



W.P.No.34110 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2024

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.34110 of 2024

and

W.M.P.No.36922 of 2024

M. Santhamoorthy

...Petitioner

Vs

1. The Director,
O/o The Director of Medical College and Rural Health Services,
DMS Campus, Chennai 600 006.

2. The Additional Director(Administration)
O/o The Director of Medical College and Rural Health Services,
DMS Campus, Chennai 600 006.

3. The Regional Administrative Medical Officer,
Employees State Insurance Scheme
Singanallur Post
Coimbatore – 641 005.

4. Joint Director
O/o The Joint Director of Health Services,
Thirupur District 641 604.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned order passed by the 1st respondent in Ref.No.6231/E2/2/2024 dated 04.03.2024 and quash the same and consequently direct the first respondent to grant promotion to the petitioner as Junior Assistant notionally and as Assistant on par with the juniors to the petitioner and pass orders.

For Petitioner : Mr. V.S.Jagadeesan

For Respondent : Mr. M. Bindran
Additional Government Pleader

ORDER

By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

2.This petition is filed seeking to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned order passed by the 1st respondent in Ref.No.6231/E2/2/2024 dated 04.03.2024 and quash the same and consequently direct the first respondent to grant promotion to the petitioner as Junior Assistant notionally and as Assistant on par with the juniors to the petitioner and pass orders.

3. The facts of the case is that the petitioner is a retired employee of



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the ESI Dispensary, Ramanathapuram, Coimbatore. He joined the services on 05.11.1975 as Office Assistant and he was promoted as Junior Assistant on 20.12.1994 but the juniors of the petitioner was granted promotion on 18.09.1981. The grievance of the petitioner is that the respondents should have been given promotion to the petitioner on 18.09.1981 on par with the juniors whereas, he was granted promotion on 20.12.1994. Due to which the petitioner gave several representation to the respondents while he was in service. Thereafter, he has also given representation after his superannuation i.e on 31.03.2008, 13.12.2010 and 08.02.2011, but there was no progress till date. Hence, the petitioner gave representation to the respondent on 16.07.2012 and the same was kept pending, due to which the petitioner gave another representation on 17.02.2020. Pursuant to which the 3rd respondent vide letter dated 25.11.2021 requested the first respondent to take action on the representation made by the petitioner. Subsequently the petitioner made detailed representation to the second respondent on 19.10.2022 and 26.12.2022 but there was no response. Thereafter, the first respondent has passed the impugned order in Ref.No.6231/E2/2/2024 dated 04.03.2024 stating that the petitioner had not rendered 7 years of service



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from the date of appointment i.e on 05.11.1975 in the basis servant post.

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Aggrieved over the same the petitioner has come up with this petition.

4. The learned counsel for the petitioner submitted that the first respondent has passed the impugned order mechanically without any basis. He further submitted that the petitioner was possessing the requisite qualification for inclusion of his name in the panel for promotion in the year 1981 itself but his name was not considered by the first respondent despite the availability of vacancy. Hence, prays for interference by this Court.

5. The learned Additional Government Pleader appearing for the respondents submitted that the impugned order is passed on the basis of the G.O.(Ms)No.43 dated 15.02.1984, wherein there was a detailed discussion about Rule 3(g) of the Special Rules for the Tamil Nadu Ministerial Services which states about the appointment of Junior



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Assistant by transfer and promotion etc. Hence there is no infirmity in the impugned order and the same does not require interference by this Court.

6. Heard both sides and perused available on record.

7. Before advertizing further it would be relevant to go into Rule 3(g) of the Special Rules of the Tamil Nadu Ministerial Service extracted in G.O.(Ms)No.43 dated 15.02.1984 and the relevant portion is extracted under:

6. An Office Assistant cannot be expected to have any acquaintance with office procedure. If such acquaintance is considered essential, such acquaintance is considered essential office Assistants and other categories who have no avenue of advancement are similarly placed.

7. It will be desirable that such appointment by transfer is made from the category of Record Clerk and not directly from the category of Office Assistant.

The Tribunal finally directed the Director of Approved Schools and Vigilance Service (Now Director of Social Defence) to formulate a policy to consider all category of personnel in the department who have no avenues of advancement and are in scales lower than the scale of pay of Junior Assistants and obtain orders of the Government for a rational system of consideration of procedure for appointment by transfer as Junior Assistant to provide equal opportunities to all persons and ensure fair consideration of claims of all categories of persons.

The Tribunal has observed that a term of appointment as Record Clerk, can be prescribed for



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movement to the post of junior Assistant. The Tamil Nadu Public Service Commission has also observed that the appointment to the post of Junior Assistant/Junior Assistant-cum-Typist/Typist may be made from the post of Record Clerk only. As there will be only a few posts of Record clerks as compared to a large number of persons in other categories like Office Assistants etc., It will not be possible to post each of them as Record Clerk for a specified period.

8. On going through the Rule 3(g) of the Special Rules for the Tamil Nadu Ministerial Service in G.O.(Ms)No.43 dated 15.02.1984 it is made clear that there was certain parameters fixed and procedures to be followed for making promotion to the post of Junior Assistant from Office Assistant and the same was strictly adopted by the respondent without any deviation. Hence, there is no infirmity in the impugned order passed by the respondent and the same does not require interference by this Court.

9. Considering the facts of the case it is made clear that the contentions of the petitioner is devoid of merits and the same cannot be accepted by this Court.



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10. In view of the above facts it is made clear that there is no merits in the submissions made by the petitioner and this petition deserves to be dismissed. Accordingly this petition is dismissed. No order as to costs. Consequently the connected miscellaneous petition is closed.

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Index:Yes/No
Speaking order/Non-speaking order
smn

To.

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V.BHAVANI SUBBAROYAN,J.

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