

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2016

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.240 of 2016
and
C.M.P.No.4111 of 2016

- 1.The State of Tamil Nadu,
rep by its Secretary,
Agriculture Department,
Fort St. George, Chennai-600 009.
- 2.The Commissioner of Agriculture,
Chepauk, Chennai-5. .. Appellants

Vs.

T.M.Doraisamy .. Respondent

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 30.11.2012 passed in W.P. No.2237 of 2012 to issue a writ of certiorarified Mandamus calling for the records in Letter No. 33775/Ve.Ne.4(1)-2010-1 dt 21.12.2010 on the file of 1st respondent and quash the same and consequently direct the respondents to regularize the services of the petitioner in the cadre of watchmen from the date of initial appointment with consequential service benefits in par with to the relief granted to similarly situated person in G.O.Ms. No. 179 Agriculture-2 (AAIV) Department dt 8.7.2005 with all consequential service and monetary benefits;

For appellants Mrs.A.Srijayanthi,
Special Government Pleader

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal is preferred by the appellants State against the order dated 30th November, 2012 passed in W.P.No.2237 of 2012.

2 The writ petitioner / respondent herein moved this court under Article 226 of the Constitution of India, questioning the legality of the order dated 21st December, 2010 of the first appellant herein, whereunder the request of the respondent herein for regularisation from the date of appointment as contingency watchman was rejected.

3 The case of the respondent herein before the writ court was that under G.O.Ms.No.179, Agriculture (AA4) Department, dated 8th July, 2005, a similarly situated watchman was granted regularisation from the date of his initial appointment. Thus, the same benefit be extended to the writ petitioner also.

4 The learned Single Judge, noticing the order passed by the Tribunal in respect of 11 employees, regularizing their services on completion of five years based on G.O.Ms.No.52, Finance Department, dated 14th January, 1977, set aside the impugned order and directed the appellants herein to regularise the respondent herein on completion of five years of service in terms of the order dated 22nd November, 1993 passed in O.A.No.2677 of 1991 and the order dated 11th November 2010 passed in W.P.No.25461 of 2010.

5 The learned counsel appearing for the appellants submits that the respondent herein is not entitled to regularisation on completion of five years as per G.O.Ms.No.52, Finance Department, dated 14th January 1977. The subsequent government orders were passed by the agricultural department in contravention of the G.O.Ms.No.52, Finance Department, dated 14th January, 1977.

6 We have given our anxious consideration to the submissions advanced by the learned Special Government Pleader for the appellant and also perused the pleadings and documents appended thereto.

7 G.O.Ms.No.52, Finance dated 14th January, 1977 provides for regularisation of the contingent workers on completion of five or more years of service in the following terms :

"3.After a careful review of the position, Government reiterate their earlier decision contained in the order first cited and direct that the decision to bring all the contingent employees with five or more years of service to regular establishment be strictly implemented on a systematic, orderly and uniform basis. The following procedure is prescribed for adoption by the Heads of Department in this regard.

(i)Heads of Departments may send complete proposals for creation of adequate number of posts for bringing to regular establishments the contingent workers who have completed five years of

service as on 1st January 1977 after a careful review of the need for continuance of the posts in which they are employed. Based on these proposals necessary additional posts will be created with effect from 1st April 1977.

(ii) In future, Heads of Departments should send proposals on 1st January of each year for bringing into regular establishment the contingent employees who complete five years of service as on 1st January."

8 Subsequently, several contingent workers approached the Administrative Tribunal and also the High Court, whereunder a direction was issued to regularise their service from the date of joining on the post of watchmen under contingent establishment, which was accepted by the department and appropriate orders were passed.

9 Be that as it may, the Finance Department itself has contemplated under G.O.Ms.No.52, dated 14th January, 1977 to consider the contingent workers for regularisation on completion of five years of service. Thus, the contention of the learned Special Government Pleader for the appellants that grant of regularisation after five years of service is contrary to G.O.Ms.No.52 is misplaced and is rejected. The impugned order was passed on 30th November, 2012. The appellants have not chosen to question the legality and validity of the said order till the appeal was filed on 2nd February, 2015. In the meantime, it is expected that the order must have been complied with. Once the order is complied with, it is not proper to reopen the same and also on merit, the appellants are unable to produce any material to establish that consideration of regularisation after five years of service is contrary to the statutory provisions or executive instructions, as aforesaid.

10 For the reasons mentioned hereinabove, we do not find any irregularity or illegality in the order rendered by the learned Single Judge. Resultantly, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vvk

To

1.The Secretary,
The State of Tamil Nadu,
Agriculture Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Agriculture,
Chepauk, Chennai-5.

+1cc to the Government Pleader, S.R.No.15394

SNS (CO)
EU (29/03/2016)

W.A.No.240 of 2016



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