



WEB COPY



W.P.No.11548 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.11548 of 2020

and

W.M.P.No.14125 of 2020

1. Dr. G.S.M.P. Khadri (Deceased)

2. Asifa Khadri

*Implied as per order dated 03.10.2024 in
W.M.P.No.28657 of 2023*

....Petitioners

Vs

1. The Commissioner and Secretary,
To the Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai – 600 009.

2. The Director of Medical Education,
Kilpauk,
Chennai – 600 010

3. The Director of Medical Services,
Anna Salai,
Chennai – 600 006.

4. The Director of Medical and Rural Health Services,
Anna Salai,
Chennai – 600 006

5. The Dean,
Kilpauk Medical College,
Chennai – 600 010

....Respondents



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PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in his proceedings portion of the para 8 and 9 in G.O.(2D) No.154 Health and Family Welfare (B1) Department dated 14.10.2019 (received by the petitioner herein only on 06.03.2020, in reply to an RTI Letter of the petitioner dated 02.03.2020), culminating the para 4 of the Govt. Letter vide Letter No. 28144/A2/2018-6, Health and Family Welfare (A2) Department dated 05.04.2019 (received on 17.03.20) respectively and quash the same and to direct the first respondent to substitute the date of completion of probation period only from 27.07.1983, instead of from the date of passing the Departmental Accounts Test ie., on 29.12.2004 and to recalculate and grant the notional promotion, pensionary and other monetary benefits to the petitioner.

For Petitioner : Mr.V.Raghupathi
For Respondents : Mr.E.Sundaram
Government Advocate

ORDER

The instant Writ Petition has been filed challenging the impugned order rejecting the representations submitted by the petitioner for retrospective notional promotion.

2. The learned counsel for the petitioner invited the attention of this Court to the order of the learned Single Judge dated 07.01.2011 in W.P.No.25153 of 2010, wherein this Court had held that, petitioner's non qualification in Tamil Test within a period of four years and his continuance



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in the post for 25 years would tantamount to grant him an exemption from passing the test. Based upon that, this Court has ordered to regularize the petitioner and directed the respondents to calculate the retiral and pensionary benefits etc. For ready reference, the order of the learned Single Judge is extracted hereunder:

8. In view of the facts and circumstances of the case and keeping in view of the fact that no action was taken to terminate the service of the petitioner within 4 years, as stipulated under Government Order, it would be deemed that the petitioner was granted necessary exemption from passing of Tamil test, as he was allowed to continue in service for 25 years, ie., till the date of his retirement. In any case, the order granting exemption from passing the test can be made applicable from date of appointment, so as to do substantial justice, in consonance with enquiry and good conscience.

9. Consequently, the service of the petitioner is ordered to be regularized, and the respondents are directed to calculate the retiral and pensionary benefits et., which are due to the petitioner, and pay to the petitioner within a period of six months of the date of receipt certified copy of the order. No costs. Consequently, connected miscellaneous petition is closed.



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3. Based upon the above order, the learned counsel for the petitioner would submit that, learned Single Judge apart from directing the respondent to calculate the retiral and pensionary benefits, had also directed to grant all consequential benefits that includes notional promotion to the petitioner. In this regard, the learned counsel for the petitioner refers the word “etc” in the order of the learned Single Judge and based upon this reference, the learned counsel for the petitioner take this Court to the meaning of the word “etc” in the Oxford Dictionary, which states that, *“used after a list to show that there are other things that you could have mentioned”*

4. Thus, it is the contention of the learned counsel for the petitioner that, the rejection to grant notional promotion is in contravention to the order of the learned Single Judge, which was subsequently confirmed by this Court in W.A.No.1809 of 2012. Hence, he prayed to interfere with the order of the respondent.

5. Per contra, the learned Government Advocate would submit that the petitioner was granted all exemptions, and his case was considered compassionately and favourably hence, he prayed for dismissal of the petition.

6. I have given my anxious consideration to either side submissions.



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7. The entire submissions of the learned counsel for the petitioner revolves around the main plank of non-compliance of the earlier Writ order in W.P.No.25153 of 2010 dated 07.01.2011. It is in this background, his request is to execute the earlier order of W.P.No.25153 of 2010, as it was not obeyed by the respondent. It is the settled principle of law that, subsequent Writ cannot be filed to execute the earlier Writ Petition order. It is obvious that, if the petitioner has got grievance against the non-compliance of the earlier order dated 07.01.2011, the proper procedure would be to initiate contempt proceedings. In such view of the matter, the present Writ petition is devoid of merits.

8. Accordingly, this Writ Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

22.10.2024

Index :Yes/No
Neutral Citation : Yes
Speaking order : Yes
Sma



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C.KUMARAPPAN, J

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