



WEB COPY

WP No. 18237 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-03-2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

WP No. 18237 of 2018

1. S.Kalaiselvi Elizabeth,
W/o.Jetson Thangaraj.J, Office
Superintendent, Government Medical
College and ESI Hospital,
Coimbatore-641 015.

Petitioner(s)

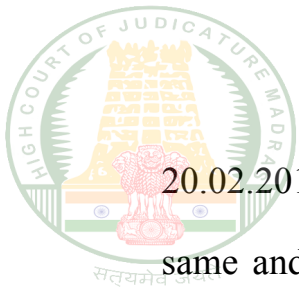
Vs

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to
Government, Health and Family
Welfare Department, Secretariat, Fort
St. George, Chennai-600 009.

2.The Director of Medical
and Rural Health Services, 359, Anna
Salai, Teynampet, Chennai-600 006.

Respondent(s)

PRAYER:Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified mandamus to call for the records relating to the proceedings of 1st respondent in Letter No.42651/ AD2/2016-19 dated



20.02.2017 Health and Family Welfare (AD2) Department and to quash the same and consequently direct the respondents to amend the G.O.(D) No.1154

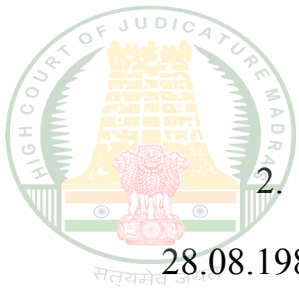
Health and Family Welfare Department dated 05.12.1994 and to regularize the service of the petitioner in the post of Junior Assistant with effect from 20.09.1989 with all consequential and other attendant benefits including arrears of salary and seniority with promotion.

For Petitioner(s): M/s.S.Nedunchezhiyan

For Respondent(s): Mr.Tippusulthan
Government Advocate

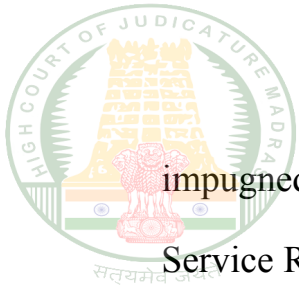
ORDER

This writ petition has been filed to call for the records relating to the proceedings of 1st respondent in Letter No.42651/AD2/2016-19 dated 20.02.2017 Health and Family Welfare (AD2) Department and to quash the same and consequently direct the respondents to amend G.O.(D) No.1154 Health and Family Welfare Department dated 05.12.1994 and to regularize the service of the petitioner in the post of Junior Assistant with effect from 20.09.1989 with all consequential and other attendant benefits including arrears of salary and seniority with promotion.



2. The petitioner has been appointed on compassionate ground on 28.08.1987 as a Record Clerk. In the year 1989 the petitioner has been appointed as Junior Assistant by the first respondent in view of the proposal sent by the second respondent. The petitioner has completed her Foundational Training at Bhavani Sagar in the year 1992. The petitioner's services have been regularized with effect from 05.12.1994 on which date the Government Order in G.O.(D) No.1154 Health and Family Welfare Department dated 05.12.1994, has been issued. The petitioner's probation was declared on 12.10.1999. A proposal was sent to the Government to regularize the services of the petitioner with effect from 20.09.1989 which is her date of joining in the post of Junior Assistant. In fact the second respondent has sent a clarification on 03.06.2016 to the first respondent stating that similar orders granting regularization with effect from the date of joining has been passed in case of one Andal and the same benefit can be extended to the petitioner also. However, the said proposal was not accepted by the Government and the impugned order has been passed to that effect on 20.02.2017. As the petitioner has been appointed as Junior Assistant without any prior concurrence from the Tamil Nadu Public Service Commission (TNPSC) the first respondent has passed an order denying her regularization from the date of her appointment.

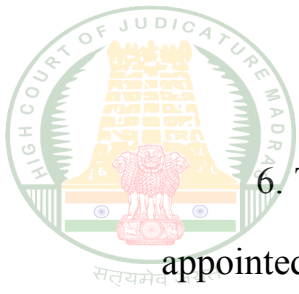
3. As the petitioner's appointment has been made on compassionate ground without following the Rules of Reservation, the first respondent has denied to regularize her services from the date of her appointment. In the



impugned order itself it has been stated that Rule 26 of Tamil Nadu Ministerial Service Rules, has been relaxed as a special case in the case of the petitioner for the purpose of regularizing her services. In such case, there cannot be any reason for postponing her regularization to a future date of issuing the Government Order without giving her the benefit of regularization from the date of her appointment.

4. It is not the contention of the respondents that the petitioner was not willing to participate in the foundational training course even though orders have been issued at the earliest point of time.

5. Mr.Tippusulthan, the learned Government Advocate for the respondents, submitted that as per G.O.Ms.No.23 (a) (i) of the General Rules for the Tamil Nadu State and Subordinate Services, any person appointed temporarily under Sub Rule (a) or (b) of Rule 10 to fill vacancy in any service class or category otherwise than in accordance with the Rules governing appointment, the person appointed shall commence the probation either from the date of his /her first appointment or from such subsequent date as the appointing authority might determine. In the instant case no such orders have been passed subsequent to the appointment of the petitioner stating that her probation would run from a particular date determined by the appointing authority.



6. The petitioner is not appointed to any temporary post but she has been appointed on compassionate grounds to a permanent post. So it is wrong on the part of the respondents to invoke the Rules for temporary service. The respondents have stated in the counter about various Government Orders and Rules which were not the points for discussion in the impugned order passed by the first respondent. But the first respondent could have relaxed Rule 26 of Tamil Nadu Ministerial Service Rules that it should relate back to the date of appointment of the petitioner and not any time later. Even if it is accepted for the sake of argument, the respondents have got the discretion to fix the date of probation at any point of time and also the date of regularization. But such a discretion cannot be exercised in any arbitrary manner.

7. The impugned order has been passed without any reason and by ignoring the fact that the completion of probation relates back to the date of appointment and completion of foundational training. As there is no fault on the part of the petitioner to get a late accommodation for the foundational training at Bhavani Sagar, I feel the impugned order is liable to be quashed.

8. In view of the above stated reasons, the writ petition is partly allowed and the order passed by the 1st respondent in Letter No.42651/AD2/2016-19 dated 20.02.2017 Health and Family Welfare (AD2) Department is hereby quashed and the respondents are directed to amend G.O.(D) No.1154 Health and Family Welfare Department dated 05.12.1994 and regularize the service of the



petitioner in the post of Junior Assistant from the date of her joining as Junior Assistant and with monetary effect from the date of such regularization and service benefits from the date of issuing the order. This order shall be complied within a period of eight weeks from the date of receipt of a copy of this order.

No costs.

26-03-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To
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Government, Health and Family
Welfare Department, Secretariat, Fort
St. George, Chennai-600 009.

2. The Director of Medical
and Rural Health Services, 359, Anna
Salai, Teynampet, Chennai-600 006.



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R.N.MANJULA J.

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