



W.P.No.12831 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24/11/2023
Delivered on	26/4/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.12831 of 2014

a n d

M.P.No.2 of 2014

S. Kuppammal ... Petitioner

Vs

1. State of Tamil Nadu
rep. By the Secretary
Social Welfare and Nutritious Meal Department
Fort St. George
Chennai 600 009.
2. The Director
Social Welfare Department
Chintadripet
Chennai 600 002.
3. The Principal Secretary/
Special Commissioner
Integrated Child Development Scheme
Taramani
Chennai 600 113.



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4. The Principal Accountant General
(Accounts and Entitlements)

Teynampet

Chennai 600 018.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records of the respondents relating to G.O.Ms.No.34 Social Welfare and Nutritious Meal Department dated 14/3/2013 and quash the same and direct the respondents to forthwith grant the petitioner pension and other retirement benefits with effect from the date on which she attained the age of superannuation.

For petitioner

...

Ms.Ramapriya Gopalakrishnan
Assisted by
Mr.T.Sundaramurthy

For respondents

...

Ms.C.Sangamithirai
Special Government Pleader
for R.R.1 to 3.

Mr.T.S.Selvarani
for R.4

ORDER

This writ petition is filed for the issuance of a writ of certiorarified mandamus to quash G.O.Ms.No.34 Social Welfare and Nutritious Meal



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Department, dated 14/3/2013 and to direct the respondents to forthwith grant pension to the petitioner and other retirement benefits with effect from the date on which she attained the age of superannuation.

2. The petitioner has joined the service as Child Welfare Organiser at Child Welfare Centre, Pennagar, Vallam Block, Villupuram District on 1/9/1978. After working for three years, she was transferred to Vallam and worked upto 2007. As per G.O.Ms.No.858, Social Welfare Department, dated 28/5/1982, the working hours are from 8.30 a.m., to 4 p.m., which means, the petitioner has worked 8 hours a day as a full time worker.

3. The petitioner who is a B.A.graduate in Tamil Literature has undergone training given by Social Welfare Department and Education Department. She has passed Tamil Nadu Panchayat Act test, Grama Swaraj test and E.O Accounts test, etc. The petitioner was sanctioned time scale of pay with effect from 1/1/1996 as per G.O.Ms.No.2 dated 3/1/1996. As per G.O.Ms.No.370 dated 16/4/1989, she should have been made permanent.



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4. The petitioner was eligible to be promoted to the post of Supervisor in the year 1993. On 29/3/1993, the petitioner's name was included in the list of eligible Child Welfare Organisers for the purpose of promotion and the said list was published on 1/4/1993. On 22/8/1994, the petitioner was also informed that in-service training for the purpose of such promotion to be conducted by the Directorate of Social Welfare and that the petitioner was to attend the said training from 5/9/1994 for a period of two months. However, proceedings were not issued, thereby, she could not undergo the training.

5. The petitioner was informed that the proceeding for the training could not be issued as her service register was lost. The petitioner has made several representations to various authorities and on the recommendation of the Director of Social Welfare, a new Service Register was created on 8/10/1998. In the meanwhile, 357 persons who were similarly placed to that of the petitioner were promoted to the post of Supervisor Grade – II. On account of losing of Service Register of the petitioner, the petitioner could not be promoted along with 357 persons.



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6. In the year 1999, another list of eligible candidates was prepared for the purpose of promotion to the post of Supervisor Grade – II and petitioner's name was included in the said list. However, promotion were not given on account of ban imposed by the Government as per G.O.Ms.No.212 dated 29/11/2001 of the Personnel and Administrative Reforms (P) Department. Finally, promotion list was published only on 23/3/2006 and on 14/5/2007, the petitioner was promoted and her services were regularized on 23/7/2009 and petitioner retired from service on 31/10/2009, on attaining the age of superannuation.

