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Writ Petition No.4205 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 18.09.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE BATTU DEVANAND**

**Writ Petition No.4205 of 2018**  
**& WMP No.22250 of 2019**

S.Jacindas

..Petitioner

vs.

1.The Secretary to Government,  
Personal & Administrative Reforms Department,  
Fort St George,  
Chennai-600 009

2.The Secretary to Government/Commissioner,  
General Repatriates Rehabilitation Department,  
Secretariat, Chennai-600 009

3.The Chairman,  
Tamil Nadu Public Service Commission,  
Chennai-600 003.

4.The Secretary,  
Tamil Nadu Public Service Commission,  
Chennai-600 003.

... Respondents

**PRAYER** : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 4<sup>th</sup> respondent herein regularising the petitioner's appointment from 25.06.1984, by proceeding no.7767-D1/84-2 dated 18.03.1985 along



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with the impugned order Tamil Nadu Public Service Commission(TNPSC) Memorandum no.7863/PD-E1/2015 dated 03.05.2016 passed by the 4<sup>th</sup> respondent herein and quash the same in so far as it relates to the petitioner's herein with a consequential direction to the respondents herein to regularise the appointment of the petitioner from the date of his initial appointment as Junior Assistant in Tamil Nadu Public Service Commission(TNPSC) i.e., from 16.12.1982 by applying G.O.Ms.No.2024, Revenue Department dated 15.05.1974 by fixing the seniority with consequential service benefits viz., notional promotion to the posts of Assistant Section Officer, Section Officer, Under Secretary, Deputy Secretary and Joint Secretary with notional fixation of pay in the aided promotional posts and advancement of selection grade in the posts of Assistant, Assistant Section Officer and Section Officer without the benefits of arrears of pay and allowances as per the order of this Court in WP.No.539 of 2006 dated 29.10.2008 and WP.Nos.32253, 37888 & 37896 of 2006 dated 06.04.2009 passed in favour of similarly placed persons, who are all repatriates from Burma and Sri Lanka within a period of 6 weeks from the date of the order.

For Petitioner : Mr.C.V.Vijayakumar

For Respondents : Mr.V.Jeevagiridharan, AGP for RR1  
& 2  
Mr.R.Bharanidharan, St.counsel  
for 3 & 4

### **ORDER**



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This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records of the 4<sup>th</sup> respondent dated 18.03.1985 along with the records pertaining to the impugned order dated 03.05.2016 passed by the 4<sup>th</sup> respondent, quash the same and consequently direct the respondents to regularise the appointment of the petitioner from the date of his initial appointment as Junior Assistant in Tamil Nadu Public Service Commission(TNPSC) from 16.12.1982 and accord all consequential service benefits including notional promotion.

2. When this Writ Petition is taken up for hearing, the learned counsel for the petitioner would submit that the issue involved in this Writ Petition regarding regularisation of services with regard to the Burma repatriates from the date of their initial appointment, has been settled by this Court in WP Nos.37888, 37896 & 32253 of 2006. By order dated 06.04.2009, while allowing the said Writ Petitions, this Court has observed as follows:

“4. The stand of the petitioners was that they are admitted Burma Repatriates and having registered their names in the Employment Exchange, under the said category, they were given appointment as Junior Assistants. Though the initial appointment order stated that it was under Rule 10(a)



(i) of the Tamil Nadu State and Subordinate Service Rules, but their appointments were under the special category under Burma Repatriates.

5. With reference to the persons who are appointed under the Burma Repatriates category, there are Government Orders with regard to the appointments and their regularisation. It is stated that in G.O.Ms.No.2024, Revenue Department, dated 15.5.1974, the Government had issued orders for appointing Burma Repatriates and Repatriates from Sri Lanka with a view to rehabilitate them and in such case, the Government has also promised to grant necessary relaxation in respect of recruitment Rules.

6. Pursuant to the said direction of the Government, the Commissioner for Sri Lankan Refugees and Rehabilitation, had issued Circular/letter, dated 11.8.1999, stating that for those Repatriates who were appointed, would be given the benefit of retrospective regularisation from the dates of appointment without arrears of pay and allowances.

