



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2016

CORAM

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WP(MD)No.5213 of 2013

I.Chinnathai

.. Petitioner

Vs.

1. The Director of School Education,
Chennai.

2. The District Educational Officer,
Tirunelveli District.

3. The State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Secretariat, Chennai.

..Respondents

(R3 Impleaded as party of the respondent
vide Court order dated 08.04.2013
in MP.No.1 of 2013)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to regularize the petitioner service in time scale and confer all consequential benefits.

For Petitioner : Mr.V.Panneerselvam
For C.S.Associates

For Respondents : Mr.K.Guru
Additional Government Pleader

O R D E R

The case of the petitioner is that she has studied upto 5th standard because of her poverty, she could not continue her study. The petitioner has registered her name in the employment exchange and thereafter, her name was sponsored by the employment exchange for the post of Sweeper on consolidated pay. Accordingly, the petitioner was called for certificate verification on 02.08.1988 and thereafter she was appointed as Sweeper on the consolidated pay and posted at Government Higher Secondary School, Karivalamvantha Nallur, Sankarankovil Taluk, Tirunelveli District. At the time of appointment of the petitioner the consolidated pay was fixed as Rs.70/- per month and the petitioner was continuously working as part time Sweeper from 03.08.1988.



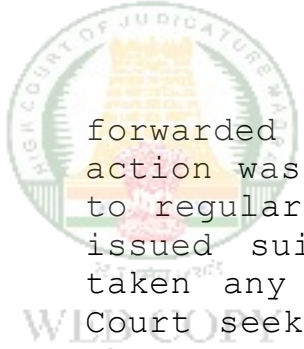
2.The petitioner also further states that the Government has issued orders in G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 10.10.1988 directing to appoint in the regular time scale of pay with reference to age and educational qualification of course in any one of the suitable posts in the Tamil Nadu Basic Services. On the basis of the above Government Order, when the petitioner was anxiously waiting for appointment, the Government imposed ban of appointment. Though the ban was imposed, it was clarified that it will not apply to the basic service posts, such as Gardener, Sweeper and Watchman. Therefore, the said G.O. is not applicable to the petitioner's case, since she was working as a Sweeper.

3.The petitioner also states that the Government also issued another order in G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006 directing the authority concerned to regularize the persons, who are working in the respective Department for more than 10 years, but even after all these years, the petitioner was not regularised in her service.

4.The petitioner also states that under the similar circumstances in respect of similarly placed persons like the petitioner, the Tamil Nadu Administrative Tribunal was issued direction and based on that the seniority list was prepared and when they were about to be appointed, the ban was imposed. After lifting of the ban, when they are not appointed again they approached this Court and suitable direction was issued by this Court.

5.Though the District Educational Officer, Tirunelveli has prepared a seniority list on 06.08.1990 to regularize the service of the part time employees and in that list the petitioner's name was placed in Sl.No.13. Thereafter, the District Educational Officer, Tirunelveli prepared a seniority list to give regular time scale from 01.12.2000 and in that seniority list the petitioner's name was in Sl.No.9. Therefore, the persons who were all include in the seniority list, the petitioner was approached this Court and filed a writ petition in WP.No.11707 of 2006 to include her name in the seniority list. The said writ petition was disposed on 22.12.2006 and as against the said order, the Government has filed Writ Appeal in W.A.No.391 of 2007, which was dismissed by the Hon'ble Division Bench of this Court. Thereafter, the said order passed in the writ petition in WP.No.11707 of 2006, the Writ Appeal in W.A.No.391 of 2007 was implicated.

6.Pursuant to the above order, this petitioner has sent a service petition to the Government dated 25.04.2008 to regularise the petitioner's service through proper channel. The Head Master of the School has



forwarded the same to the 2nd respondent on 27.03.2008. But no action was taken by the respondents, since there is no impediment to regularize the petitioner's service. Unless this Hon'ble Court issued suitable direction, the respondents authority has not taken any action. Therefore, the petitioner has approached this Court seeking a direction to issue a writ of Mandamus, directing the respondents to regularize the petitioner's service with time scale and also confer all consequential benefits.

7.A counter affidavit has been filed by the 2nd respondent / District Educational Officer, Tirunelveli District, in which he denied all the allegations stated in the affidavit.

8.The 2nd respondent in her counter states that the petitioner has working purely as a Part-time Sweeper/Scavenger on consolidated pay in the Government Higher Secondary School, Karivalamvandanallur, and the petitioner's work is confined to a few hours in a day and the part-time work discharged by her has no service rules at all. The Government order was passed in G.O.Ms.No.22 Personnel and Administrative Reforms Department, dated 28.02.2006 pertains to the daily wages employees and not to part-time workers. Daily wages employees shall have work throughout the day whereas the Part-time employees shall have a few hours of work in a working day who are paid only consolidated pay. Further, the work of all Group "D" categories like Sweeper, Scavenger, Cleaner and Gardener shall have to be outsourced and entrusted on contract basis as per G.O.Ms.No.49 Personnel and Administrative Reforms (F) Department, dated 14.06.2009. Therefore, there is no question of appointing the petitioner who is a part-time worker in a regular time scale of pay as the work that she is presently discharging for a few hours in a day has to be outsourced.

9.The 2nd respondent also states that consequent on the issue of G.O.Ms.No.49 Personnel and Administrative Reforms (F) Department, dated 14.06.2009, the entire scenario has changed leaving no scope for the petitioner to be appointed in a regular time scale of pay as the work was done by her has to be outsourced and also has to be entrusted on contract basis. The existing consolidated wage employees are to be given preference in employment by the Contractor to protect the interest of such persons. Hence, the relief sought for in the writ petition is not permissible and the respondents prayed for dismissal of the writ petition.

