

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.39608 of 2016

R.Vijayal

... Petitioner

Vs.

- 1.The State of Tamil Nadu
rep. by its Secretary to Government,
School Education Department,
Secretariat,
Chennai-600 009.
- 2.The Director of Government Examinations,
Directorate of Government Examinations,
College Road, Chennai-600 006.
- 3.The Regional Deputy Director of
Government Examinations,
Tirunelveli-1.

... Respondents

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to consider the claims of the petitioner for regularization in the post of Record Clerk from 1998 onwards as was given to similarly placed persons in G.O.(ID)No.286, School Education (GE1) Department, dated 19.07.2016, which was issued based on the order of the Hon'ble High Court dated 26.03.2010 in W.P.No.39645 of 2004 and the same was confirmed by an order of the Hon'ble Division Bench of Madras High Court dated 05.11.2014 in W.A.No.2678 of 2010.

For Petitioner : Mr.G.Elanchezhian

For respondents : Mr.V.Anandhamoorthy, AGP (Edu)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, directing the respondents to consider the claim of the petitioner for regularization in the

post of Record Clerk from 1998 onwards, as was given to similarly placed persons by G.O.(ID)No.286, School Education (GE1) Department, dated 19.07.2016, which was issued based on the orders of this Court in W.P.No.39645 of 2004, dated 26.03.2010 and W.A.No.2678 of 2010 dated 05.11.2014.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, as follows_

2-1.The petitioner's name was sponsored by the District Employment Office, Thirunelveli and she was initially selected and appointed as Section Writer on daily wage basis in the year 1990 by an order of the 3rd respondent. Accordingly, she joined duty on 08.02.1990. Thereafter, she was appointed as Record Clerk on 25.10.2006 on time scale of pay; as such she is working in the said post.

2-2.It is stated by the petitioner that similarly placed persons namely one P.Paramasivam and 43 other persons, who joined duty as Section Writers in the year 1987, had filed an Original Applications in O.A.Nos.6872 & 6873 of 1993 before the Tamil Nadu Administrative Tribunal seeking to direct the respondents to regularise their services. The Tribunal by order dated 13.05.1994 has issued a direction to consider 30% of the Employees for regularization. Based on that, the services of some of the Section Writers were regularised in the Head Office as per the orders of the Tribunal. Though the order of the Tribunal clearly stated that 30% of the daily wage employees shall be regularised immediately, the said order was not implemented in letter and spirit by the respondents. However, the respondents have sent a proposal on 03.11.1998 to the Government for regularization of service of the remaining 118 Section Writers, which was pending till 18.10.2006.

2-3.In the meantime, the Government had issued an order in G.O.M.No.22, P & AR Department, dated 28.02.2006, stating that the services of the daily wage employees working in all Government Departments, those who have rendered 10 years of service as on 01.01.2006, shall be regularised by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned, subject to they being otherwise qualified for the post. Based on the said Government Order, the 2nd respondent submitted a proposal to the 1st respondent to create Supernumerary posts of Record Clerk in the time scale of pay of Rs.2610-60-3150-65-3540 so as to regularise the service of the daily wage employees working under the control of the Director of Government Examinations, Chennai, and accordingly, orders were issued sanctioning 92 supernumerary posts of Record Clerks, vide G.O.(Ms).No.203, School Education (vi) Department, dated 19.10.2006. Based on the above said Government Orders, the petitioner was appointed as Record Clerk

in one of the vacant places already available in the time scale of pay of Rs.2610-60-3150-65-3540 as per orders of the 3rd respondent with effect from 25.10.2006 and accordingly, she has joined duty as Record Clerk on the forenoon of 25.10.2006. The petitioner's services were regularised from the date of taking charge ie. from the forenoon of 25.10.2006 in the post of Record Clerk as per orders issued by the 3rd respondent on 29.02.2008. The period of probation of the petitioner has been declared as satisfactory, as per orders issued by the 3rd respondent.

2-4.It is further stated by the petitioner that in a similar case relating to the above said P.Paramasivam, who was also working along with the petitioner in the same department, this Court vide order dated 30.07.2010 made in W.P.No.11731/2006, issued directions to the respondents, as follows_

"Applying the said judgment to the facts of this case, the impugned order dated 13.06.2005 is set aside and the 1st respondent is directed to regularise the services of the petitioner from the date of completion of ten years of service in the department and sanction all benefits arising out of such regularization by counting 50% of the earlier service as full time Section Writer in accordance with Rule 11(2) of the Tamil Nadu Pension Rules, 1978. Necessary order is directed to be passed by the 1st respondent within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is ordered with the above direction. No costs."

