

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.09.2016

Coram:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

W.P.No.31870 of 2014

T.Ramadoss

... Petitioner

Vs

1.The Director of Rural Development
Panagal Building
Saidapet, Chennai-15.

2.The District Collector
Kanyakumari District
Kanyakumari.

3.The Commissioner
Melpuram Panchayat Union
Melpuram
Kanyakumari District.

4.The President
Malayadi Village and Panchayat
Malayadi
Melpuram Taluk
Kanyakumari District.
...Respondents

Prayer : This writ petition has been filed to issue a Writ of Mandamus, directing the respondents to absorb the petitioner in the regular establishment of the fourth respondent Panchayat in a permanent post with a time scale of pay with effect from the date of his appointment, namely, 12.8.1985, and grant all other consequential benefits to the petitioner.

For Petitioner : M/s.N. Sampath
For Respondents Nos.1 & 2 : Mr.V.Jayaprakash Narayanan
Special Govt. Pleader
For Respondents Nos.3 & 4 : Mr.P. Chinnadurai.

O R D E R

Heard.

2. This writ petition has been filed, praying that this Court may be pleased to issue a Writ of Mandamus, directing the respondents to absorb the petitioner, in a permanent post and to fix the time scale of pay, with effect from the date of his appointment, namely, 12.8.1983, and to grant him all other consequential benefits.

3. It has been stated that the petitioner had been appointed as a 'Pump Operator', by the third respondent, on daily wage basis, on 12.8.1983. The petitioner has been working as such, continuously, from the date of his initial appointment. Even though, the similarly placed persons, as that of the petitioner, had been absorbed in the regular cadre and fixed the time scale of pay, the services of the petitioner had not been considered for regularisation, in the fourth respondent Panchayat.

4. In such circumstances, the petitioner has preferred this writ petition, under Article 226 of the Constitution of India.

5. A detailed counter affidavit has been filed on behalf of the second respondent, denying the claims made by the petitioner.

6. Paragraphs Nos.6 to 13 of the counter affidavit, read as follows:-

"6. I respectfully submit that, the contention of the petitioner that the similarly placed individual Thiru. R. Davidson was brought under time scale of pay absorbed in Killiyoor Panchayat Union consequent on order in W.P.No.15827 of 1996 is not applicable for the petitioner's service regularisation. This plea was not considered in similar case by the Division Bench of this Hon'ble High Court, vide order, dated 06.08.2014 in W.A.(MD) No.1370 of 2013. Para 7 of this order reads as follows:-

"As we have pointed out in the previous paragraph, the learned Judges allowed the writ petition primarily on two grounds, apart from the question of applicability of provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. But in

so far as the first ground on which the learned Judge allowed the writ petition is concerned, we do not think that any analogy could be drawn between the case of the first respondent and the case of R.Davidson. The facts on the basis of which the writ petition filed by R.Davidson was allowed, are not known. It is not known whether he was appointed against a sanctioned post. We do not know what are the terms and conditions subject to which he was appointed. In cases of this nature, two situations are not comparable. Therefore, the first ground on which the learned Judge allowed the writ petition of the first respondent cannot be sustained."

7. I respectfully submit that, as per the G.O.Ms.No.22 P & AR Department, dated 28.02.2006 the Government have ordered that services of the employees working in various departments on daily wages who have completed more than ten years of service as on 01.01.2006 will be regularized. Later in supercession of this G.O. Government have issued revised orders vide G.O.Ms.No.74 P & AR (F) Department, dated 27.05.2013 (copy enclosed). Para 6 (II) of this G.O. reads as follows:-

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

8. I also respectfully submit that, the initial appointment of the petitioner was not made through employment exchange or following the communal roster and reservation policy. Hence, he is not entitled for regularisation of service. Moreover, the regularisation of full time/part time/daily wages employees of local body or any other Government organizations, are all policy decision of the Government. In Kanyakumari District there are totally 95 villages. In every village there are one or more water supply attenders are working as daily wages/part time employees. Further, some of them are seniors to the petitioner also still working as daily wages/consolidated pay water supply attenders. Hence, the petitioner does not

possess eligibility for his claim of service regularisation cannot be countenanced.