10.I heard Mr.V.Panneerselvam, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents.



11. It is admitted fact that the petitioner was appointed through employment exchange by the 2nd respondent and posted the petitioner on 02.08.1988 at Government Higher Secondary School, Karivalamvantha Nallur, Sankarankovil Taluk, Tirunelveli District and she is continuously working till the filing of the writ petition.

12. Similarly placed persons were approached this Court and filed a Writ petition in WP(MD)No.11707 of 2006 and this Court by order dated 22.12.2006 has passed the following orders:

"4. The case of the petitioners is that the petitioners were placed in the list of seniority for regular appointment in class IV by the District Educational Officer, in his proceedings dated 22.02.2001 and all the petitioners name are found in the list. On 23.02.2001, the respondent has passed an order, granting full time basis appointment only to three persons and ordered that the balance 14 persons' claim will be considered whenever vacancy arises in the post of regular time scale.

5. The learned counsel for the petitioners submits that thereafter several vacancies arose and due to the ban order issued by the Government in G.O.M.S.No.212 dated 22.11.2001, the petitioners were not appointed, in spite of availability of vacancies. The learned counsel for the petitioners further submits that since the ban order issued by the Government has been withdrawn by G.O.M.S.No.14, Personnel & Administrative Reforms Department, dated 07.02.2006, petitioners may be appointed in the said vacancies as per the order of the District Educational Officer, Tenkasi.

6. In view of the order passed by the District Educational Officer, dated 23.02.2001 and petitioners' name having been found in the list, the respondent is directed to appoint the petitioners in the regular time scale in the existing vacancies of Class IV of Last Grade Government Servants in Tirunelveli Education District. This exercise shall be made by the respondent, within a period of four weeks from the date of receipt of a copy of this order."

13. Challenging the said order, the Government has filed the Writ Appeal in WA(MD)No.391 of 2007 before this Court.

14. The Hon'ble Division Bench of this Court by order dated 25.10.2007 has passed the following orders:



"5. We have heard the learned counsel on either side. In view of the Government Order mentioned supra, the respondents are eligible for getting regularization in their service. It is not disputed that they have rendered service for over 10 years as on 01.01.2006 and all the respondents have completed more than 10 years of service so as to get eligibility under the Government Order. There is nothing on record to show that any of the respondents suffer from any disqualification to hold the post.

6. We have also gone through the order passed by the learned Single Judge of this Court, which does not warrant any interference. The fact remains that they were already selected by the concerned authorities and at the time of selection, their names were sponsored by the employment exchange and they are continuing as wage earners.

7. Since we do not find any disqualification on their part, it is just and necessary to direct the appellant herein to regularize the service of the respondents. The appellant is directed to comply with the direction of this Court, within a period of four weeks from the date of receipt of a copy of this order.

8. In these circumstances, the order passed by the learned Single Judge of this Court dated 22.12.2006 in W.P. (MD) No. 11707 of 2006 deserves to be confirmed."

15. The Government of Tamilnadu has passed G.O. Ms. No. 22 Personnel & Administrative Reforms Department, dated 28.02.2006 in which directs the concerned authorities to regularize the daily wage employees working in all the Government Departments. The operative portion of the Government Order viz., paragraph Nos. 2 and 3, reads as follows:

"2. Based on the announcement made by the Hon'ble Chief Minister on 08.02.2006, the Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 01.01.2006 be regularized 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 their being otherwise qualified for the post.

3. The Departments of Secretariat may therefore, be



01.01.2006 as ordered in para 2 above, in consultation with the respective Heads of Departments wherever necessary. In Special cases whieing relaxation of rules is required, proposal shall be sent to Government."

16. When the similarly placed persons were approached this Court and the Hon'ble Division Bench also confirmed the order of the Hon'ble Single Judge of this Court that the like the petitioner are entitled for regularization and time scale pay that cannot be omitted in the petitioner's case, since the petitioner was appointed only through the employment exchange in the sanctioned post and not appointed in a back door steps and this Court in W.A.(MD)No.391 of 2007 also considered and directing the respondents to regularize the service of the petitioners and the same was applied in the petitioner's case.

17. Apart from this, it is not disputed that the petitioner has rendered service for more than 10 years as on 01.01.2006, since the petitioner was appointed on 02.08.1988 and therefore considering the 10 years lengthy service, the Hon'ble Division Bench considered their case directing the authority to regularize the petitioners' in the said writ petition service. Therefore, the petitioner is entitled for the benefit of the order of the writ petition and also in the writ appeal, since the petitioner is working from 02.08.1988 and her appointment was only through employment exchange. I cannot defer with the orders passed by this Court in the Writ Petition and Writ Appeal and the benefit in the said order also to be given to this petitioner. Hence, the writ petition is liable to be allowed as prayed for.

18. In the result:

(a) this writ petition is allowed;

(b) the respondents are directed to regularize the petitioner's service in time scale and confer all the consequential benefits to the petitioner;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar



To

1. The Director of School Education,
Chennai.

2. The District Educational Officer,
Tirunelveli District.

3. The Secretary to Government,
School Education Department,
Secretariat, Chennai.

+1cc to M/s. C.S.Associates, Sr.No.58078

+1cc to The Spl.Government Pleader Sr.No.58538

VSA/SKN

VB/SKN/RSK/SAR2/20.11.2017/7P/6C

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