

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2017

CORAM :

The Hon'ble MR.JUSTICE HULUVADI G.RAMESH

AND

The Hon'ble MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.538 of 2015

and

M.P.No.1 of 2015

1. The Secretary to Government,
Revenue Department,
Fort St. George,
Chennai - 600 009.
 2. The Commissioner of Revenue Administration,
Chepauk,
Chennai - 5.
 3. The District Collector,
Collectorate,
Salem - 636 001.
 4. The Revenue Divisional Officer,
Salem,
Salem District.
 5. The Tahsildar,
Salem Collectorate,
Salem District.
- ... Appellants/Respondents

-vs-

P.Chandrasekaran

... Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent against the order dated 21.10.2013 made in W.P.No.28394 of 2013 on the file of this Court.

W.P.No.28394 of 2013:- Writ Petition filed Under Article 226 of the Constitution of India praying for the issuance or a Writ or Certiorarified Mandamus Calling for the records in pursuant to the G.O.(Ms) No.322 Revenue (Service-8(2) Department dated 21.08.2013 passed by the 1st respondent to regularize the petitioners services with effect from 28.01.1993 in the cadre of

masalchi and also direct the respondents to pay the arrears of pay payable to the petitioner in pursuant to the regularization.

For Appellants .. Mr.P.S.Sivashanmugasundaram
Spl. Government Pleader

For Respondent .. Mr.M.Elango

JUDGMENT

(Judgment of the Court was made by Huluvadi G.Ramesh, J.)

Being aggrieved by the order of the learned Single Judge in W.P.No.28394 of 2013, dated 21.10.2013, quashing G.O.(Ms) No.322, dated 21.08.2013 and thereby directing the appellants to regularise the service of the respondent from 27.1.1993, the appellants have preferred this appeal.

2. Heard Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader for the appellants and Mr.M.Elango, learned counsel for the respondent.

3. Brief facts are that the respondent was appointed as Masalchi in the fifth appellant office on 28.1.1983 on daily wage basis. On 8.1.1999, the third appellant sent a proposal to regularise the service of the respondent and six other similarly placed persons to the first appellant. Out of seven persons, the first appellant regularised the service of two persons. Thereafter, third appellant requested the second appellant to regularise the service of the respondent. The second appellant also requested the first appellant to regularise the service of the respondent. Since no action was taken, the respondent filed W.P.No.21090 of 2011 seeking direction to the respondents therein to regularise the service of the respondent with effect from 28.1.1993 in the cadre of Masalchi and also to pay the arrears in pursuance of the regularization. By order dated 5.6.2012, the said writ petition was disposed of by directing the first respondent therein to pass orders on the proposal within a period of eight weeks from the date of receipt of a copy of the order. Thereafter, the respondent's service was regularised by the first appellant on 21.8.2013 with effect from 28.2.2006 vide G.O.(Ms) No.322, Revenue (Service-8(2) Department. Challenging the same, the respondent herein has filed W.P.No.28394 of 2013.

4. By the impugned order, the learned Single Judge observed that the respondent was appointed initially during January, 1983 and as on 27.1.1993, he had completed ten years of service. The learned Single Judge also observed that regularisation with effect from 28.2.2006 given by the first appellant is contrary

to the terms of completion of ten years of service and thus set aside the order dated 21.8.2013, which regularizes the service of the respondent from 28.02.2006 and ordered regularization of service with effect from 27.01.1993, the date of completion of ten years of service. Aggrieved over the said finding, the appellants have preferred this appeal.

5. Learned Special Government Pleader submitted that the learned Single Judge erred in considering the spirit of G.O.(Ms) No.22, dated 28.2.2006, wherein it has been clearly stated that those who were in daily wages as on 01.01.2006 will be regularised and not on the date of completion of ten years of service from the date of joining. He has also drawn our attention to the subsequent G.O.(Ms) No.74 dated 27.6.2013, wherein it has been stated that G.O.Ms.No.22 dated 28.2.2006 shall take effect from 01.01.2006 only and not retrospectively.

