



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2016

CORAM :

WEB COPY

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.21596 of 2016

Thayammal

... Petitioner

vs.

1) The Commissioner,
Fisheries Department,
DMS Complex, Teynampet,
Chennai-600 006.

2) The Joint Director,
Fisheries Department,
Tuticorin, Tuticorin District.

3) The Assistant Director,
Fisheries Department,
Tuticorin,
Tuticorin District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to fix time scale to the petitioner in the post of Sweeper with all consequential benefits by implementing the order of this Hon'ble Court in WP.No.4194/2010 dated 24.1.2012 by considering the representation of the petitioner dated 3.8.2016.

For Petitioner : Mr.R.Devaraj

For Respondents : Mr.M.Murugan, Government Advocate

ORDER

This Writ of Mandamus has been filed, seeking for a direction to the respondents, to fix time scale to the petitioner in the post of Sweeper with all consequential benefits, by implementing the order of this Hon'ble Court in WP.No.4194/2010, dated 24.1.2012, by considering the representation of the petitioner, dated 3.8.2016.



The petitioner was appointed as Part Time Sweeper by the 2nd respondent on 04.11.1996 on the sponsorship by the employment exchange; she is working in the said capacity till date; the Government have issued G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, to regularise the daily wage employees working in all Government departments, who have rendered 10 years of service as on 01.01.2006; the petitioner made representations to the respondents, seeking regularisation of her services; thereafter, vide proceedings in Na.Ka.No.3143/A3/2014, dated 30.07.2014, the 2nd respondent has informed the petitioner's son that a proposal seeking regularisation of the petitioner's services, has been forwarded to the Commissioner of Fisheries and action thereon is being taken. As no orders are passed on the said proposal, this writ petition has been filed.

3.The learned counsel for the petitioner would submit that the issue raised in this writ petition is squarely covered by the order of this Court made in W.P(MD)Nos.4193 and 4194 of 2010, dated 24.01.2012, whereunder, after considering some of the decisions with regard to the issue herein, this Court has ordered for regularisation of the petitioners therein, who were working as part time sweepers. It is relevant to extract below the paragraphs 7 to 10 of the said order:-

'7.The admitted facts in both the writ petitions are that, all the petitioners are appointed as part-time sweepers and are continuously working without any break in service all these years. It is also the fact that their names were duly sponsored by the Employment Exchange and their appointments were also made by the competent authority. When G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 contemplates that the daily wage employees working in all Government Departments who have rendered 10 years of service as on 01.01.2006 are entitled for regularisation of their services, the reasoning assigned in the impugned orders goes contra to the said G.O.Ms.No.22. Moreover, the learned counsel for the petitioners has brought to my notice about similar orders passed by this Court in several writ petitions, viz. in W.P.(MD) Nos.6700 to 6705 of 2008, etc. batch dated 04.12.2008. In the said order, the learned Judge had dealt with the issue in detail and observed as under:

"10.However, without noticing the said G.O.Ms.No.528, G.O.Ms.No.22 has been issued by the Government, wherein the Government has directed absorption of all the daily wagers, who have been working for more than 10 years in various Government Departments. When a question arose whether the said G.O.Ms.No.22 would take into its ambit the part-time employees appointed through Employment Exchange also or not, the Government has issued a clarification in the letter Na.Ka.No.34799/R.1/06-4, dated 26.04.2007, wherein the Government has stated that part-time employees, who were paid



out of contingent fund, are not eligible for absorption as per G.O.Ms.No.22. The said G.O.Ms.No.22 has not superseded the earlier G.O.Ms.No.528. Therefore, both the G.Os. are to be read conjointly, along with the clarifications issued by the Government in the letters stated supra. If that is done, what emerges is that those part-time employees, who have been working for 10 years and more in various Government Departments, are eligible for absorption on time scale of pay. That is the view taken by this court in W.P.(MD)No.11707 of 2006, dated 22.12.2006. Further, when an identical situation arose out of a case under G.O.Ms.No. 528, this Court has issued a direction to the authorities to regularise the services of all the part-time workers in time scale of pay by order dated 22.12.2006. The writ appeal filed in W.A.(MD)No.391/2007 against the said order was also dismissed by a Division Bench of this Court on 25.10.2007. Further, when an appointment made as per G.O.Ms.No.528 was later on withdrawn on the ground that the appointments of the petitioners therein were made subsequent to the said G.O. 528, this Court by Order dated 01.02.2006 in W.P.No.32446/2005, set aside the order, whereby confirming the regularisation."

