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W.P.No.18082 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.18082 of 2022 and
WMP.No.17424 of 2022

1.P.Balakrishnan
2.R.Selvarasu
3.K.Indra Priyatharsini
4.S.Rajeswari
5.G.Murugesan
6.R.Nirmala
7.G.Gayathri
8.S.Gomathi
9.P.Senthilkumar
10.J.Nagabanu
11.R.Sangeetha
12.J.Tamilarasan

... Petitioners

Vs.

1.The State of Tamilnadu,
Rep. By its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai 600 009
2.The Director of Public Health and Preventive Medicine,
DMS Campus, Anna Salai,
Teynampet,
Chennai 600 006
3.The Director of Medical Education,
Kilpauk, Chennai 600 010

... Respondents



W.P.No.18082 of 2022

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records relating to the impugned Government order in G.O. Ms. No. 25 Health and Family Welfare (C2) Department dated 13.01.2022 issued by the 1st Respondent and to quash the same in so far as the condition relating to the regularization of service of the petitioners with monetary benefits only from the date of Government Order (13.01.2022) and consequently directing the respondents to regularize the service of the petitioners in the post of Ophthalmic Assistant along with monetary benefits from the date of initial appointment with payment of arrears of salary and other attendant service benefits along with interest within a time frame to be fixed by this Court.

For Petitioners : Mr.G.Sankaran,
Senior Counsel
for Mr.S.Nedunchezhiyan

For Respondents : Mr.M.Bindran,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the Government order in G.O. Ms. No. 25 Health and Family Welfare (C2) Department dated 13.01.2022 issued by the first respondent insofar as the condition relating to the regularization of service of the petitioners with monetary benefits only from the date of Government Order i.e. 13.01.2022.



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2. Heard, the learned counsel appearing on either side.

3. This Court already dealt with the present issue in a batch of writ petitions in W.P.No.22328 of 2022, etc. batch dated 23.07.2024, wherein this Court held as follows:

“Once the Government decided to regularise the service of the petitioners with monetary benefits on the date of issuance of Government order by relaxing Rule 3 (method of appointment), Rule 5(a) (age), Rule 5(b)(educational qualification) of the Ad hoc Rules for the post of Ophthalmic Assistant and Section 27 of Tamilnadu Government Servants (Condition of Services) Act, 2016, their services are entitled to be regularised from the date of their initial appointment.

10. Admittedly all the petitioners are qualified with required educational qualification for appointment to the post of Ophthalmic Assistant. They had completed their Diploma in Optometry from the Regional Institute of Ophthalmology, Government Ophthalmic Hospital, Egmore, Chennai and also had undergone three months condensed certificate course. So far age is concerned, they were below 28 years at the time of their appointment.



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When the petitioners were appointed in pursuant to the order passed by this Court as well as the Tribunal, it does not mean that their entry into service is backdoor. In fact the orders passed by the Tribunal as well as this Court had arisen on the mistake committed by the Government by giving appointments to the persons qualified from the private institutions in spite of the fact that as per the rules existed at that time, only the persons who have qualified from Government institutions were eligible to be posted as Ophthalmic Assistant. Therefore, the petitioners are fully qualified and eligible to be appointed as Ophthalmic Assistant. If the Government had appointed them already as Ophthalmic Assistant, their service ought to have been regularised by considering their employment exchange seniority.

11. That apart, immediately after their appointment, they have been allotted contributory pension scheme account number and contributions are deducted from their salary. Further, from the date of their appointment, they are rendering service continuously without any break. When the similarly placed persons who completed the diploma course from the Government institutions and had undergone condensed certificate course, were appointed as Ophthalmic Assistant and their services were already regularised from the date of their



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initial appointment, therefore the service of the petitioners regularising only from 13.01.2022 is clear violation of Articles 14 and 16 (1) of the Constitution of India. The service which was already rendered by the petitioners cannot be thrown out simply without regularising their service from the date of initial appointment.

12. In view of the above, the impugned order issued by the first respondent in G.O.Ms.No.25 Health and Family welfare (C2) Department dated 13.01.2022 is quashed insofar as giving regularisation to the petitioners with effect from 13.01.2022. The third respondent is directed to regularize the petitioners' services with effect from the date of their initial appointment in the light of the order of this Court passed in W.A.No.139 of 2008 dated 30.04.2008 within a period of eight weeks from the date of receipt of copy of this order.”

4. In view of the above, the impugned order issued by the first respondent in G.O.Ms.No.25 Health and Family welfare (C2) Department dated 13.01.2022 is quashed insofar as giving regularisation to the petitioners with effect from 13.01.2022. The third respondent is directed to regularize the petitioners' services with effect from the date of their initial appointment in the light of the order of this Court passed in



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WA.No.139 of 2008 dated 30.04.2008 within a period of eight weeks from the date of receipt of copy of this order.

5. With the above direction, this writ petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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29.07.2024
(2/2)

To

1.Principal Secretary to Government,
The State of Tamilnadu,
Health and Family Welfare Department,
Secretariat, Fort St.George,



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Chennai 600 009

- 2.The Director of Public Health and Preventive Medicine,
DMS Campus, Anna Salai,
Teynampet,
Chennai 600 006
- 3.The Director of Medical Education,
Kilpauk, Chennai 600 010

G.K.ILANTHIRAIYAN, J.

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