

In the High Court of Judicature at Madras

Dated : 04.4.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.5915 of 2017

A.Sivananthan

...Petitioner

Vs

1.State of Tamil Nadu, rep.by its
Secretary to Government, Home
(Courts-II) Department,
Fort.St.George, Chennai-9.

2.The Registrar of High Court of
Judicature (Admn.), at MaDRAS,
Chennai-104.

3.The Tamil Nadu Public Service Commission,
Frazer Bridge Road V.O.C.Nagar Park Town,
Chennai-3.

4.The Principal Judge, City Civil Court,
Chennai-104.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent pertaining to the official memorandum in R.O.C.No.588-A/2006/C3 dated 29.3.2006, quash the same and direct the fourth respondent to consider the petitioner's representation dated 19.9.2014 as well as to condone the break of one day (i.e.) 27.4.2006 and regularize the petitioner's service from the date of the petitioner's appointment dated 11.6.1997 as per the proceedings of the Principal Judge, City Civil Court dated 04.6.1997 in the Tamil Nadu Judicial Ministerial Service and provide all consequential service and monetary benefits to the petitioner.

For Petitioner : No appearance

For Respondent-1 :Mr.P.S.Sivashanmugasundaram, SGP

For Respondents 2 & 4 : Mr.E.K.Kumaresan

For Respondent-3 : Ms.C.N.G.Niraimathi

Order of the Court was made by NOOTY.RAMAMOHANA RAO,J

When the matter was taken up on 10.3.2017, none appeared for the petitioner and hence, we adjourned the matter on that day by two weeks. The matter again appeared on 24.3.2017 and a request was made to adjourn the case by two weeks and accordingly, the matter is adjourned to today. When the matter is called today, none appears on behalf of the petitioner.

2. The writ petitioner, upon being sponsored by the local Employment Exchange, came to be appointed on temporary basis as a Typist by the learned Principal Judge, City Civil Court, Chennai through proceedings dated 04.6.1997. It is the claim of the writ petitioner that when similarly situated employees instituted W.P.No.20341 of 2001 and batch of cases, which were disposed of on 03.7.2001 by a Division Bench, it has been held that so long as there are vacancies available, the temporarily recruited candidates may not be ousted from service.

3. Thereafter, the writ petitioner, in the company of several others, also instituted W.P.No.10132 of 2005 seeking a Writ of Mandamus for regularization of their services in the post of Typist. That writ petition was decided on 24.3.2006 by a Division Bench issuing several directions. The principal among them was a direction to the Appointing Authorities of the Units where the temporary Steno-Typists and Junior Assistants were already ousted, shall, on their application, consider providing employment to them in the posts of Reader/Examiner/Copyist, on regular basis as fresh entrants. If some of the temporarily recruited Steno-Typists, Typists and Junior Assistants are still working, a further direction was issued to oust them from service and then upon consideration of their applications, provide them employment as Readers/Examiners/Copyist on regular basis as fresh entrants after one clear day gap from the date of ousting. It was also ordered to be made clear that their appointment on temporary basis as Typists, Steno-Typists or Junior Assistants will not be considered for the purpose of service benefits such as pay protection, increment, seniority and promotion except for pensionary benefits.

4. In terms of this order of the Division Bench, through proceedings dated 26.4.2006, the Principal Judge, City Civil Court, Chennai ousted the temporarily recruited candidates, including the writ petitioner herein from the post of Typist. By a separate proceeding dated 27.4.2006, several candidates came to be appointed as Examiner/Reader with effect from 28.4.2006. The writ petitioner is one such, who has been appointed as a Copyist in the Unit of the City Civil Court, Chennai. By proceedings dated 25.6.2008, the Principal Judge, City Civil Court, Chennai also declared the writ petitioner to have

completed satisfactorily the two year period of probation with effect from 06.5.2008.

5. Thereafter, the petitioner submitted a representation dated 30.3.2009 seeking condonation of break in service and also for pay protection. He followed it up with another representation dated 10.2.2011. That request has been turned down on 15.12.2014 by the Principal Judge, City Civil Court, Chennai for the reason that as per the directions issued by this Court in W.P.No.10132 of 2005 dated 24.3.2006, the writ petitioner came to be appointed as a fresh entrant in the cadre of Copyist with effect from 28.4.2006 and that he is also not entitled for any benefit for the past temporary service as a Typist.

6. Since the petitioner herein is a party to the order dated 24.3.2006 passed by the Division Bench in W.P.No.10132 of 2005, pursuant to which alone, he came to be appointed as a fresh entrant as a Copyist through proceedings dated 27.4.2006 with effect from 28.4.2006, for all practical purposes, the temporary services rendered as Typist by him upto 26.4.2006 will be of no avail. He cannot seek any benefit for such temporary length of service. Virtually, the request made by the petitioner seeking condonation of break in service and pay protection based upon the past service would amount to reviewing the directions issued by the Division Bench on the Judicial Side, which powers are not available to a District Unit Head. Therefore, the claim made by the petitioner in his representations is beyond the limit of authority of power in the hands of the Unit Head where the writ petitioner came to be appointed as a fresh entrant with effect from 28.4.2006.

7. This apart, it would be wholly appropriate to recall that the Division Bench, by its order dated 24.3.2006, has given directions, which it did based purely on compassion towards the length of temporary service put in by several employees. It is also appropriate to remember that the very process of temporary recruitment is resorted to, as the process of direct recruitment is consuming much more time than anticipated by the Tamil Nadu Public Service Commission and with a view to ensure that the work in the Courts does not suffer for want of adequate man power, resort is made for recruitment on temporary basis.

8. Even on merits, we are satisfied that the temporary services rendered by the petitioner prior to 26.4.2006 as a Typist cannot be counted for purposes of pay protection in the post of Copyist where he joined service as a fresh entrant. A fresh entrant into service cannot ask for pay protection. Therefore, we see no merit in the writ petition.

9. Accordingly, the writ petition stands dismissed. No costs.

-s/d-
Assistant Registrar(CSII)

True Copy

Sub-Assistant Registrar

To

- 1.The Secretary to Government of Tamil Nadu, Home (Courts-II) Department, Fort.St.George, Chennai-9.
- 2.The Registrar of High Court of Judicature (Admn.), at MaDRAS, Chennai-104.
- 3.The Tamil Nadu Public Service Commission, Frazer Bridge Road, VOC Nagar Park Town, Chennai-3.
- 4.The Principal Judge, City Civil Court, Chennai-104.

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