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W.P.No.17505 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.17505 of 2017

Dr.K.Sathiyarayanan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Fort St. George, Chennai - 600 009.

2. The Secretary,
Health & Family Welfare Department,
Fort St.George, Chennai - 600 009.

3. The Commissioner,
Indian Medicine & Homeopathy Department,
Arumbakkam, Chennai - 600 009.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent relating to G.O. (3D) No.8 Health and Family Welfare (IM 2(1)) Department dated 31.01.2017 quash the same and direct the first respondent to regularize the petitioner's service, and fix his seniority and pay and benefits from the date of his notional appointment on par with the candidates listed in



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GO (D) No.700 dt.7.7.2014 of the Health and Family Welfare

(IM2-

1) Department.

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For Petitioner : Mrs.Nalini Chidambaram
for M/s.Hema Sampath,
Senior Counsel

For Respondents : M/s.M.Sneha, Spl.Counsel
for Health and Family Welfare

ORDER

This petition has been filed for calling for the records of the 1st respondent relating to G.O. (3D) No.8 Health and Family Welfare (IM 2(1)) Department dated 31.01.2017 quash the same and further sought for a direction, directing the 1st respondent to regularize the services of the petitioner and fix his seniority and pay benefits from the date of his notional appointment on par with the candidates listed in GO (D) No.700 dated 07.07.2014 of the Health and Family Welfare (IM2-1) Department.

2. The petitioner herein is a physically challenged person suffering 45% disability in his leg has acquired qualification for the post of Assistant Medical Officer (Siddha). On coming to know that the Tamil Nadu Public Service Commission (hereinafter referred to as "the TNPSC" for short) has notified the post of Assistant Medical Officer (Siddha) for the year 2003-2004, the petitioner submitted an application and on noticing that the TNPSC



had failed to provide reservation for the physically disabled category in terms of the mandate provided under the provisions of the Persons with Disability Act (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995, the petitioner approached this Court by filing W.P.Nos.21078 and 21079 of 2004, challenging the proviso to Rule 22 of the Tamil Nadu State and Subordinate Service Rules and sought for a direction to give 3% reservation for the physically disabled persons. The said Writ Petitions were allowed by the learned Division Bench of this Court by an order dated 11.03.2008, declaring that proviso to Rule 22 of the Tamil Nadu State and Subordinate Service Rules, excluding the posts covered by Group A and B services, including the post of Assistant Medical Officer (Siddha) from the purview of Rule 22 of the of the Tamil Nadu State and Subordinate Service Rules as unconstitutional and further directed for implementing the provisions of the Act, 1995 for filling up the posts of Assistant Medical Officer (Siddha). Further, the learned Division Bench of this Court also directed the respondents to consider the case of the petitioner as against the post reserved for physically disabled and appoint him as Assistant Medical Officer (Siddha), if he is otherwise found eligible. The operative portion of the said order passed by the learned Division Bench at Paragraph Nos.11 and 12 reads as under:-



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“11. For all these reasons, writ petition no.21078 of 2004 is allowed, declaring the proviso to Rule 22 of the Tamil Nadu State and Subordinate Service Rules insofar as it excludes the applicability of reservation for physically disabled to the Executive Posts in Group A and B services as ultra vires of the Constitution of India and contrary to the statutory provisions of persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1996. Until the Government amends the Rules in consonance with G.O (Ms) No.53 dated 11.04.2005, the appointment to the various posts shall be governed by the provisions of the said Government Order.

12. Consequently, Writ Petition No.21079 of 2004 is disposed of, directing the respondents to consider the case of the petitioner as against the post reserved for physically disabled and appoint him as Assistant Medical Officer (Siddha), if he is otherwise found eligible. No costs. Consequently, W.P.M.P.No.25412 of 2004 and 31559 of 2005 are closed.”



