



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.7003 of 2013

K.Thiyagarajan

... Petitioner

vs.

1)The Special Commissioner & Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Nungambakkam High Road,
Chennai-600 034.

2)The Joint Commissioner,
Hindu Religious and Charitable
Endowments (Admn) Department,
Madurai.

3)The Executive Officer,
Arulmigu Anjaneyar Thirukoil,
Krishnarayar Theppakulam Street,
Madurai-625 001.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent in Na.Ka.No.10165/2013/G4, dated 27.03.2013, quash the same and direct the 1st respondent to regularise the petitioner's service as a permanent watchman in the 3rd respondent office atleast with effect from 24.03.1999.

For Petitioner	: Mr.Saravanan for Mr.N.C.Ashok Kumar
For R1 & R2	: Mr.Aayiram K.Selvakumar, Government Advocate
For R3	: Mr.S.Manohar

ORDER

Mr.S.Manohar, learned counsel appearing for the 3rd respondent temple placed two objections. Firstly, when the petitioner has not produced any Birth Certificate or Birth extract so as to fix his date of superannuation, it is not possible to pass an order of regularisation. Secondly, it was contended that minimum educational qualification for the post of Watchman is, 8th Standard that also the petitioner has failed to possess. For these two reasons, the proposal seeking regularisation of his services sent by the Joint Commissioner, HR & CE, Madurai, could not be acceded to. These two



contentions have been properly considered in paragraphs 6 and 7 of the order made in W.P(MD)No.13659 of 2011 dated 05.11.2012, which are given as under:-

''6.Mr.B.Pugalenthi, learned Special Government Pleader appearing for respondents 1 and 2 also relying upon his detailed counter filed submitted that in the light of the order passed by this Court in W.P.No.2407 of 2003 dated 04.08.2003, important particulars were called for from the third respondent temple, including the copy of the service roll available in his service register and the age certificate. On verification of the said report, the first respondent has come to know that the petitioner does not even possess the minimum educational qualification of 8th standard, which is essential for the post of Watchman. Therefore, for the simple reason that the petitioner till date has not produced any reliable document to show his date of birth, the first respondent was not in a position to consider the claim of the petitioner and the recommendations made by the second respondent along with the order passed by this Court. It was also finally submitted that even if the subordinate officers have sent proposals for regularisation to any staffs working in the third respondent temple, it is the final decision of the first respondent either to approve the said proposal or reject it depending upon the factual present circumstances.

7.The third respondent temple is placed in a precarious financial condition, hence it is not feasible to consider the case of the petitioner for regularisation. I do not agree with the submission made by the learned counsel appearing for the respondents. It is an admitted fact by both sides that the petitioner was appointed in the year 1999 as a Watchman and he has been continuously working till now. It is also not in dispute that the second respondent, the Joint commissioner of Hindu Religious and Charitable Endowments Department has repeatedly made, not only one or two, but three recommendations on various dates 24.03.1999, 30.05.2000 and 12.12.2001 for his permanent appointment. In view of these recommendations made by the second respondent, this Court, also on earlier occasion while considering the case of the petitioner by passing an order dated 04.08.2003, directed the first respondent to consider the case of regularisation of the petitioner to the post of Watchman in the third respondent temple.''

2.Mr.Aayiram K.Selvakumar, learned Government Advocate appearing for the respondents 1 and 2 would submit that the 1st respondent/Special Commissioner & Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department, Chennai, in the impugned order has indicated the impediment in passing the order of regularisation on the ground that the petitioner has not produced any document showing his date of birth, therefore, the said order cannot be found fault with.



3.The above contention of the learned Government Advocate also deserves to be rejected. The reason is, the petitioner was appointed as a Watchman 17 years ago pursuant to the resolution passed by the 3rd respondent dated 18.03.1998, since then, he has been continuously working and the respondents also have been paying salary without any hesitation. When the question of regularisation was raised by the petitioner, even at that point of time, considering the continuous service rendered by the petitioner, the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai, agreeing with his representation, has sent a proposal/representation to regularise his services.

4.No doubt, the petitioner is not in a position to place on record the age proof enabling the 3rd respondent to pass the order of regularisation, but this aspect also in my earlier order has been considered. After considering the grievance of both sides, I have come to the conclusion that the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai, has made repeated recommendation not only one or two occasions but on three occasions namely, 24.03.1999, 30.05.2000 and 12.12.2001 respectively, for the petitioner's permanent appointment, therefore, when the recommendation has been made by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai, on the aforementioned three occasions, the objection raised by the respondents that there is no proof for his date of birth, does not appear to be valid, in the light of the order dated 01.03.2016 issued by the 3rd respondent stating that as per his Service Register, his date of retirement would be on 31.03.2016. Further, in view of the petitioner's continuous employment in the 3rd respondent temple, the objection raised by the Commissioner, Hindu Religious and Charitable Endowment Board, that he has not passed the qualification of 8th Standard, is hereby overruled. Therefore, taking into account his date of retirement as 31.03.2016, this Court is of the view that the petitioner is deemed to have retired on reaching the age of superannuation namely, 60 years on 31.03.2016.

5.It may be mentioned herein that while giving a direction in my earlier order, the 1st respondent was directed to take up the case of the petitioner and pass appropriate order atleast from the date of first recommendation of the 2nd respondent for regularisation namely, 24.03.1999, therefore, the said date shall be taken for the purpose of regularisation. Accordingly, this Court is inclined to pass an order holding that the petitioner is entitled to get regularisation from 24.03.1999.

6.As I mentioned above, in view of the continuous employment of the petitioner for the past 17 years, the respondents shall not refuse to give him the benefit of regularisation on the ground that he is not having the educational qualification. In view of the above, this Court is also constrained to hold that the petitioner can be exempted from having the educational qualification, hence the 1st respondent is directed to pass an order of regularisation by taking into account the date of first recommendation of the 2nd



respondent for regularisation of the petitioner namely, 24.03.1999 and disburse the retiral benefits within 10 weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To

1)The Special Commissioner & Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Nungambakkam High Road,
Chennai-600 034.

2)The Joint Commissioner,
Hindu Religious and Charitable
Endowments (Admn) Department,
Madurai.

3)The Executive Officer,
Arulmigu Anjaneyar Thirukoil,
Krishnarayar Theppakulam Street,
Madurai-625 001.

+1cc to Mr.M.Saravanan, Advocate Sr.No.38756/16
+1cc to Mr.S.Manohar, Advocate SR.No.38976/16
+1cc to special Government Pleader Sr.No.38762

nbi

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