7. It is further stated in the affidavit that the petitioner has in all put up 31 years of service prior to regularization. Losing of Service Register is only on account of negligence of the Department and hence, the petitioner cannot be made to suffer. As per G.O.Ms.No.408 dated 25/8/2009, the employees who are made permanent prior to 1/4/2003 are entitled for taking into consideration of 50% of their services rendered in non-provincialized service either on consolidated wage or honorarium or daily wage towards pension. It is also stated in the affidavit that G.O.Ms.No.6 dated 5/1/2010 was issued extending the benefit of G.O.Ms.No.408 to all Noon Meal Organisers and Anganwadi workers



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without any cut off date and thereby, the petitioner is entitled to include 50% of her past service for calculating the pension. W.P.(MD) Nos.7070, 7329 and 8287 of 2011 were disposed of on 27/6/2012 holding that persons who were served in Noon Meal Scheme as Child Welfare Organisers, etc., who had absorbed after 1/4/2003 are entitled for the benefit of counting of 50% of the past as provincialized service without reference to cut off date for absorption in the regular service.

8. It is further stated in the affidavit that the Deputy Accountant General, O/o The Principal Accountant General (A & E), has filed counter affidavit, stating that G.O.Ms.No.408, Finance (Pension) dated 25/8/2009 and G.O.Ms.No.6, Social Welfare and Nutritious Meal Programme Department dated 5/1/2010 were amended by as per G.O.Ms.No.34 dated 14/3/2013, to the effect that for availing the benefit under the said G.Os, the Government Servant should have been absorbed into the regular service prior to 1/4/2003, which is not the case of the petitioner. Moreover, the fourth respondent has no role to play, as the function of the respondent is limited only to authorization of pensionary benefits, as per Rules/G.Os.



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9. Child Development Project Officer, Vallam, has filed a counter affidavit, wherein stating that the petitioner is getting special pension of Rs.2,000/-, as per Government Order and the petitioner is not eligible to count her half of her past service to get pension as claimed by her.

10. The Commissioner of Social Welfare, Lady Willingdon College Campus, Kamarajar Salai, Chennai, has filed a status report, dated 8th November, 2023, wherein it is stated that the averments made by the writ petitioner in the affidavit are baseless as the petitioner was not entitled for the retirement benefits and family pension as per the Government Orders specified by the petitioner in the affidavit.

11. Heard Ms.Ramapriya Gopalakrishnan, learned counsel appearing for the petitioner, Ms.C.Sangamithirai, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.T.S.Selvarani, learned counsel appearing for the fourth respondent.

12. The petitioner is seeking the relief as sought for, mainly on two grounds, namely



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(i). Services of 357 persons who are similarly working like the petitioner as Child Welfare Organiser were regularized and promoted in the year 1994 as Supervisor Grade – II and the services of the petitioner could not be regularized along with them, as her Service Register was lost in the Department due to the negligence on the Department.

(ii). Secondly, as per G.O.Ms.No.6 dated 5/1/2010, the benefits of G.O.Ms.No.408 dated 25/8/2009, were extended without mentioning the cut off date, thereby, the petitioner's past non provincialized service has to be counted along with her regular services with effect from 23/7/2011 until her retirement.

13. In so far as losing of the Service Register of the petitioner is concerned, according to the petitioner, she was eligible to be promoted on 23/3/1993 and the petitioner was given information that she will be drawn for the training for a period of two months from 5/9/1994, enabling the Department to promote her as Supervisor Grade – II. However, the proceedings have not been issued for promotion as the Service Register of the petitioner was lost in the Department and that all



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efforts were made to trace the same could not yield any results, thereby, another Service Register was created on 8/10/1998.

