



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.54 of 2014
and
M.P.No.1 of 2014

1. The State of Tamil Nadu,
rep by its Secretary,
Public Works Department,
Fort St. George,
Chennai-9.
2. The Chief Engineer (General),
& Engineer in Chief,
Public Works Department,
Chepauk, Chennai-5.
3. The Executive Engineer,
PWD, Araniyar Basin Division,
Chepauk, Chennai-5.

...Appellants/Respondents

Vs.

K.Senthamarai

...Respondent/Petitioner

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 27.06.2013 made in W.P.No.17486 of 2013.

W.P.No.17486 of 2013:

Petition presented to this court to issue a writ of Mandamus directing the respondents to regularise the services of the petitioner in the post of Sweeper with effect from her date of



initial appointment i.e. on 1.10.1991 in the regular time Scale of Pay on the basis of the Government Orders and the proposals with all monetary and other service benefits.

WEB COPY

For Appellants : Mr.N.Sakthivel, GA

For Respondent : Mr.L.Chandrakumar

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The challenge in this appeal is to the order dated 27.6.2013 rendered in W.P.No.17486 of 2013, whereunder the learned Writ Court has directed the first appellant / first respondent therein to regularise the service of the writ petitioner /respondent herein by granting scale of pay with monetary benefits on completion of ten years of service within a period of twelve weeks from the date of receipt of a copy of the order.

2. The facts as projected by the writ petitioner was that the writ petitioner was appointed as part time sweeper on daily wage basis on 01.10.1991. Thereafter, he continued in the same capacity for about 21 years. The writ petitioner became entitled to regularisation on completion of 10 years of service as per G.O.Ms.No.22, P&AR Department dated 28.02.2006 and also on the basis of the judgment of a division bench of this Court in W.A.No.230 of 2009 dated 3.8.2009, confirming the order dated 29.7.2008 in W.P.No.18126 of 2008. Feeling aggrieved, the State has come up with the appeal, questioning the validity and propriety of the order on the ground that the writ petitioner, being a part time sweeper, is not entitled to regularisation under G.O., dated 28.2.2006. The writ petitioner had worked hardly for 30 minutes per day in the Tourist office for the purpose of sweeping a single room and to provide a pot of water, for which he was paid Rs.60/- per month and as such, even under the law laid down by the Supreme Court in several decisions, he is not entitled to be regularised in service.

3. The learned counsel appearing for the writ petitioner/respondent herein would, on the other hand, submit that the writ petitioner has been working for more than 21 years on the said post. The other similarly situated employees working on part time basis have been regularised as per G.O.Ms.No.22, P&AR Department dated 28.02.2006 and also on the basis of the judgment of a division bench



of this Court in W.A.No.230 of 2009 dated 3.8.2009, confirming the order dated 29.7.2008 in W.P.No.18126 of 2008 as referred to in the impugned order of the learned Single Judge.

4. We have heard the learned counsel for the parties and perused the pleadings and documents appended thereto.

5. The Government Order dated 28.2.2006 prescribes for regularisation of service of daily wage employees working in all government departments, who have rendered 10 years of service as on 1.1.2006 in accordance with the service conditions prescribed for the post concerned. It appears that the said decision was taken by the Government following the law laid down by the Supreme Court in Secretary, State of Karnataka Vs. Umadevi and others¹. The Supreme Court in the said decision has clearly held that irregular appointment can be regularised, however no illegal appointment made dehors the constitutional scheme of employment and the service conditions. It was further held that temporary, part time daily wage employees are not entitled to regularisation as a matter of right. This Court has passed orders in some cases directing regularisation though facts are not clear as to under what circumstances the said orders were passed.

6. Subsequently, on 27.06.2013, one more Government Order in continuation of the earlier G.O dated 28.02.2006 was issued, whereunder it was clearly observed that certain deviations have been noticed in compliance of the Government order dated 28.2.2006, inter-alia that part time employees have been granted the benefit of regularisation. It was clarified that in supersession of the orders issued in the earlier Government Order dated 28.2.2006, now a revised order is issued on regularisation of services of full time daily wage employees working in all government departments and the relevant portion reads as under :

" 6.In supersession of the orders issued in the Government Order read above, the Government now issue revised orders on regularization of services of full time daily wage employees working in all Government departments as detailed below:

¹ (2006) 4 SCC 1



WEB COPY

(i) This order shall be deemed to have been come into force with retrospective effect from 01.01.2006;

(ii) The services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and completed 10 (ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength;

(iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed;

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23 (a) (ii) of the General Rules for Tamil Nadu State and Subordinate Services;

(v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularization;

(vi) The Part-time and casual employees are not entitled to the concession referred to at para (ii) above;

x x x x x x x x x x x x x x x x x

7. But, the case of the writ petitioner was not the one, wherein regularisation was granted prior to the issuance of the instant G.O. The submission of the writ petitioner is that the writ petitioner has completed 10 years of service prior to issuance of the Government Order and as such, the writ petitioner's case be considered under the earlier G.Os for grant of relaxation.

8. At this stage, we are not inclined to pass any direction to regularise the service of the writ petitioner / respondent herein, on completion of 10 years of service, as the direction will be contrary to the well settled principles of law in case of regularisation, as aforesaid. However, we reserve liberty to the writ petitioner / respondent herein to make a fresh representation for regularization



in accordance with law. If a representation is made, the authorities shall consider the same and pass orders in accordance with law and on its own merit. Accordingly, the writ appeal is allowed to the above extent and the order of the learned Single Judge is set aside. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Secretary,
The State of Tamil Nadu,
Public Works Department,
Fort St. George,
Chennai-9.
2. The Chief Engineer (General),
& Engineer in Chief,
Public Works Department,
Chepauk, Chennai-5.
3. The Executive Engineer,
PWD, Araniyar Basin Division,
Chepauk, Chennai-5.

1 CC to the Government Pleader, SR.No. 21803

W.A.No.54 of 2014

NM (CO)
PSI (13.05.2015)