It is further seen that the very same learned Judge had passed another order in another set of writ petitions in respect of the same issue, in W.P.(MD)Nos.872 of 2008 etc.batch, dated 04.12.2008 and observed that even the part-time employees or the daily wagers are entitled for regularisation as per G.O.Ms.No.528, Personnel and Administrative Reforms (Per.F) Department, dated 10.10.1988 and G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. The said order made by the learned Judge was taken on appeal before the Hon'ble Division Bench of this Court in W.A.(MD)Nos.69 and 70 of 2010 and the Hon'ble Division Bench in the reported judgment in the matter of Commissioner and Director, Animal Husbandry and Veterinary Services, Chennai and others vs. V.Karunakaran and another, reported in 2011 (2) CWC 80, has observed as follows:

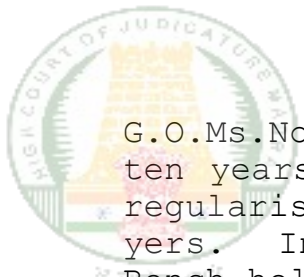
"3.The case of the respondents/writ petitioners is that they have been working as part-time employees for more than ten years in the appellants Department and based on the Government Order in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, they are entitled for regularisation in time scale of pay.

4.Similar issues were considered by this Court in the following decisions:

(i) W.P.(MD)No.11707 of 2006 dated 22.12.2006, confirmed in W.A.(MD)No.391 of 2007 dated 25.10.2007 and the said order was already implemented by the department on 30.11.2007.

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) W.P.No.18126 of 2008 dated 29.07.2008, confirmed in W.A.No.230 of 2009 dated 03.08.2009, taking note of



G.O.Ms.Nos.22, dated 28.02.2006, and held that on completion of ten years of service, services of a part-time employee shall be regularised by the department from the date of completion of ten years. In paragraphs 7 to 9 of the said judgment, the Division Bench held as follows:

"7.The main submission of the learned Government Advocate is that the proposals for regularisation of the part time employees are pending before the Government. When the proposals are pending under consideration before the Government, there is no need to give any direction to the Government to regularise the services of the respondent.

8.We do not find any force in the said submission made by the learned Government Advocate. On a perusal of the entire materials, it could be seen that the respondent was working for the past 13 years as a part time employee in a Higher Secondary School. Para 3 of G.O.Ms.No.2 P&AR(F) Department, dated 28.2.2006, reads as follows:

"3.The Departments of Secretariat may therefore be directed to pursue action to regularise the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 1.4.2006."

9.Though in the letter dated 20.02.1995 it has been stated that the regularisation shall not apply to the appointment on daily wages employees, if any, made on or after 01.03.1993, in G.O.Ms.No.22 P&AR(F) Department, dated 28.02.2006, it was made clear by the Government to regularise the part time employees, who had completed 10 years of service. In fact, the services of some of the part time employees were regularised pursuant to the orders passed by this Court in the earlier writ petitions. Under those circumstances, we do not find any justification in delaying the regularisation of the services of the respondent by saying that the proposal for regularisation of part time employees is pending for consideration before the Government. On that ground, the respondent cannot be made to wait for a long period, especially when he had completed 13 years of service, which is more than that of the required service mentioned in G.O.Ms.No.22 dated 28.02.2006. Under such circumstances, we do not find any infirmity in the directions given by the learned single Judge. Hence, we are not inclined to entertain this appeal.

Accordingly, this appeal fails and is dismissed. No costs. Consequently, connected M.Ps are closed. A copy of the order shall be communicated to the State Government (Secretary), School Education Department, to issue the necessary orders in compliance with the order passed by the learned single Judge, within a period of two months from the date of receipt of a copy of this order."

The special leave petition in SLP No.1972/2009 filed against the said judgment was dismissed by the Hon'ble Supreme Court during March, 2010. The said order was already implemented.



wherein the Division Bench held thus.

"3... We have also noted that even on merits, the first appellant Director of School Education does not have any case. The respondent herein was employed as a Part-Time Sweeper in a Government Girls High School and her appointment was approved by the Inspector of Girls School, Kancheepuram, way back on 19.12.1999. The respondent had prayed for regularization of her services by filing the writ petition. The learned single Judge has noted that there is a government order in G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.2.2006, which requires the Government Departments to regularize daily wage employees who have rendered ten years of service as on 1.1.2006. The respondent herein fully satisfied that requirement and had, therefore, prayed her regularization right from the initial date of her appointment. The learned single Judge has granted regularisation only after her completion of ten years of service, in tune with the above government order. This being so, in fact on merits, the first appellant-Director of School Education has no reason to have any grievance with the order passed by the learned single Judge, apart from the fact that he does not have any case."

