



WEB COPY

W.P.No.21657 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

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THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.21657 of 2021

K.Devanathan

...Petitioner

VS.

1. The Government of Tamil Nadu
represented by its Secretary,
School Education Department,
St.Fort George, Chennai – 8
2. The Director of School Education,
College Road,
Chennai – 600 006
3. The Chief Educational Officer,
and Chairman, South Arcot,
District Mobile Medical Inspection,
Van Committee, Cuddalore,
Cuddalore District

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Certiorarified Mandamus, to call for the records pertaining to the impugned order of the 3rd respondent passed Na.Ka.No.12863/A3/2012 dated 22.07.2021 and quash the same and direct the 3rd respondent to implement the order passed in W.P.No.6934/2013 dated 01.12.2020.



For Petitioner : Mr.M.Thamizhavel
For Respondents : Ms.Akila Rajendran
Government Advocate

ORDER

This writ petition has been filed for quashment of impugned order passed by the 3rd respondent in Na.Ka.No.12863/A3/2012 dated 22.07.2021 and to direct the 3rd respondent to implement the order passed in W.P.No.6934 of 2013 dated 01.12.2020.

2. The case of the petitioner is that the petitioner's father namely, Kaliyaperumal was initially appointed as a driver for Mobile Medical Inspection Van by the 3rd respondent through proceedings dated 31.08.1976 and joined duty on 02.09.1976 on consolidated pay at Cuddalore under the control of 3rd respondent. Thereafter, he was terminated from service by the 3rd respondent through proceedings dated 30.03.1999, without notice or any opportunity to him. Aggrieved by this, he preferred Writ Petition No.9432 of 1999, challenging the 3rd respondent's order dated 30.03.1999 and this Court allowed the same by an order dated 12.08.2004. Subsequently, he was



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sanctioned salary in the time scale from 01.04.1992 to the date of his retirement on attaining the age of superannuation on 30.04.2011, but his service was not regularized. Thereafter, he made a representation dated 14.11.2012, seeking regularization of his service. Aggrieved by the inaction, the petitioner filed W.P.No.6934 of 2013, which was allowed by an order dated 01.12.2020, directing the 3rd respondent to consider the petitioner's representation dated 14.11.2012. However, the 3rd respondent failed to pass any order in favour of the petitioner's father. Thereafter, the 3rd respondent passed the impugned order dated 22.07.2021 stating that the petitioner's father is not entitled to any other retirement benefits since he had not worked in a Government Department. Hence, the petitioner has filed the present petition.

3. The learned counsel appearing for the petitioner submits that the termination of the petitioner's father's services without notice constitutes a gross violation of the principles of natural justice. He further submits that it is the duty of the 3rd respondent to implement the order passed in W.P. No. 6934 of 2013 and the 3rd respondent illegally rejected the petitioner's father's representation dated 14.11.2012. Hence, he prays that this writ petition be



allowed.

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4. The learned Government Advocate appearing for the respondents has filed a counter affidavit and submits that the appointment of Thiru. Kaliyaperumal was purely temporary i.e on consolidated monthly pay and in the appointment order itself, it was made clear that the employee cannot claim any right and he will be terminated at any time without prior notice. He further submits that the 3rd respondent has no powers to regularize the service of the petitioner's father and the matter was placed before the District Medical Inspection Van Committee, which passed a resolution to pay arrears of pay and allowances at the rate applicable to the Government Department from 01.10.1999 to 21.01.2011. Consequently, a sum of Rs.6,84,035/- was paid vide proceedings dated 22.01.2011. However, it is submitted that Thiru Kaliyaperumal is not entitled to any retirement benefits as per the Tamil Nadu Pension Rules, since he was not part of a provincialized establishment and his service was not in a Government Department.

5. Heard both sides and perused the materials available on record.



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6. For reference, the relevant paragraph Nos.10, 11 and 12 of the counter affidavit is extracted hereunder:

10.Regarding the averments in ground 'i' of the affidavit of the petitioner, it is submitted that the Hon'ble Supreme Court held has follows:

In view of the aforesaid judgments, it cannot be said that the appointment of the employees in the present set of appeals 17 (2017) 8 SCC 670 38 were irregular appointments. Such appointments are illegal appointment in terms of the ratio of Supreme Court judgment in Uma Devi. As such appointments were made without any sanctioned post, without any advertisement giving opportunity to all eligible candidates to apply and seek public employment and without any method of recruitment. Such appointments were backdoor entries, an act of nepotism and favoritism and thus from any judicial standards cannot be said to be irregular appointments but are illegal appointments in wholly arbitrary process.

Hence there is no question of violation of any constitutional provisions as alleged by the petitioner.

11. Regarding the averments in ground "ii" 'iii" of the affidavit of the petitioner, it is submitted the directions of this Hon'ble court could not be complied with fully for the following



reasons:-

(i) *the appointment of ThiruKaliyaperumal was purely temporary i.e. on consolidated monthly pay.*

(ii) *in the order of appointment itself it was made clear that the employee cannot claim any right and he will be terminated at any time without prior notice.*

(iii) *the 1st respondent Chairman of the Committee has no independent powers to regularize the services of ThiruKaliyaperumal.*

(iv) *the post of Driver in Medical Inspection committee is not government sanctioned post.*

(v) *the said post is not in government department.*

(vi) *the said appointment was not made adopting the statutory method of recruitment.*

(vii) *the petitioner has not born on the provincialized establishment*

It is further that the present petitioner is not the employee and hence the petitioner has no loco standi to claim for any service benefits due to Thiru.Kaliyaperumal.

12. Regarding the averments in ground 'iv' and 'v' of the affidavit of the petitioner, it is submitted that with a view to comply with the directions of this Hon'ble Court, the 3rd respondent has placed the orders before the District Medical



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Inspection Van Committee and got sanctioned the arrears of pay worked out at the rate applicable to the Government Department driver from 1.10.99 to 21.1.2011 and paid a sum of Rs.6,84,035 vide proceedings dated 21.1.2011. It is submitted that the petitioner was already relieved from the post as early as on 30.4.2011 on attaining the age of superannuation. It is further submitted that the 3rd respondent has no authority to regularize the services of the employee 10 years after the retirement that too in the absence of any sanctioned post. Moreover place in which the employee was appointed is only non governmental organization and the salary paid from fund raised by the said committee. It is further submitted that the present petitioner has no loco standi to claim any retirement benefit in the absence of employee who had worked as such. It is submitted that the petitioner has not explained any thing about the where abouts of the employee.

7. In the present case, it is admitted that the petitioner's father was appointed in a Non-Governmental Organization on consolidated pay and he was relieved from the said post as early as 30.04.2011, upon attaining the age of superannuation. The 3rd respondent has no authority to regularize the services of the petitioner's father. Therefore, the present petitioner lacks



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locus standi to claim any retirement benefits, as his father did not work as a Government employee and this writ petition is liable to be dismissed.

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Accordingly, this writ petition is dismissed. No costs.

11.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Cases : Yes/No
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VIVEK KUMAR SINGH, J.

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