

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal Nos.1824 & 1825 of 2012
and
M.P.Nos.1 and 2 of 2012

- 1.The State of Tamil Nadu,
rep.by the Secretary to Government,
Tourism and Culture Department,
Fort St.George, Chennai-9.
- 2.The Commissioner of Art and Culture,
Chennai-8
- 3.The Principal,
Government College of Architecture
and Sculpture,
Mahabalipuram,
Kancheepuram District

..Appellants in
both W.As./Respondent

-vs-

J.Punniyaraj

..Respondent in
W.A.No.1824 of 2012/ Petitioner

K.Ganesan

..Respondent in
W.A.No.1825 of 2012/ Petitioner

WRIT APPEALS filed under Clause 15 of Letters Patent against the order passed in W.P.Nos.29528 and 29529 of 2008, dated 20.10.2011. Writ petition filed under Article 226 of the constitution of India, praying for the issuance of writ of certiorarified Mandamus to call for the records connected with the G.O.Ms. No.39 Tourism and Culture Panl (1) Department dt 26.3.2007 of the 1st respondent and also the consequential order passed by the 2nd respondent in Pro. No.4675/B2/2000-2 dt 26.4.2007 and quash the same as far as the regularisation of

petitioners service from the date of issuing order is concerned and directing the 1st and 2nd respondents to consider the case of the petitioner for regularisation of service in the post of Watchman from the date of initial appointment and grant all consequential benefits.

For Appellants : Mr.R.Ravichandran,A.G.P.
For Respondents : Mr.G.Elanchezhiyan

COMMON JUDGMENT

(Judgment of the Court was delivered by
A.SELVAM, J)

These Writ Appeals have been directed against the common order passed in W.P.Nos.29528 & 29529 of 2008, by the learned Single Judge of this Court.

2. It is averred in both the writ petitions that the respondents/petitioners have studied up to 10th standard and enlisted their names in Employment Exchange, Kancheepuram and subsequently, they have been duly appointed on contractual basis, on 04.03.1997 in the Government College of Architecture and Sculpture, Mahabalipuram and subsequently, they have been given time scale of pay, on 4.11.1998. But the first appellant/first respondent has passed G.O.Ms.No.39, dated 26.3.2007, wherein, the services of the petitioners have been regularised only from 26.3.2007 and in order to quash the same, the present writ petitions have been filed.

3. The learned Single Judge, after considering the contentions put forth on either side, has allowed both the writ petitions and directed the appellants/respondents to regularise the services of the petitioners from 4.11.1998, by way of passing the impugned common order and the same has been challenged in the present Writ Appeals. Since common questions of law and facts are involved, common judgment is pronounced.

4. Before contemplating the rival submissions made on either side, the Court has to narrate the following admitted facts.

It is an admitted fact that both the petitioners have studied up to 10th standard and they enlisted their names in Employment Exchange, Kancheepuram District and subsequently, the petitioner in W.P.No.29528 of 2008 has been appointed as Watchman, whereas, the petitioner in W.P.No.29529 of 2008 has been appointed as Gardener, on temporary basis, on 04.03.1997, in Government College of Architecture and Sculpture, Mahabalipuram. It is also equally an admitted fact that the petitioners have been given time scale of pay on 04.11.1998.

The first appellant/first respondent has passed the impugned G.O.Ms.No.39, dated 26.3.2007, wherein, the services of the petitioners have been regularised from 26.3.2007.

5. The only gravamen expressed on the side of the respondents/petitioners is that since they have been given time scale of pay from 4.11.1998, their services have to be regularised from the said date; whereas, in the impugned G.O., it has been erroneously mentioned as 26.3.2007. The learned single Judge, after considering the contentions put forth on either side, has directed the appellants/respondents to regularise the services of the petitioners from 4.11.1998.

6. The learned Additional Government Pleader has repleatedly contended that there is no specific Rule so as to regularise the service of a Government Servant from the date on which he/she has been given time scale of pay and further, the learned single Judge has passed the impugned order against the judgment given by the Hon'ble Supreme Court and therefore, the order passed by the learned Single Judge is liable to be set aside.