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3. In spite of the said direction issued by the learned Division Bench of this Court, the case of the petitioner was negatived by issuing Memorandum No.5922/OTD-A1/2002 dated 08.08.2012 by the TNPSC necessitating the petitioner to approach this Court once again by filing W.P.No.5097 of 2009. The learned Single Judge of this Court having considered the matter on merits by an order dated 17.11.2011 allowed the said Writ Petition. The operative portion of the said order reads as under:-

“ 16. In the result, the Writ Petition is allowed, the impugned order is set aside and the respondents are directed to appoint the petitioner as Assistant Medical Officer (Siddha) in the post reserved for him pursuant to the interim order in W.P.M.P.No.25412 of 2004 in W.P.No.21079 of 2004, dated 12.08.2004 and as per the direction contained in paragraph 12 of the common final order of the Hon'ble First Bench of this Court in W.P.Nos.21078 and 21079 of 2004, dated 11.03.2008, within a period of four weeks from the date of receipt of a copy of this order. However, it is made clear that the petitioner shall not be entitled for any monetary benefits for the earlier period, prior to his taking charge, but the earlier period shall be taken into consideration for the purpose of computing the total length of service of the



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*petitioner. No costs. Consequently, connected
Miscellaneous Petition is closed.”*

4. From the above, it is clear that the petitioner was directed to be appointed as Assistant Medical Officer (Siddha) in the post reserved for him, in terms of the order passed by the learned Division Bench of this Court in W.P.Nos.21078 and 21079 of 2004 dated 11.03.2008. It is also further made clear that the period prior to the date of taking charge by the petitioner in the post of Assistant Medical Officer (Siddha) shall be taken into consideration for the purpose of computing the total length of services of the petitioner. However, the petitioner was held to be not entitled for monetary benefits for the earlier period i.e., the period prior to the date of taking charge by the petitioner in the post of Assistant Medical Officer (Siddha).

5. Pursuant to the said order, the respondents have appointed the petitioner as Assistant Medical Officer (Siddha) by issuing G.O (4D) No.3, Health and Family Welfare Department dated 03.05.2012 and accordingly, the petitioner reported to duty and has been working as such. Thereafter, through the impugned order, the respondent no.1 regularized the services of the petitioner in the post of Assistant Medical Officer (Siddha) only from the



date of taking charge in the said post. Aggrieved by the said Government order, the petitioner approached this Court by filing the present Writ Petition.

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6. It is the contention of Smt.Nalini Chidambaram, learned Senior Counsel appearing for the petitioner that in terms of the order passed by the learned Single Judge of this Court in W.P.No.5097 of 2009 dated 17.11.2011, the petitioner is entitled for counting of his services on par with the persons who were appointed pursuant to the notification issued by the TNPSC in the same batch and also for fixation of pay on par with the other persons who were appointed under the same notification and for payment of salary from the date on which the petitioner reported to duty and also for counting of the said service for all purposes.

7. M/s.M.Sneha, learned counsel for the respondents brought to the notice of this Court that in the counter-affidavit filed by the respondent no.1, it is stated that the earlier period i.e., the period prior to taking charge of the post of Assistant Medical Officer (Siddha) by the petitioner will be taken into consideration for the purpose of computing total length of service of the petitioner, as ordered by this Court in W.P.No.5097 of 2009 and as such it is contended that there is no justification for the petitioner to file the present Writ



Petition. The relevant Paragraph No.16 from the counter-affidavit reads as under:-

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“ 16. With reference to the averments made in Ground (d) of the affidavit, it is submitted that this Hon'ble Court in its order dated 17.11.2011 has ordered that the petitioner shall not be entitled for monetary benefits for the earlier period, prior to his taking charge, but the earlier period shall be taken into consideration for the purpose of taking charge, but the earlier period shall be taken into consideration for the purpose of computing the total length of services to the petitioner. Accordingly, the Government have appointed the petitioner in G.O (D) No.3, Health dated 03.05.2012, authority and length of service shall be taken into consideration as ordered by the Court. Hence, there is no failure on the part of the respondents as contended by the petitioner.”

