016 and as per G.O.Ms.No.74 Personnel and Administrative Reforms Department dated 27.06.2013 the employee is entitled to get regularization from the date of passing the G.O. and not prior to the said date and the 1st respondent prayed to dismiss the writ petition.

5.Heard Mr.N.Mariappan, learned Counsel appearing for the petitioner and Mr.S.R.A.Ramachandran, learned Additional Government Pleader appearing for the respondents and perused the records.

6. The plea of the respondents that, when the petitioner filed W.P. (MD)No.14369 of 2015, the said writ petition came to be allowed without giving opportunity to the respondents and hence in contempt



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proceedings the service of the petitioner was regularized. When such plea was taken by the respondents, this Court in order to grant an opportunity to the respondents is proceeding to consider the contentions that were raised by the respondents in the counter.

7. The first contention of the respondents is that the appointment of the petitioner is for temporary basis in an unsanctioned post. The respondents have issued appointment order, dated 07.01.1985, which was entered in the service book and the contents are extracted hereunder:

“Sponsored by Assistant Director of Ex-Servicemen's Welfare Ramanathapuram at Srivilliputhur in letter aoreder card No. 65/84 dated 25.10.1984 and appointed as GURKHA WATCHMEN in proceedings No. F/2124/84 dated 07.01.1985 of the Special Duty Collector (Rehabilitation) Mandapam Camp joined on F.N of 18.01.1985 as Gurkha Watchmen in the office of the Special Deputy Collector (Rehabilitation) Mandapam Camp.”

In the aforesaid appointment order, no where it is stated that the



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petitioner was appointed in unsanctioned post in a temporary basis. The respondents have taken a plea that the petitioner was appointed in unsanctioned post. Since the appointment order is not stating that it is an unsanctioned post and further not stating that it is a temporary post, the claim of the respondents ought to be rejected.

8. The contention of the respondents is that there were only four sanctioned posts as per G.O.Ms.No.2082, Revenue Department, dated 21.12.1983, hence the petitioner was appointed in unsanctioned post. The further contention of the respondent that in the said G.O.Ms.No.2082 the post was sanctioned until 29.02.1984, but the petitioner was appointed on 18.01.1985. It is seen from records that the respondents have appointed six persons in the four sanctioned posts. Therefore, this Court is of the considered opinion that it is the mistake of the respondents to appoint the petitioner in an unsanctioned post. When the Government has



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sanctioned only four posts, the respondents ought to have sought permission to appoint one more person or ought to have sought to sanction one more post and thereafter, appoint the petitioner. After appointing the petitioner then the respondents cannot take a stand that the petitioner was appointed in an unsanctioned post. More so when the G.O. has sanctioned the post until 29.02.1984, but the petitioner was appointed beyond the said period i.e. on 18.01.1985, then the petitioner is protected under the principles of legitimate expectation.

9. The next contention of the respondents is that the petitioner was not sponsored by the District Employment Exchange. It is seen that the petitioner is sponsored by the Assistant Director of Ex-Servicemen's Welfare Ramanathapuram. When the respondents have called the list for from the Ex-serviceman Welfare Office, then the appointment is legally sustainable and the plea that local employment exchange has not



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sponsored cannot be entertained.

10. Therefore, this Court is of the considered opinion that fixing the date of 2017 is absolutely improper. In fact, the 3rd respondent has submitted a proposal to the 2nd respondent proposing for regularization of the petitioner as early as 23.12.1993 itself. When the official respondents failed to take up the proposal, it is the mistake of the official respondents. Either the respondents ought to have regularized the service or ought to have intimated the petitioner that his service will not be regularized. If that has been communicated to the petitioner, then petitioner would have left the job and taken up some other job which is remunerative to the petitioner. Such an opportunity was not granted to the petitioner.

11. Therefore, this Court is of the considered opinion that the petitioner is entitled to be regularized from 23.12.1993 or atleast after a



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lapse of ten years that from 07.01.1995. Therefore, this Court is directing the respondents to regularize the petitioner's service from 07.01.1995 and consequently, pay the service benefits to the petitioner. As far as monetary benefits the petitioner is entitled to the said monetary benefits, but without interest. The impugned G.O., is modified to that effect. The petitioner had retired on 30.06.2019. Therefore, the entire monetary benefits shall be given along with pensionary benefits. The entire exercise shall be completed within a period of sixteen weeks from the date of receipt of a copy of this order.

12. For the reasons stated above, the writ petition is allowed. No costs.

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

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S.SRIMATHY, J

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