6. Learned counsel for the respondent/employee submitted that as per G.O.(Ms) No.22, dated 28.2.2006, after completion of ten years of service, the service of the respondent has to be regularized and that the learned Single Judge has rightly quashed G.O.(Ms) No.322, dated 21.8.2013 and directed the appellants to regularize the respondent's service on completion of ten years of service i.e. 27.1.1993.

7. G.O.(Ms.) No.22, Personnel and Administrative Reforms (F) Department, dated 28.2.2006 prescribes for regularization of service of daily wage employees working in all Government departments, who have rendered ten years of service as on 01.1.2006 in accordance with the service conditions prescribed for the post concerned. Subsequently on 27.6.2013, noticing certain deviations in regularization ordered invoking G.O.(Ms) No.22, the Government issued G.O.(Ms) No.74, whereby in supersession of the orders issued in G.O.(Ms) No.22, a revised order was issued on regularization of services of full time daily wage employees working in all Government departments and the relevant portion reads thus:-

" 6.In supersession of the orders issued in the Government Order read above, the Government now issue revised orders on regularization of services of full time daily wage employees working in all Government departments as detailed below:

(i) This order shall be deemed to have been come into force with retrospective effect from 01.01.2006;

(ii) The services of the full time daily wage employees who were initially appointed on full time basis in consultation with the

Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and completed 10 (ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength;

(iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed;

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23(a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services;

(v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularization;

(vi) The Part-time and casual employees are not entitled to the concession referred to at para (ii) above;

....."

8. The Apex Court in State of Rajasthan and others v. Daya Lal and others, reported in AIR 2011 SC 1193 has considered the scope of regularization of part-time and adhoc employees. In paragraph 8 (ii), it has been held as under:-

"Mere continuation of service by a temporary or adhoc or daily wage employee under cover of some interim orders of the Court, would not confer upon him any right to be absorbed into service as such service would be litigious employment. Even temporary, adhoc or daily wages service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right."

9. When a policy decision has been taken by the State Government to protect the interest of the employees working on temporary/adhoc/daily wage basis, service regularization cannot go back to the stage of initial appointment. The employees

working on temporary/adhoc/daily wage basis cannot seek benefit of regularization based on their initial appointment. As observed by the Apex Court in the case cited supra, sympathy and sentiment cannot be the ground for passing any order for regularization in the absence of any legal right.

10. At this stage it is pertinent to point that it is the wisdom of the Government to grant regularization from any date as per the decision in K.Madalaimuthu and other v. State of Tamil Nadu and others, reported in (2006) 6 SCC 558. Only when the date fixed by the Government giving effect to regularization is found to be arbitrary and violative of Article 14 of the Constitution of India, it can be said that the same is an illegal or unconstitutional one. As such, there is no discrimination and also the same is not against the tenets of Article 14 and 16 of the Constitution of India.

11. A Full Bench of this Court in S.Dhanasekaran & 24 others v. Government of Tamil Nadu, rep. by its Secretary, Department of Municipal Administration and Water Supply, Fort St. George, Chennai and others, reported in 2013 (6) CTC 593, observed that the wisdom of the Government to order regularization from the date of passing of the Government Order regularizing service is not arbitrary.

12. A Division Bench of this Court in State of Tamil Nadu and others v. A.Velayutham, reported in 2015 Supreme (Mad) 1763 held as follows:-

"46. Applying the ratio laid down by the Full Bench decision of this Court reported in 2013 (6) CTC 593 (cited supra), this Court comes to an inescapable and inevitable conclusion that the impugned order in G.O.(Ms)No.187, Labour and Employment (E2) Department, dated 17.09.2010 insofar as it relates to the Respondent/Petitioner appointing him as Regular Watchman in the time scale of pay from the date of issuance of the order is a just, valid and proper one, in the eye of Law and the contrary view taken by the Writ Court, in allowing the Writ Petition by setting aside the impugned order in G.O.(Ms).No.187, Labour and Employment (E2) Department, dated 17.09.2010 of the 1st Appellant/1st Respondent insofar as it restricts the regularisation of the Respondent/Petitioner's services from the date of order, is not a tenable one, in the eye of Law. As such, this Court interferes with the said order dated 02.07.2012 in W.P.No.11640 of 2012 and sets aside the same. Consequently, the Writ Appeal succeeds."