7. In support of the contentions put forth on the side of the appellants, the learned Additional Government Pleader has relied upon the following decisions:

(i) In the Secretary, State of Karnataka and Others vs. Umadevi (3) and Others [(2006) 4 SCC 1], wherein at paragraph No.55, the Hon'ble Supreme Court has observed as follows:-

"55. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa (State of Mysore v. S.V.Narayanappa (1967) 1 SCR 128), R.N.Nanjundappa (R.N.Nanjundappa v. T.Thimmiah (1972) 1 SCC 409 and B.N.Nagarajan (B.N.Nagarajan v. State of Karnataka, (1979) 4 SCC 507) and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of this judgment. In that context, the steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or

more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any, already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

(2) In Civil Appeal Nos.2726-2729 of 2014 (Secretary to Government, School Education Department, Chennai vs. Thiru R.Govindaswamy and Others.), wherein, the Hon'ble Supreme Court has followed the observations made in Umadevi's case [State of Karnataka & Others v. Umadevi & Others (AIR 2006 SC 1806)]

8. In order to controvert the contentions put forth on the side of the appellants/respondents, the learned counsel appearing for the respondents/petitioners has contended that the observations made by the Hon'ble Supreme Court in the Secretary, State of Karnataka and Others vs. Umadevi (3) and Others [2006(4) SCC 1] are not applicable to the facts and circumstances of the present case and the learned Single Judge, after considering the decision reported in 2010 (3) Supreme 332 (S.Sumnyan & Others vs. Limi Niri & Others), has rightly allowed both the writ petitions and therefore, the order passed by the learned Single Judge does not call for any interference.

9. The short point that arises for consideration in both the Writ Appeals is as to whether the services of the petitioners can be regularised from the date mentioned in the impugned G.O. or it can be regularised from 4.11.1998, the date on which they have been given time scale of pay?.

10. As rightly pointed out on the side of the respondents/petitioners, the decision reported in 2006(4) SCC 1 is applicable to illegal/irregular appointments, by using back door methods. In the instant case, as admitted on the side of the appellants/respondents, initially the petitioners have been appointed on contractual basis on 4.3.1997 and subsequently, on 4.11.1998, they have been given time scale of pay.

11. In the decision reported in 2010 (3) Supreme 332 (S.Sumnyan & Others vs. Limi Niri & Others), the Hon'ble Supreme Court has observed that regularisation of service of a person, whose initial appointment, although not in accordance with the prescribed procedure, but later on approved by an authority having power and jurisdiction to do so, would always relate back to the date of his/her initial appointment.

12. Even from a mere reading of the observation given by the Hon'ble Supreme Court, it is easily discernible that even though an appointment is not in accordance with the prescribed Rule/Law, subsequently, approved by competent authority, the date of initial appointment will be taken into consideration.

13. In the instant case, as adverted to earlier, the respondents/petitioners have been temporarily appointed on contractual basis on 04.3.1997, but subsequently, they have been given time scale of pay on 04.11.1998. The contention of the respondents/petitioners is that their services should be regularized only from 04.11.1998.

14. Considering the dictum given by the Hon'ble Supreme Court in the decision reported in S.Sumnyan & Others vs. Limi Niri & Others[2010(3) Supreme 332], and also considering the fact that the petitioners have been given time scale of pay on 4.11.1998, this Court is of the considered view that the contention put forth on the side of the respondents/petitioners is really having subsisting force.

15. In the impugned G.O., the first appellant/first respondent has simply fixed the date of regularisation as on 26.3.2007, the date on which G.O. has been passed, even though the petitioners have been given time scale of pay on 04.11.1998. The date mentioned in the impugned G.O. is totally erroneous.

16. The learned Single Judge, after considering the contentions put forth on either side, has rightly applied the dictum of the Hon'ble Supreme Court given in S.Sumnyan & Others vs. Limi Niri & Others [2010 (3) Supreme 332] and also rightly passed the impugned order. In view of the foregoing discussion both on the factual as well as legal aspects, this Court has not found any merit in the writ appeals and the same are liable to be dismissed.

In fine, these writ appeals are dismissed. No costs.
Connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msk
TO

- 1.The Secretary to Government,
State of Tamil Nadu,
Tourism and Culture Department,
Fort St.George, Chennai-9.
- 2.The Commissioner of Art and Culture,
Chennai-8
- 3.The Principal,
Government College of Architecture
and Sculpture,
Mahabalipuram,
Kancheepuram District

+ 2 ccs to Mr.G. Elanchezhian, Advocate Sr. 37678
+ 1 cc to Mr.Government pleader Sr.37402

W.A. Nos.1824 & 1825 of 2012

MSM(CO)
EU 23.7.16

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