

In the High Court of Judicature at Madras

Dated: 13.04.2015

Coram:

The Honourable Mr. Justice T.S.SIVAGNANAM

Writ Petition No. 27914 of 2012  
and  
M.P. Nos.2 of 2012 & 1 of 2014

M.V. Paulraj

... Petitioner

vs.

1. The Director of School Education  
D.P.I. Complex, College Road  
Chennai 600 006.
2. The Joint Director of School Education (Personnel)  
D.P.I. Complex, College Road  
Chennai 600 006.
3. The Chief Educational Officer  
Coimbatore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second respondent in his proceedings Na.Ka.32341/A3/E1/07 dated 04.06.2007 and the consequential order passed by the second respondent in Na.Ka.32341/A3/E1/07 dated 19.05.2008 and the order passed by the second respondent in Na.Ka.No.25295/A3/E1/07 dated 01.07.2008 and in pursuance of the same, the subsequent order passed by the third respondent in his proceedings Na.Ka.No.3130/A1/2010 dated 15.06.2012 and the consequential undated proceedings passed by the third respondent in Mu.Mu.No.3130/A1/2012 dated .09.2012 (which was received by the petitioner on 28.09.2012 and quash the same and direct the respondents to restore the service of regularisation of the petitioner as 14.05.1981 instead of 25.06.1984 as per the Government Order No.2024, Revenue Department, dated 15.05.1974 and the subsequent Government letter No.3096/Ma.Va.1(2) 89 dated 11.08.1989 and to grant all service and consequential benefits.

For Petitioner : Mr. K.H. Ravikumar  
For Respondents : Mr. R. Vijayakumar  
Addl. Govt. Pleader.

O R D E R

By consent of both sides, the main writ petition itself is taken up for final disposal. Heard Mr.K.H.Ravikumar, learned counsel for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader for the respondents.

2. The petitioner seeks for the issuance of a Writ of Certiorarified Mandamus to quash the orders passed by the second respondent dated 04.06.2007 and 19.05.2008 and the consequential impugned order passed by the third respondent dated 15.06.2012 and for a direction to restore the petitioner's regularisation of service with effect from 14.05.1981 instead of 25.06.1984 in terms of Government Order No.2024, Revenue Department, dated 15.05.1974 and the subsequent clarification by a Government letter No.3096/Ma.Va.1 (2) 89, dated 11.08.1989.

3. Though various averments are made in the affidavit as well as in the counter affidavit, the issue in this case lies in a narrow compass. The undisputed facts are that the petitioner was a Burma repatriate and was initially appointed as Junior Assistant on temporary basis under Rule 10(a)(1) of the General Rules of the State and Subordinate Service Rules, after being selected through the Employment Exchange and posted in the Office of the District Educational Office, Thiruppur.

4. During the relevant point of time, several persons were repatriated from Burma and Srilanka and the State Government took a policy decision to not only offer employment to the qualified repatriates, but, also decided to regularise their services in cases, where such repatriates were appointed on temporary basis. To this effect, an order in G.O.Ms.No.2024, Revenue Department, dated 15.05.1974, was issued by the Government in order to grant employment opportunities to the repatriates. After the persons were offered employment on temporary basis under Rule 10(a)(1), a request was made to regularise their services. Therefore, the Government passed another order in G.O.Ms.No.996, Personnel and Administrative Reforms (Placements) Department, dated 22.09.1984, by which the services of all the temporary personnel in the category of Junior Assistant,

Typist and Steno-typist in Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service and Typist and Steno-typist in the Tamil Nadu Secretariat Service recruited through Employment Exchange under Rule 10(a)(1) and who were in temporary service as on 25.06.1984 be regularised with effect from 25.06.1984 in the same category and in the Department in which they were working. Thus, the Government had fixed the cut-off date for those persons, who were in temporary service as on 25.06.1984 for regularisation with effect from the said date. If the said position had been left as such, the petitioner would not have a case.

5. But, subsequently, the Government issued another clarification/modification letter dated 11.08.1989 to the Government Order No.2024, dated 15.5.1974, by which a recommendation was made by the Commissioner to the Srilankan Repatriates through its Secretary that regularisation of such repatriates could be done from the date of their appointment without monetary benefits. This benefit was extended to the petitioner and his services were regularised from his date of appointment i.e. from 14.5.1981 and with monetary benefits from 1984 in terms of G.O.Ms.No.996, dated 22.09.1984.

