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W.P. Nos.35394 of 2012 & 17696 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.35394 of 2012 & 17696 of 2015

S.Balan

... Petitioner in both W.Ps.,

Vs.

1.The Secretary to Government,
Health & Family Welfare Department,
Fort St. George,
Chennai.

2.The Director of Family Welfare,
No.258, Anna Salai,
Chennai – 600 006.

...Respondents in W.P.No.35394 of 2012

1.The Secretary to Government,
Health & Family Welfare Department,
Fort St. George,
Chennai.

2.The Director of Family Welfare,
No.258, Anna Salai,
Chennai – 600 006.

3.The Chairman,
Tamil Nadu Public Service Commissioner,
VOC Nagar, Park Town,
Chennai – 600 003.

4.The Principal Accountant General,



W.P. Nos.35394 of 2012 & 17696 of 2015

(Accounts & Entitlements) Tamil Nadu,
No.361, Annasalai,
Teynampet,
Chennai – 600 018.

...Respondents in W.P.No.17696 of 2015

PRAYER in W.P.No.35394 of 2012: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, call for the records and quash the proceedings of the 1st respondent in his letter No.46659/R2/2011-1 dated 20.06.2012 and consequently direct the respondents to reckon the petitioner's promotion to the post of Block Extension Education with effect from 6.9.1985 and consequently extend all promotional and monetary benefits to the petitioner, including pension.

PRAYER in W.P.No.17696 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, call for the records and quash G.O.Ms.No.29 dated 30.01.2015 Health and Family Welfare (R1) Department 1st respondent herein and further directing the respondents to pay petitioner damages of Rs.5/- lakhs.

For Petitioner : Mr.D.Baskar

For R1 & R2 : Mr.K.Tippu Sultan
Government Advocate.

For R3 : Mr.R.Bharanidaran

COMMON ORDER

These two writ petitions are at the instance of the sole petitioner and is pertaining to his claim for promotion to the post of Block Extension Educator and as such both the matters are taken up for consideration together and are



being disposed of by this common order.

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2. The brief facts that are relevant for disposal of these writ petitions are as under:

The petitioner herein was initially appointed as Family Welfare Assistant, Health & Family Welfare Department, Fort St. George, Chennai on 11.06.1971 and thereafter, promoted to the post of Computor on 02.09.1985 and he was further promoted to the post of Block Extension Educator on 29.12.1993 and then, he retired from service in the said post on attaining the age of superannuation on 31.01.2009. While he was working as Block Extension Educator, he was kept in charge of post of District Mass Educational Officer on 03.10.2005 and continued in the said post till 13.08.2008 as an additional in-charge post and then, he was reverted to the substantial post of Block Extension Educator.

3. The claim of the petitioner in these writ petitions is for notional promotion to the post of Block Extension Educator with effect from 02.09.1985, i.e., the date on which he was promoted to the post of Computor, on the ground, Ministry of Health and Family Welfare, Government of India



by its Letter No.HO.N.17011/43/81/MFN gave a concurrence to the proposal submitted by the Commissioner of Secretary, Health and Family Welfare Department, Government of Tamil Nadu to fill up the post of Block Extension Educator/Elector from the post of Health Inspector/Selection Grade Health Inspectors and also to fill up the remaining vacancies of 126 posts of Block Extension Educators from amongst the holders of the post of Family Welfare Worker or Computer on the Tamil Nadu Medical Subordinate Service by relaxing the requirement possessing University degree. The petitioner herein, admittedly, not possessing the University degree which is a qualification that is prescribed for the post of Block Extension Educator and by virtue of relaxation granted by the Government of India, the petitioner is claiming for promotion to the post of Block Extension Educator with effect from 02.09.1985.

4. According to the learned counsel for the petitioner, the respondents, instead of promoting the petitioner to the post of Block Extension Educator on 02.09.1985, erroneously promoted to the post of Computer. Thus, the petitioner also claimed to have filed O.A.No.113 of 1990, but the said OA is stated to have been dismissed. However, it is



thereafter, the petitioner once again made a claim for notional promotion to the post of Block Extension Educator with effect from 02.09.1985 by submitting a representation and thereafter, approached this Court by filing W.P.Nos.3420 of 2008 & 7196 of 2009, complaining inaction on the part of the respondents. This Court, on two occasions, directed the respondents to consider the claim of the petitioner. Thus, on considering the claim of the petitioner, the respondents passed the impugned order rejecting the claim of the petitioner.

5. The respondents filed counter affidavit contending that the none of the juniors of the petitioner was promoted to the post of Block Extension Educator and his case never came up for consideration and his case was not considered and he was also rightly promoted to the post of Computer on 02.09.1985 and then as Block Extension Educator on 29.12.1993 in his own turn.

6. This Court has carefully considered the submissions made on either side and also perused the entire materials on record.



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7. It is not the case of the petitioner that any of his juniors were promoted to the post of Block Extension Educator while he was in service. However, the sole basis for the claim that is being made by the petitioner is relaxation that was granted by the Government of India through the above referred letter. The said Letter only enables the State Government to effect promotion from the post of Computer or Family Welfare Assistant to the post of Block Extension Educator. But the said Letter does not makes it mandatory to promote all the persons who are working as Family Welfare Assistant as on the date. It is for the State to act upon the said Letter or not.

8. It is not clear from the material on record as to whether the 126 vacancies that were referred to in the above said Letter are filled up by the respondents or not. Even if the said vacancies are filled up or not filled up, also it is only in case, any of his juniors were promoted, ignoring the claim of the petitioner from the post of Family Welfare Assistant, the petitioner can have any sustainable grievance. It is not the case of the petitioner. Further, the petitioner herein, having made similar claim when he also promoted to the post of Computer on 02.09.1985 and to the post of Block Extension Educator in O.A.No.113 of 1190, failed in his attempt and allowed the said order



passed in the said O.A to become final. Once the petitioner has raised a claim before the then Tamil Nadu Administrative Tribunal, on having lost it, it is not open for the petitioner to make any further claim subsequently at this stage by approaching this Court.

9. In the light of the above, this Court does not find any error or illegality in the impugned order passed by the respondents. Accordingly, W.P.No.35394 of 2012 is dismissed.

10. Then, W.P.No.17696 of 2015 is concerned, in this writ petition, the petitioner has challenged promotion orders issued in favour of his juniors. The petitioner already retired from service. Once the petitioner retired from service, the question of petitioner comparing himself with juniors and claiming for promotion to the post of District Mass Educational Officer does not arise. It is only in case, if he had succeeded in W.P.No.35394 of 2012, the petitioner case would come for consideration in this writ petition. As W.P.No.35394 of 2012 is dismissed, the petitioner is not entitled for any relief in this writ petition, as well.



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11. Accordingly, both the writ petitions are dismissed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

30.09.2024

Index : Yes/No
Speaking Order : Yes/No
dpa

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MUMMINENI SUDHEER KUMAR,J.

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