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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal(MD) No.618 of 2011

and

M.P(MD)No.1 of 2011

- 1.The Secretary to Government,
Department of Rural Development,
Fort St., George, Chennai.
- 2.The Director cum Commissioner,
Directorate of Rural Development,
Panagal Building,
No.1, Jeenias Road, Saidapet,
Chennai 15.
- 3.The District Collector,
Virudhunagar, Virudhunagar District.
- 4.The Block Development Officer,
Block Development Office,
Watrap,
Virudhunagar District.

... Appellants/Respondents

Vs.

S.Ayyasamy

... Respondent/Petitioner

Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 07.04.2011 made in W.P. (MD)No.8693 of 2008.

Prayer in WP(MD). 8693/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus, calling for records relating to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No. 29107/08 E4 dated 18/09/200d8 and quash the same and also direct the 2nd respondent to appoint the petitioner in the time pay scale either as godown watchman or to any other post as per the orders issued by the Government in G.O.Ms. 22 dated 28/02/2006 or as per any Government order applicable to the case of the petitioner and thus render justice.

For Appellants : Mr.A.K.Baskarapandian,
Special Government Pleader.
For Respondent : Mr.B.Prahalad Ravi

JUDGMENT

(Judgment of the Court was delivered by **N.KIRUBAKARAN, J**)

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The appeal has been preferred by the Government against the allowing of the writ petition filed by the respondent to regularise the



services of the respondent based on the proposal that was sent to the first appellant on 18.03.2009.

2. Heard Mr. A.K. Baskarapandian, learned Special Government Pleader for the appellants.

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3. The appellant was appointed as Godown Watchman on 20.07.1993 in Watrap Panchayat Union and he has been continuously working as Godown Watchman on daily wage basis from 1993 onwards. Subsequently, he made representation to the fourth appellant on 17.03.2006 requesting to regularise his services based on G.O.Ms.No.22, P & AR Department, dated 28.02.2006 as he has rendered more than 13 years of service. According to the respondent, he possesses educational qualification for the post of Godown Watchman.

4. The Block Development Officer, the fourth appellant herein through his proceedings dated 20.03.2006 recommended for regularisation and requested the third appellant to take proper steps for regularising the service of the respondent. Based on the said proceedings of the fourth appellant, the third appellant sent a proposal dated 13.04.2006 to the second appellant for regularising the service of the respondent.

5. Meanwhile, the respondent filed W.P.(MD)No.2033 of 2006 seeking direction to appoint him in time scale of pay as Godown Watchman based on G.O.Ms.No.22, P & AR Department, dated 28.02.2006. The said writ petition was disposed of on 10.03.2008 directing the second appellant to consider the respondent's claim and pass appropriate orders. Based on the aforesaid order, an order dated 18.09.2008 was passed refusing to regularise the services of the respondent stating that G.O.Ms.No.22, P & AR Department, dated 28.02.2006 is not applicable to the employees under the Panchayat Union and it applies only to the Government employees. Therefore, the respondent filed a writ petition in W.P(MD)No.8693 of 2008 and the same was allowed holding that the respondent is entitled to regularisation. The learned single Judge allowed the writ relying upon paragraph 5 of the counter affidavit filed by the third appellant which is extracted as follows:

"Further the names of daily wage employees who were not working in Panchayat Unions are called for from all the District Collector Vide C.R.D.Lr.No.54133/08/E4, dated 20.11.2008. A consolidated proposal including the name of the petitioner to regularising the services of the daily wage employees working in Panchayat Union who had rendered 10 years of service as on 01.01.2006 was sent to Government on 18.03.2009. After receipt of the Government Order, further action will be taken. There was no ulterior motive or any other mollified and intention against the petitioner".

6. The learned single Judge observed that the consolidated proposal was sent to the first appellant on 18.03.2009 seeking appropriate orders from him for regularising the services of the daily wage employees working in Panchayat Unions who had rendered 10 years of service as on 01.01.2006 and the respondent's name found in the aforesaid proposal.

7. Though G.O.Ms.No.22, P & AR Department, dated 28.02.2006 is not applicable to the daily wage employees under the panchayat unions, the learned single Judge held that the principle could be applied and the Government is expected to extend the same to the employees under the panchayat union also. Even otherwise, the action of the appellants keeping the employees on daily wages continuously for 17 years is highly arbitrary and violative of Articles 14 and 16 of the Constitution of India.

8. In view of that, the learned Judge rightly allowed the writ petition. The learned single Judge taking into consideration, the long service rendered by the respondent namely more than 13 years, rightly directed the respondents to regularise the services of the respondent. Therefore, this Court is not inclined to interfere with the order of the learned single Judge.

9. Further, in ground No.4 of the Memorandum of Grounds of appeal, it is stated as follows:

"4. The learned Judge ought to have considered that the 2nd respondent in his letter No.54133/2008/E4, dated 18.03.2009 sent proposals to the Government for the regularisation of the services in respect of 68 daily wage employees working in Union side by extending the benefits of the G.O.Ms.No.22, P & AR Department dated 28.02.2006 to the employees of Pt.Union side also. But the Government in their letter No.12593/E7/2009-1, dated 09.03.2010 issued instructions to send proposals of those employees who are paid only from Panchayat Union General Funds. Finally proposals including only 19 names of persons who are being paid daily wages from Panchayat Union General Funds have been sent to the Government by the 2nd respondent on 22.11.2010. The petitioner herein is being paid from scheme fund only and not from Pt., Union General fund or Government fund. Hence, his name was not included in the said proposal".

10. The distinction sought to be made between those employed from and out of Panchayat Union General Fund and those paid out of the scheme fund cannot really be varied.

11. The writ appeal fails and the same is dismissed. No costs. Consequently, M.P(MD)No.1 of 2011 is closed.

Sd/-

Assistant Registrar(Crl.side)

/True copy/

Sub Assistant Registrar

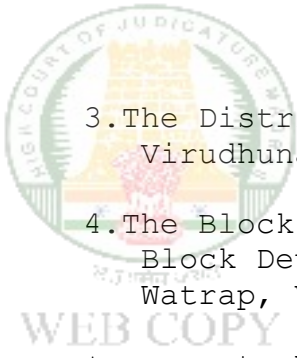
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To

1. The Secretary to Government,
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4.The Block Development Officer,
Block Development Office,
Watrap, Virudhunagar District.

+one cc to M/s.Hallmark Associates, Advocate in SR.No.69774
+one cc to The Special Government Pleader in SR.No. 69697

CSL/SKS-RR/31.12.2015/4P/7C

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