6. Similar benefit was granted to other persons also. When the said benefit was denied to one P.Veluchamy, who was a Srilankan repatriate who was initially appointed as Junior Assistant in the Collegiate Education Department on 13.10.1982, he approached this Court by filing Writ Petition No.3428 of 2005, wherein he prayed for retrospective regularisation with effect from the date of his appointment i.e. from 13.10.1982. This Court, by an order dated 04.02.2005, disposed of the said writ petition, directing the Government to consider and dispose of the representation of the said Veluchamy in the light of the Government Order as well as the clarification letter of the Government. Thereafter, the Government had examined the representation of the said Veluchamy and in the light of the orders issued in G.O.Ms.No.2024, dated 15.5.1974 and the Government letter dated 11.8.1989, directed the services of said P.Veluchamy, Assistant, Office of the Regional Joint Director of Collegiate Education, Coimbatore, be regularised in the category of Junior Assistant from the date of his initial appointment i.e. with effect from 13.10.1982 without monetary benefits. Thus, the Government took a decision to regularise the services of the said Veluchamy in the light of the G.O. No.2024 dated 15.5.1974 and the Government Letter dated 11.8.1989 and issued G.O.Ms.No.131, Higher Education Department, dated 07.04.2005, regularising his services with effect from 13.10.1982, the date anterior to the date fixed in G.O. No.996 dated 22.09.1984.

7. So far as the petitioner's case is concerned, he had already been granted the said benefit with effect from 1981. But, by the impugned order dated 28.09.2012, the benefit of retrospective regularisation granted with effect from his date of appointment, namely 14.05.1981, was cancelled. From the counter affidavit filed by the third respondent, it is seen that the third respondent has reiterated the factual position narrated in the impugned order and stated that as per G.O. No.996, dated 22.09.1984, the services of the petitioner can be regularised only from 25.06.1984 and not from the date of his appointment i.e. from 14.05.1981. Therefore, it is submitted that the impugned order has been rightly passed and the petitioner is not entitled for regularisation with effect from the date of his initial appointment.

8. I have given careful consideration to the submissions of both sides and also perused the materials placed before this Court. At the outset, it is to be pointed out that the petitioner did not approach this Court earlier for regularisation of his services. The respondents-authorities themselves had granted the benefit to the petitioner and passed an order on 11.12.1991. By this proceedings, the Chief Educational Officer, Coimbatore, recommended to the Director of School Education to regularise the services of the petitioner with effect from 14.05.1981. The Director of School Education accepted the proposal and regularised the services of the petitioner from the said date without monetary benefits. Therefore, there was no need for the petitioner to approach either this Court or the Government, as was the case of the said Veluchamy. In such circumstances, the action of the respondents in re-opening the settled matter and cancelling the benefit already granted to the petitioner, is unreasonable and arbitrary.

9. That apart, the Government, while considering the case of the said Veluchamy, have taken into consideration the Government Orders in G.O.Ms.Nos.2024, dated 15.05.1974 and 996 dated 22.09.1984 and also relied on the Government Letter dated 11.08.1989. Therefore, the Government has accepted the Letter dated 11.08.1989 as a clarification to the earlier Government Orders and granted retrospective regularisation to the said Veluchamy. The only difference between the said Veluchamy and the petitioner herein is that the earlier one was appointed in 1982, whereas the petitioner was appointed in 1981, though in different departments.

10. In the light of the factual position and taking into consideration the benefit extended to another similarly placed person and that the officials of the respondents-department up to the level of Director of School Education have wrongly understood the intention

and purport of the Government Orders and the clarification letter, the impugned orders passed by the respondents, cancelling the retrospective regularisation granted to the petitioner with effect from 14.05.1981, are unsustainable in law. Accordingly, the writ petition is allowed and the impugned orders are set aside and the respondents are directed to restore the petitioner's date of regularisation of service as 14.05.1981 instead of 25.06.1984 within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, M.P. Nos. 2 of 2012 and 1 of 2014 are closed.

Sd/-  
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ATR

Copies to;

1. The Director of School Education  
D.P.I. Complex, College Road  
Chennai 600 006.
2. The Joint Director of School Education (Personnel)  
D.P.I. Complex, College Road  
Chennai 600 006.
3. The Chief Educational Officer  
Coimbatore.

+1cc to Mr.K.H.Ravikumar, Advocate, S.R.No.20331  
+1cc to the Government Pleader, S.R.No.20565

W.P. No. 27914 of 2012

BVR(CO)  
CA(23/04/2015)

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