Against the said order passed by the learned Single Judge, an Writ Appeal in W.A.No.602 of 2011 was filed by the respondents herein and the said Writ Appeal has been dismissed by Division Bench of this Court on 22.09.2011 and thereafter, the the said order of this Court was implemented by the respondents by passing the orders in G.O.(ID).No.363, School Education (VI) Department, dated 11.10.2012, regularising the services of the said persons on completion of 10 years of service and also terminal benefits were paid. Based on the said orders, the petitioner made representations to the respondents with a request to regularise her service from the date of completion of 10 years of service and to count her past service for the purpose of granting pension and consequently, to grant pension to her as per the Pension Rules at that time of retirement. There was no response to the said representations of the petitioner.

2-5.While so, the Government issued orders in G.O.(ID) No.286, School Education (GE1) Department, dated 19.07.2016, regularising the services of 26 Section Writers, based on the

orders of this Court in W.P.No.39645 of 2004, dated 26.03.2010, and W.A.No.2678/2010, dated 05.11.2014. According to the petitioner, she is entitled to the regularization of her service from 1998 onwards. Hence, the petitioner made a representation dated 27.09.2016 requesting the respondents to regularise her service also from the year 1998, as was done to her juniors by G.O.(ID)No.286, School Education (GE1) Department, dated 19.07.2016. Since the petitioner's representation was not considered, the petitioner has come forward with the present writ petition.

3.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader for the respondents and perused the materials available on record.

4.Considering the submissions made on either side, without expressing any opinion on the merits of the claim made by the petitioner, this Court directs the 3rd respondent to consider the representation dated 27.09.2016 given by the petitioner, in the light of the orders passed by this Court in W.P.No.39645 of 2004, dated 26.03.2010, and W.A.No.2678/2010, dated 05.11.2014 and also G.O.(ID)No.286, School Education (GE1) Department, dated 19.07.2016, and pass appropriate orders on merits in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of.
No costs.

sd/

Assistant Registrar

//True Copy//

Sub Assistant Registrar

[ssv]

To

1.The Secretary to Government,
State of Tamil Nadu
School Education Department,
Secretariat,
Chennai-600 009.

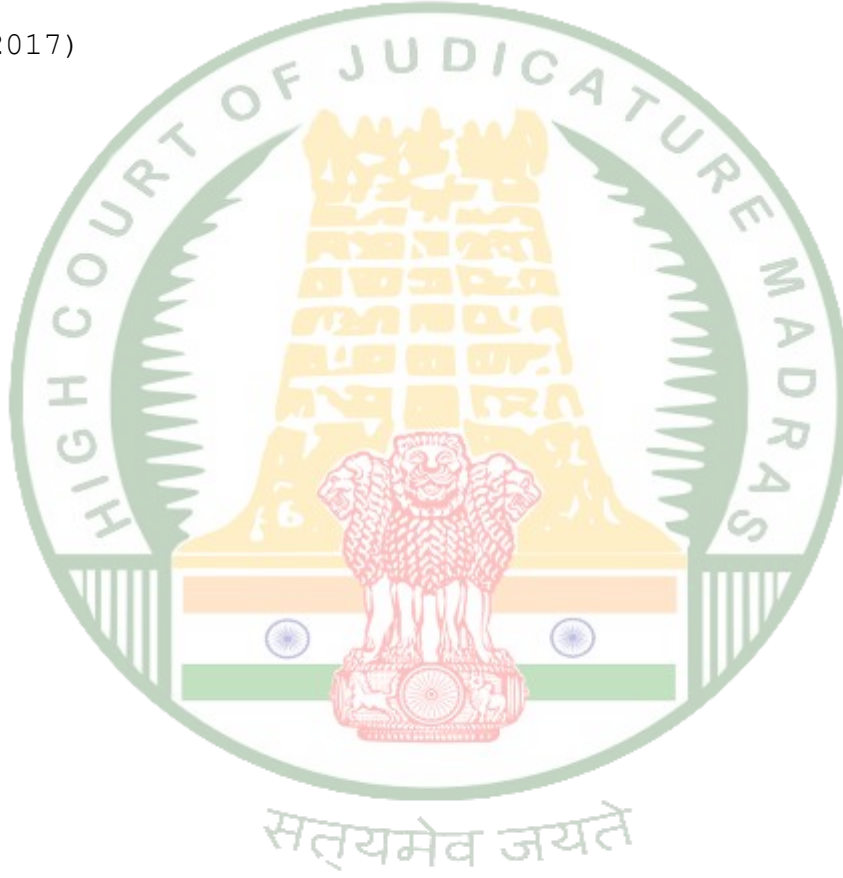
2.The Director of Government Examinations,
Directorate of Government Examinations,
College Road, Chennai-600 006.

3.The Regional Deputy Director of
Government Examinations,
Tirunelveli-1.

+1cc to Mr.G.Elanchezhiyan, Advocate SR.No.68570

W.P.No.39608 of 2016

RJ (CO)
GN (27/01/2017)



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