9. I respectfully submit that, as per Government letter No.4451/E5/07-1 Rural Development and Panchayat Raj Department, dated 11.10.2007 (copy enclosed) the Government categorically informed that the water supply attenders are only part time employees and are entitled for consolidated pay. The Government have also stated that, the question of granting them time scale of pay doesn't arise as the post of water supply attenders are not full time. Similarly water supply attenders are not covered by any service rules, they are not entitled for pension and other benefits. Hence, as a part time water supply attender the petitioner is not eligible for time scale of pay/regularisation.

10. I also respectfully submit that, in a batch of Writ Petitions W.P.No.11681 to 11684 of 2007 filed by the petitioners like the petitioner herein with a similar claim by identically placed persons was rejected by an order, dated 18.08.2009 (copy enclosed) on the ground that, part time employees could not ask for regularization in a full time basis; that even the Tamil Nadu Administrative Tribunal dismissed a similar claim by such part time employees in O.A.No.6403 of 1998 and that therefore there is no question of regularisation of the petitioner herein.

11. I respectfully submit that, the Hon'ble Supreme Court of India in Civil Appeal Nos.2726 to 2729 of 2014 between the Secretary to Government, School Education Department, Chennai and Thiru. Govindaswamy and others has passed the orders as :-

i) In Union of India & Ors. Vs. A.S.Pillai & Ors ((2010) 13 SCC 448). (order copy enclosed) this Court dealt with the issue of regularisation of part time employees and the court refused the relief on the ground that being he part time employees, they are not subject to service rules or other regularisations which govern and control the regularly appointed staff of the department. Therefore the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

ii) In State of Rajasthan & Ors. Vs. Daya Lal & Ors. A.I.R. 2011 SC 1193, the Hon'ble Supreme Court of India has ordered as:-

a. Part time employees are not entitled to seek regularisations as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part time temporary employees".

Hence, the petitioner is not eligible is service regularisation as per settled law.

12. I respectfully submit that, the regularization of full time/ part time/daily wages employees of local body or any other Government organizations, are all policy decisions of the Government. In Kanyakumari District there are totally 95 Villages in every village there are one or more water supply attenders are working as daily wages/consolidated pay/part time employees and are still working as water supply attender, and not on time scale of pay.

13. It is humbly submitted that this writ petition is devoid of merits and liable for dismissal on various and following grounds:-

I. The appointment the petitioner itself is irregular and not made against substantive vacancy.

II. Appointment of the petitioner not made through the sponsorship of employment exchange. Also there is no communal roster and reservation policy in the appointment of the petitioner, as water supply attender.

III. The petitioner is not working against any sanctioned post. He is only a part time temporary employee. Hence, he is not entitled to seek regularization/absorption/permanent continuance.

IV. The temporary post held by the petitioner is not a feeder category post for any other promotional posts.

V. The prayer of the petitioner is against the law settled by the Hon'ble Supreme Court of India.

VI. The prayer of the petitioner is against the order of Government of Tamil Nadu vide G.O.Ms.No.22 P & AR Department, dated 28.02.2006 and G.O.Ms.No.74 P & AR Department, dated 27.06.2013 as his initially appointment was not made through employment exchange."

7. From the above referred decisions of the Apex Court, it is clear that a person, who is working on daily wages, as a part time employee, cannot claim for regularisation of his or her service, as a matter of right, except under the special circumstances. Therefore, the services of the petitioner, who had been employed as a 'Pump Operator' in the fourth respondent Panchayat, on daily wage basis, cannot be considered for regularisation, even though he had been employed as such for a number of years. Further, the petitioner has not claimed for the regularisation of his service, either based on any Government Order, or based on any law, granting such a right.

8. In view of the averments made in the counter affidavit, as extracted above, and in view of the settled legal positions, this Court does not find any cause or reason, for granting the relief, as prayed for by the petitioner. Hence, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1.The Director of Rural Development
Panagal Building
Saidapet, Chennai-15.

2.The District Collector
Kanyakumari District
Kanyakumari.

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Melpuram Panchayat Union
Melpuram
Kanyakumari District.

4.The President
Malayadi Village and Panchayat
Malayadi
Melpuram Taluk
Kanyakumari District.

+lcc to the Government Pleader Sr.51305
+lcc to Mr.N.Sampath, Advocate sr.51271
+lcc to Mr.P.Chinnadurai, Advocate sr.51023

W.P.No.31870 of 2014

vsn[col]
srg 05/10/2016



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