14. As per letter of the Joint Director, Administration to the Directorate of Social Welfare, Chennai, dated 19/1/1999, the Service Register of the petitioner was received by the Department to consider the promotion and the said service register was examined by the Department in the month of February 1996 that it was found at page Nos.11, 13, 15, 17 and 19 of the Service Register that the petitioner worked as Child Welfare Organiser at various places in leave post, etc., and that the petitioner was working since 27/8/1982 continuously in a permanent vacancy. In the Service Register, it is also found that the petitioner had worked in Vallam Panchayat Union. According to the counter affidavit, Service Register of the petitioner was returned with a question as to whether the petitioner has worked in the said post without any break or whether the petitioner worked intermittently prior to 27/2/1982. According to the respondents, when the original Service Register was available, it was examined that the petitioner was found to be ineligible on merits.



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15. However, the Status Report would disclose that the Service Register was lost and new Service Register was prepared. Therefore, though the Service Register was lost, according to the Status Report and the counter, reason for not giving the promotion to the petitioner along with others is not losing of Service Register but on merits. Therefore, the contention of the petitioner that only on account of losing Service Register, the petitioner has lost the opportunity of getting promoted, cannot be accepted.

16. In a case decided on March 8, 2022 between ***UNION OF INDIA AND ANOTHER Vs. MANPREET SINGH POONAM, etc.,*** the Hon'ble Supreme Court of India has held that mere existence of a vacancy per se will not create a right in favour of an employee for retrospective promotion. Paragraph 18 of the said judgment runs as under:-

“A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post is specifically prescribed under the rules, which also



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mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules. In the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17.04.2012 with effect from 01.07.2011, when the actual vacancies arose, which in any case is a benefit granted to the Respondent in Civil Appeal No.518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification.

17. Therefore, on account of administrative delay, if the promotion is not granted on time, then, the administration cannot be found fault and



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promotion cannot be given with retrospective effect. However, in case, if any deliberate effort was made, to cause loss to the petitioner, such issue can be addressed. But no such allegation is levelled by the petitioner.

18. The other aspect raised by the petitioner is that in G.O.Ms.No.408, Finance (Pension) Department, dated 25/8/2009, a cut off date was fixed as 1/4/2003 for calculation of 50% of non-provincialized service for the purpose of pension. Since as per G.O.Ms.No.6 dated 6/1/2010, similar relief of G.O.Ms.No.408 was extended without cut off date, thereby, whether the petitioner and others are entitled to the benefit of calculating 50% of service rendered in non provincialized service for computing the pension, even though the services were regularized subsequent to 1/4/2003. It is brought to the notice of the Court by the learned Additional Government Pleader that W.P.(MD) Nos.7070, 7329 and 8287 of 2011, were allowed on 27/6/2012 by giving directions to add 50% of the service even if the services of the persons were absorbed beyond 1/4/2003. The judgment in W.P.(MD) No.7070 of 2011, batch was challenged before the Division Bench in W.A.(MD) Nos.587, 605, 606 and 1024 of 2014, wherein it is held that



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“..... A combined reading of G.O.(Ms) No.408, Finance (Pension) Department, dated 25.08.2009; G.O.(Ms) No.6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010; G.O.No.41, Finance (Pension) Department, dated 09.02.2010; and G.O.(Ms) No.34, Social Welfare and Nutritious Meals Scheme Department, dated 14.03.2013 and Rule 11 (4) of the Pension Rules would clearly reveal that the respondents are not entitled to the benefit of counting of 50% of their services rendered in Noon Meal Programme and ICDS services. Accordingly, we are of the considered opinion that the orders passed by the learned Single Judge, warrant interference at the hands of this Court.”

19. Similar orders were also stated to have been passed in W.P.Nos.14244 to 14246 of 2013 dated 11/9/2013. In view of the above, G.O.Ms.No.6 dated 6/1/2010, is not applicable to the case of the petitioner, since the Government has clarified that the benefits of G.O.Ms.No.6 can only be extended to the persons whose services were regularized prior to 1/4/2003. Therefore, the petitioner is not entitled for



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calculating 50% of the provincial service, for the purpose of pension, as per G.O.Ms.No.6 dated 5/1/2010.

20. In view of the above, there are no merits in the writ petition. Accordingly, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

26/4/2024

Index: Yes/No

Neutral Citation: Yes/No



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
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