IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.41173 of 2016

B.Amirthalingam ... Petitioner

Vs

1.The Government of Tamil Nadu
Rep by the Secretary
Adi Dravidar and Tribal Welfare Department
Fort St. George Chennai 9

2.The Commissioner cum Director of Adi Dravidar
and Tribal Welfare Department
Chepauk Chennai 5

3.The District Adi Dravidar
and Tribal Welfare Officer
Cuddalore
Cuddalore District

4.The Special Tahsildar
Adi Drividar Welfare
Cuddalore
Cuddalore District ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the respondent to consider and pass order on the petitioner's representation dated 28.3.2016 in regard to retrospective regularization of service with effect from the date of initial appointment dated 7.11.2006.

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For Petitioner : Mr.V.Thirupathi

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

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ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition for a mandamus, directing the respondent to consider and pass orders on his representation dated 28.3.2016 with regard to retrospective regularization of service with effect from the date of initial appointment i.e., on 7.11.2006.

3. It is the case of the petitioner that by the proceedings of the second respondent dated 4.3.2009, he was appointed as Cook in the Adi Dravidar Welfare School Swami Sagajananda Government Boys Hostel, on a consolidated pay of Rs.850/- per month. Subsequently, the third respondent, by proceedings dated 4.12.2009, regularized his service with effect from 25.2.2011 and he was brought into regular scale of pay with effect from 25.2.2011. The nature of work for Cook either who were already working or now working like the petitioner in the consolidated sum is also same. Though the petitioner was appointed as Cook in the sanctioned post, he is not justified in granting consolidated pay of Rs.800/- per month. As per the decision of the Hon'ble Supreme Court, an appointment may be temporary or permanent, but when the nature of work being same, fixation of salary to a temporary employee by adopting a different method of payment from that of regular employee is violative of Article 14 of The Constitution of India. Further, since the petitioner's service was brought into regular scale of pay with effect from 25.2.2011, he is entitled for regularization of his service from the date of initial appointment. In this regard, he made representations dated 21.5.2013, 14.8.2013, 4.9.2013 and finally, on 28.3.2016 to the respondents requesting them to regularize his service from the date of his initial appointment and consequently, fix the time scale of pay with effect from 7.11.2006 and pay arrears of salary. However, the same was not considered so far. Hence, left with no other alternative, the petitioner has come up with the present writ petition for the relief set out earlier.

4. I have heard the learned counsel appearing for the petitioner and the learned Special Government Pleader, who has taken notice on behalf of the respondents.

5. Considering the facts and circumstances of the case and considering the submissions made on either side, without going into the merits of the claim projected by the petitioner, this Court directs the petitioner to send a fresh representation along with a copy of this order to the second respondent within

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a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the second respondent is directed to consider the said representation seeking regularization of his service from the date of his initial appointment and consequently, fix the time scale of pay with effect from 7.11.2006 and pay arrears of salary and pass appropriate orders, on merits and in accordance with law, within a period of six weeks thereafter. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sbi

To

1.The Secretary
Adi Dravidar and Tribal Welfare Department
Government of Tamil Nadu
Fort St. George Chennai 9

2.The Commissioner cum Director of Adi Dravidar
and Tribal Welfare Department
Chepauk Chennai 5

3.The District Adi Dravidar
and Tribal Welfare Officer
Cuddalore
Cuddalore District

4.The Special Tahsildar
Adi Drividar Welfare
Cuddalore
Cuddalore District

+1cc to Mr.V.Thirupathi, Advocate, S.R.No.68928
+1cc to the Government Pleader, S.R.No.68794

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W.P.No.41173 of 2016

MV(CO)
CA(28/12/2016)

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