The said order was also implemented by the department.

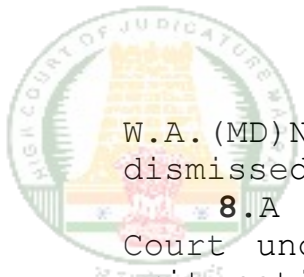
(iv) Common order in W.P(MD)No.9726 and 9727 of 2006 dated 24.06.2008, confirmed in W.A.(MD)No.151 and 225 of 2009, dated 23.06.2009. The special leave petition filed against the said order was dismissed by the Supreme Court on 11.02.2010. The said order was also implemented.

(v) Order in W.P.No.20662 of 2010 dated 15.09.2010 implemented by the DEO, Perambalur on 04.11.2010.

(vi) Order in W.P.No.23080 of 2008, dated 23.12.2008 confirmed in Writ Appeal No. 2414 of 2010, dated 26.11.2010.

5.The learned Special Government Pleader appearing for the appellants submitted that since the issue involved in these writ appeals is covered by the decisions cited supra, if the respondents herein had completed 10 years of service, they are entitled to get their services regularized in accordance with the Government Order issued in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 29.02.2006, and the appellants may be permitted to verify the service details of the respondents.

6.In view of the said submission, the Writ Appeals are dismissed with a direction to the appellants to regularize the services of the respondents with time scale of pay from the date of their completion of ten years of service, after verifying their service particulars. The regularization orders are directed to be passed by appellants within a period of four weeks from the date of receipt of a copy of this order. The arrears of pay, payable to the appellants pursuant to such regularization shall be paid within four weeks therefrom. No costs. Connected MP.(MD)No.1 of 2010 in W.A.(MD)No.69/2010 and



W.A.(MD)No.2 of 2010 in W.A.(MD)No.70 of 2010 are also dismissed."

8.A reading of the above said decisions rendered by this Court undoubtedly show that the issue involved in the present writ petitions are also covered by the above decisions made by this Court and consequently, the petitioners are entitled to succeed in these writ petitions.

9.Though the learned Additional Government Pleader made an attempt to argue that the petitioners' names were not sponsored by the Employment Exchange, there is no such allegation made in the counter affidavit filed by the respondents and on the other hand, the learned counsel for the petitioners has categorically stated that all the petitioners' names were duly sponsored by the Employment Exchange and has also produced the communications received from the Employment Exchange to show that these petitioners' names were registered in the Employment Exchange. In any event, when that is not the reason assigned in the impugned orders, the learned Additional Government Pleader is not correct in contending that the petitioners' names were not duly sponsored by the Employment Exchange.

10.Considering the above facts and circumstances and also the decisions rendered in similar cases, the impugned orders in both the writ petitions are liable to be set aside. Accordingly, the writ petitions are allowed and the respondents are directed to issue suitable orders of regularising the services of the petitioners in the time scale of pay in accordance with G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 based on their seniority from the date of their initial appointment, provided that they satisfy the other legal requirements, within a period of four weeks from the date of receipt of a copy of this order. Consequently, M.P. (MD)Nos.2 and 3 of 2010 in W.P.(MD)No.4193 of 2010 and M.P.(MD) No.1 of 2010 in W.P.(MD)No.4194 of 2010 are closed. No costs.'

4.The learned Government Advocate appearing for the respondents would submit that the 1st respondent would pass appropriate order on the proposal sent by the 2nd respondent within a time frame.

4.Recording the above submission, this Writ Petition is disposed of, directing the 1st respondent to pass orders on the proposal sent by the 2nd respondent, as informed by him in his proceedings in Na.Ka.No.3143/A3/2014, dated 30.07.2014, in the light of the order passed by this Court in W.P(MD)Nos.4193 and 4194 of 2010, dated 24.01.2012, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar



1) The Commissioner,
Fisheries Department,
DMS Complex, Teynampet,
Chennai-600 006.

2) The Joint Director,
Fisheries Department,
Tuticorin, Tuticorin District.

3) The Assistant Director,
Fisheries Department,
Tuticorin,
Tuticorin District.

+ 1 CC TO Mr.R.DEVARAJ, ADVOCATE IN SR No. 68362

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 68323

NBI

TE/PV : 29/11/2016 : 2P/6C

W.P(MD)No.21596 of 2016
11.11.2016