13. In the present case, the respondent was appointed on 28.1.1983 on daily wage basis and his ten years of service completed on 27.1.1993. G.O.(Ms) No.22 is dated 28.2.2006 and clarificatory G.O.(Ms) No.74 is dated 27.6.2013. The impugned G.O.(Ms) No.322 which regularizes the service of the respondent came to be passed on 21.8.2013 solely based on G.O.(Ms) No.74, dated 27.6.2013 and the learned Single Judge's order is dated 21.10.2013. Prior to the order of the learned Single Judge, G.O.(Ms) No.74 was issued. The learned Single Judge has not discussed about G.O.(Ms) No.74 in his order. Any direction to regularize the service of the respondent, on completion of ten years of service will be contrary to the well settled principles of law. As stated supra, G.O.(Ms) No.74, dated 27.6.2013 clearly states that benefit of G.O.(Ms) No.22 shall take effect only from 01.1.2006.

14. For the above said reasons, the appeal is allowed and the order of learned Single Judge is set aside. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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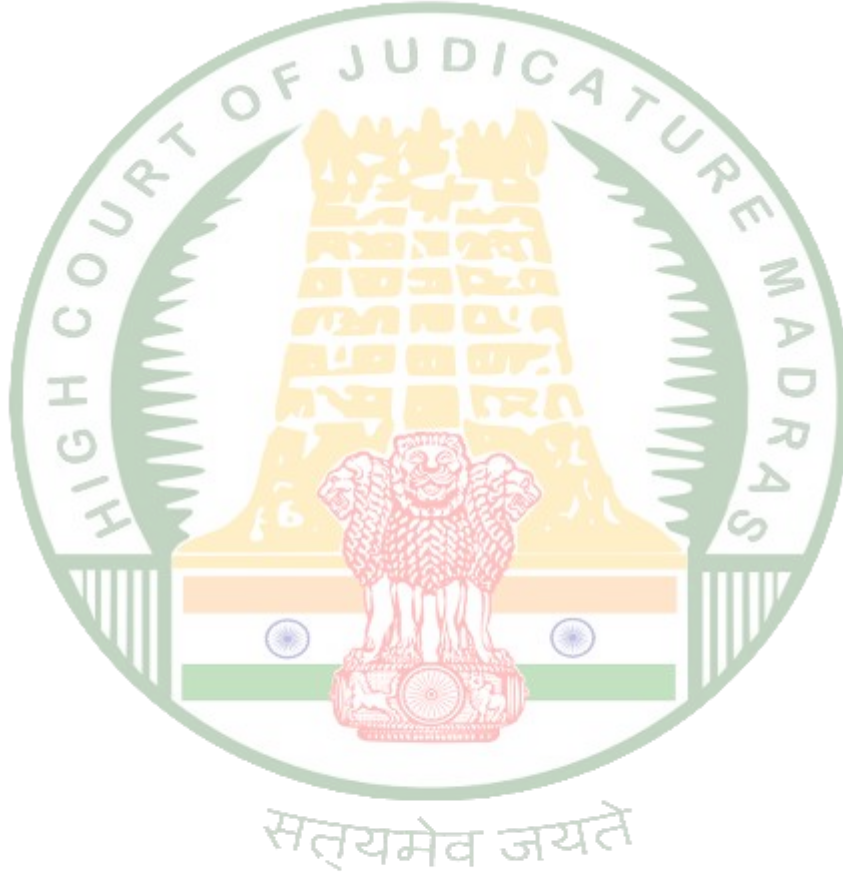
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+1cc to the Government Pleader Sr. 42195
+1cc to M/S.M.Elango, Advocate Sr, 42014

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KJ(CO)
VR(07/07/2017)



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