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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.02.2015
CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Writ Petition No.4819 of 2011
and M.P.(MD) No. 2 of 2011

M.Ayyappan

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2.The Director,
Directorate of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet, Chennai 600 015.

3.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The Block Development Officer (VP),
Sattur Panchayat Union,
Sattur, Virudhunagar District.

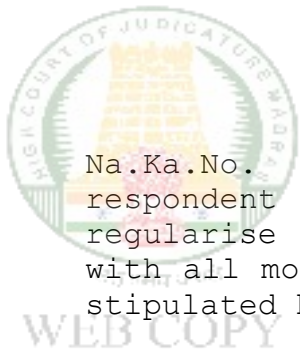
... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of writ of Certiorarified Mandamus to call for the records on the file of the second respondent in connection with the impugned letter issued by him in Na.Ka.No. 97599/09/E1 dated 23.12.2010 and quash the same as illegal and arbitrary in so far as denying to regularise the service of the petitioner and consequently direct the respondents 1 to 3 to regularise the service of the petitioner in the post of Night Watchman with all monetary and service benefits within the time limit that may be stipulated by this Court and pass such other or further orders as this Court may fit and proper in the circumstances of the case.

For Petitioner : Mr.G.Thalaimutharasu

For R1 to R3 : Mr.M.Murugan
Government Advocate

For R4 : Mr.T.S.Mohamed Mohideen
Addl.Govt.Pleader



Na.Ka.No. 97599/09/E1 dated 23.12.2010 on the file of the second respondent and consequential direction to the respondents 1 to 3 to regularise the service of the petitioner in the post of Night Watchman with all monetary and service benefits within the time limit that may be stipulated by this Court.

2. While the petitioner was studying 7th standard, he was appointed as Night Watchman as well as Godown Watchman on 1.1.1990 in the fourth respondent Sattur Panchayat Union on daily wages basis. He worked till 31.12.1999 in the said post without any remarks. Due to his employment, he could not pursue his studies. In the fourth respondent Panchayat Union the post of Office Assistant fell vacant. The petitioner had requested the fourth respondent to appoint him as Office Assistant. The Commissioner, Sattur Panchayat Union, vide his proceedings in Na.Ka.No.R3/3129/95 dated 06.09.1995 recommended the petitioner's case to the third respondent for appointing him in the said post. Subsequently, due to the instructions of the third respondent the petitioner was not allowed to continue in the said post from January 2000 onwards.

3. The petitioner made a representation to the fourth respondent to consider the petitioner's case sympathetically and appoint him in that post as he worked for 9 years. The fourth respondent by the proceedings dated 12.03.2001 in Na.Ka.P5/901/2000 dated 12.03.2001 recommended the case of the petitioner to the third respondent. The petitioner again sent a representation on 19.01.2004 to consider the petitioner in the post of Night Watchman. The fourth respondent again recommended the petitioner by the proceedings dated 20.01.2005 in Na.Ka.No.A1/203/2005 to the third respondent and informed the third respondent that the salary will be paid from the Panchayat Union fund and there will not be no loss to the public exchequer. The third respondent did not pass any order to the proposal sent by the fourth respondent.

4. The petitioner sent a representation to the Chief Minister's cell. The fourth respondent by the proceedings dated 06.03.2009 in Na.Ka.No.A1/832/09 dated 06.03.2009 rejected the petitioner's request. Again the petitioner sent a representation on 24.08.2010 to the Deputy Chief Minister requesting to appoint him by relaxing the Rules. The fourth respondent has sent the service particulars of the petitioner with enclosures to the third respondent in his proceedings dated 29.09.2010 in Na.Ka.No.A1/3612/2010 after collecting all the details from the petitioner. The third respondent by his proceedings in Na.Ka.P4/5933/2010 dated 9.11.2010 has forwarded the same to the first respondent informing that the petitioner's service cannot be regularised and requested the first respondent to relax the Rules for appointing the petitioner in the vacant place. On receipt of the proceedings of the third respondent, the second respondent by the proceedings dated 23.12.2010 in Na.Ka.No.97599/09/E1 informed that services rendered by the petitioner as a minor could not be taken into account, as he has not completed 10 years of service and hence, he could not be regularised. According to the petitioner, he had put in 9 years and 11 months of service, aged 39 years, hails from poor family and he has no means to



support his family and hence, prayed for relaxing rules and regularise his services as per G.O.Ms.No.22, P & A.R. Department dated 28.02.2006.