8. However, in Paragraph No.17 of the counter-affidavit, it is stated that the prayer of the petitioner to fix his pay and other benefits from the date of his notional appointment is not justifiable, as he had not performed his duties prior to 29.05.2012 and thus, the respondents denied the benefit of service prior to the date of petitioner taking over charge and to treat the petitioner on



par with other batch mates and to regularize his services in terms of G.O (D) No.700, Health and Family Welfare (IM2-1) Department dated 07.07.2014, wherein 57 Assistant Medical Officers (Siddha), who were appointed pursuant to the very same notification and were regularized.

9. It is further contention of M/s.M.Sneha, learned counsel for the respondents that in terms of G.O (Ms) No.377, P&AR(FR.III) dated 06.10.1986, whereby Ruling 17 was added to FR27 and the petitioner is not entitled for fixation of his pay by counting the services prior to the date of taking over charge. Ruling 17 of FR 27 reads as under:-

(17) In case where a Government servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher



post along with his junior. In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post; in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date.

10. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

11. It is not in dispute that the order dated 17.11.2011 passed by this Court in W.P.No.5097 of 2009 had become final and the same was also accepted by the respondents. Accordingly, the petitioner was appointed as Assistant Medical Officer (Siddha) with effect from 29.05.2012 and his services were also regularized with effect from the said date. Though it is admitted in the counter-affidavit that the earlier period shall be taken into consideration for the purpose of computing the total length of service of the petitioner, the said benefit was not extended to the petitioner while issuing the impugned Government order and the services were regularized only with effect from the date on which the petitioner taken charge of the post of



Assistant Medical Officer (Siddha).

12. Once the order passed by this Court in W.P.No.5097 of 2009 has become final and accepted by the respondents by virtue of the mandate provided under the said order, the petitioner is entitled for counting of the earlier service i.e., prior to the date of petitioner taking charge of the post of Assistant Medical Officer (Siddha), for all purposes. In other words, the period during which the other persons who have undergone recruitment process under the very same notification and were appointed, the petitioner is also liable to be treated on par with the said persons. Admittedly, through G.O (D) No.700, Health and Family Welfare (IM2-1) Department dated 07.07.2014, the services of the persons, who were appointed as Assistant Medical Officer (Siddha) were regularized from the date on which they have reported to duty. But for the arbitrary and unconstitutional action of the respondent State in not giving effect to the provisions of the Persons with Disability Act (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995, the petitioner would have been appointed on par with the persons who are covered by G.O (D) No.700, Health and Family Welfare (IM2-1) Department dated 07.07.2014. Such an action of the respondents was



found fault by the learned Division Bench of this Court and the same was reiterated by a learned Single Judge of this Court in W.P.No.5097 of 2009 and it was categorically declared that the petitioner is entitled for counting of earlier period prior to the date of he taking charge of the post of Assistant Medical Officer (Siddha). The claim of the petitioner in this Writ Petition is based on the previous order passed by their count, the stand of the learned counsel for the respondent placing reliance on Rule 17 of FR 27 cannot be accepted.

13. In the light of the above, this Court does not see any justification for the respondents to refuse to treat the petitioner on par with the persons who were appointed pursuant to the very same notification. Accordingly, the action of the respondents in regularizing the services of the petitioner only with effect from 29.05.2012 (FN) is declared as illegal and consequently, the Writ Petition is allowed, directing the respondents to regularize the services of the petitioner on par with the persons covered by G.O (D) No.700, Health and Family Welfare (IM2-1) Department dated 07.07.2014 and his pay shall be fixed and he shall also be paid all arrears of pay with effect from 29.05.2012 (FN). The entire exercise as directed above shall be completed within a period of three months from the date of receipt of a copy of this order.



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14. Accordingly, the Writ Petition stands allowed. No costs. Connected
Miscellaneous Petitions, if any shall stand closed.

18.04.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Principal Secretary to Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
2. The Secretary, Health & Family Welfare Department,
Fort St.George, Chennai - 600 009.
3. The Commissioner, Indian Medicine & Homeopathy Department,
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