7. Basing upon the circular/letter from the Commissioner, Refugees and Rehabilitation, many individuals have had the benefit but when it came to the case of the petitioners, it is stated that they cannot be given any special retrospective regularisation, their initial appointments were only under Rule 10 (a) (1) of the Tamil Nadu State and Subordinate Services Rules, and such of those persons who were appointed during



the period 1980-1984, they will come under the special grouping made by the State Government in G.O.Ma.No.996 Personnel and Administrative Reforms Department, dated 22.9.1984. Therefore, their regularisation can take effect only from the date of the G.O., namely from 22.09.1984 as ordered by the Government.

8. The reply affidavit filed by the respondents is silent on the special nature of the appointments of these three persons, though admittedly the appointments were made under the category of Burma Repatriates. Therefore, the stand of the respondents is mechanically reflected and there is no individual attention in respect of the G.O. issued by the State Government in G.O.Ms.No.2024, Revenue Department dated 15.5.1974 and the Circular/letter, dated 11.8.1989.

9. Mr.Nanda Kumar, learned counsel for the petitioner also brought to the notice of this Court the case of one K.Senthamar and Mr.M.Gopalakrishnan, wherein the Government issued G.O.No.19 dated 6.8.1990, on the basis of the assurance from the Legislative Assembly Department, granted them the benefit of retrospective regularisation and not from the date of the Government Order. The issue was raised before the Legislative Assembly and pursuant to the assurance given by the State Government, such an order came to be passed.

10. In this context, learned counsel also relied upon the case of



one K. Ramasamy, who filed O.A.No.430 of 1993, where the Tamil Nadu Administrative Tribunal gave a direction on 28.01.1993, directing the case of one such Burma repatriate to be considered for retrospective regularisation, which was also considered by the State Government.

11. When similar persons were given the benefit of retrospective regularisation, it is not open for the respondents to deny the same and such a stand of the respondents are arbitrary and violative of Articles 14 and 16 of the Constitution of India.

12. Ms.G.Devi, learned counsel for the petitioners in W.P.Nos.37896 and 32253 of 2006 adopted the same arguments of Mr.Nanda Kumar, learned counsel for the petitioner in W.P.No.37888 of 2006.

13. A perusal of the reply affidavit shows that the Government merely stated that the petitioner's initial appointment was under Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Services Rules. But it does not take the case any further. The respondents have failed to meet the real issues raised by the petitioners. In fact, there is an admission in the reply affidavit that the petitioners appointments were solely on the basis that that they were Burma Repatriates. In the light of the Government Orders in favour of such appointees, granting retrospective regularisation without any monetary benefits, there is no reason why the patitioners should not be given such



benefit. In the light of the same, all the three Writ Petitions stand allowed. The respondents are directed to regularise the appointments of the three petitioners from the dates of their initial appointments, but as indicated in the Government Letter/Government Orders, they will not be paid any monetary benefits for such retrospective regularisation. But their services will be counted for all other purposes, including pay fixation and other benefits available to them, in accordance with law. No costs."

3.In the present Writ Petition also similar issue has been involved wherein, the Writ Petitioner seeks regularisation of his service from the date of his initial appointment under the category of Burma Repatriate.

4.Having regard to the order dated 06.04.2009 and since this Court has dealt with the same issue, I am of the considered opinion that the above said order will hold good to the present Writ Petition also.

5.Accordingly, this Writ Petition stands allowed and impugned order dated 03.05.2016 passed by the 4<sup>th</sup> respondent is hereby set aside. The respondents are directed to regularise the appointment of the petitioner from the date of his initial appointment i.e., 16.12.1982.



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6. It is made clear that the petitioner is not entitled to any monetary benefits for such retrospective regularization. But his services will be counted for all other purposes, including pay fixation and other benefits available to him, in accordance with law.

No costs.

Consequently, connected miscellaneous petition is closed.

**18.09.2024**

Index : Yes/No  
Speaking order: Yes/No  
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To  
1.The Secretary to Government,

8/10



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Personal & Administrative Reforms Department,  
Fort St George,  
Chennai-600 009

2.The Secretary to Government/Commissioner,  
General Repatriates Rehabilitation Department,  
Secretariat, Chennai-600 009

3.The Chairman,  
Tamil Nadu Public Service Commission,  
Chennai-600 003.

4.The Secretary,  
Tamil Nadu Public Service Commission,  
Chennai-600 003.

**BATTU DEVANAND, J**

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