5. The third respondent filed counter affidavit. In the counter affidavit it is stated that the petitioner worked in third respondent Panchayat Union under NMR basis as Night Watchman from 1.1.1990 to 30.11.1999 on daily wages basis. The petitioner completed 8th Standard in private studies in the year 2000. On scrutiny of the school Transfer Certificate submitted by the petitioner, it is found that the petitioner was not even completed 7th Standard and discontinued from the school from the academic year 1989 - 1990. His father worked as Road Mazdoor in Sattur Panchayat Union. He retired on 30.11.1991 on attaining age of superannuation. He died on 18.11.1992. Therefore, the claim of the petitioner for appointing him on compassionate ground cannot be considered. The petitioner employed from 1.1.1990 at the age of 13 years for which he has not produced any appointment order issued by the competent authority. Therefore, his service before attaining the age of 18 years on 12.10.1994 could not be taken as qualified service according to the Government Orders and the request of the petitioner for appointing him by relaxing the Rules is not possible.

6. The services of petitioner, put in by him while he was minor could not be taken into account as per Rules. Excluding the said period, the petitioner had put in 5 years and 2 months only. The petitioner had not put in 10 years of service as daily wage worker and hence, he is not entitled to be regularised as per G.O.Ms.No.22, P & A.R. Department dated 28.02.2006. The petitioner is not in service for more than 12 years and therefore, G.O.Ms.No.22, P & A.R. Department dated 28.02.2006 is not applicable and prayed for dismissal of writ petition.

7. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 to 3 and the learned Additional Government Pleader appearing for the respondent No.4 and perused the materials available on record and considered the pleadings and arguments of the learned counsel for the petitioner and the respondents.

8. From the pleadings and materials on record, it is seen that admittedly the petitioner has put in 9 years and 11 months of service on daily wages. The petitioner was appointed on 01.01.1990. Admittedly, the petitioner was aged 13 years at that time. In view of this fact 5 years of service put in by the petitioner before attaining majority cannot be taken into account as per Government order. If 5 years of service is excluded, the petitioner is put in only 4 years and 11 months of service.

9. From January 2000, he is not in service. He had admitted that he did not complete 10 years of service to get the benefit of G.O.No.22, P & AR(F) Department dated 28.02.2006. Hence, there is no infirmity in the impugned order as the respondents could not relax the Rule in case of an individual worker including the service put in as a minor.

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10. From the materials on record, it is seen that Night Watchman post is very essential for Sattur Panchayat Union. The



Commissioner, Sattur Panchayat Union, had repeatedly recommended the case of the petitioner for appointment and his regularisation. The petitioner's services were terminated due to the fact that some of the contingent workers approached this Court. By proceedings dated 20.01.2005, the third respondent had stated that the petitioner may be appointed as Night Watchman and there will not be any loss to the Government as the salary would be paid from the fund of the fourth respondent Panchayat Union.

11. In view of the above said facts, the petitioner is directed to give fresh representation to the respondents 3 and 4 within a period of two weeks from the date of receipt of copy of this order. If such representation is made, the respondents 3 and 4 are directed to consider the same on merits and pass orders in accordance with law within a period of eight weeks thereafter.

12. In view of the fact that the petitioner had not completed 10 years of service as daily wages worker, this writ petition is dismissed. No costs. Consequently, connected M.P. NO. 2 of 2011 is dismissed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St. George, Chennai - 600 009.

2.The Director,
Directorate of Rural Development and Panchayat Raj,
Panagal Building, Saidapet, Chennai 600 015.

3.The District Collector,
Virudhunagar District, Virudhunagar.

4.The Block Development Officer (VP),
Sattur Panchayat Union,
Sattur, Virudhunagar District.

+1cc to Mr.G.Thalaimutharasu, Advocate, SR.No.8766

+1cc to Special Govt.Pleader SR.No.8892

Order made in
Writ Petition No.4819 of 2011
and M.P.(MD) No. 2 of 2011
24.02.2015

PA/31.03.2015/4P/7C (IT)