

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.Nos.6339, 6340 and 6448 of 2010

K.RAJA

.. Petitioner
in WP.6339/2010

T.Janaki

.. Petitioner
in WP.6340/2010

1. M.Venkatesan

2. Govindammal .. Petitioners
in WP.6448/2010

Vs

1. The Government of Tamilnadu,
Rep. by its Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai - 9.

2. The Director of Collegiate Education,
College Road, Chennai - 6.

3. The Management of Islamiah College,
Rep. by its Secretary,
Vaniyambadi 635 752.
Vellore District.

.. Respondents

PRAYER in W.P.No.6339 of 2010: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, Calling for the records from the files of the 1st respondent bearing G.O.Ms.No.310 Higher Education (D1) Department dated 13.11.2002 and G.O.Ms.No.253 Higher Education (D1) Department dated 31.07.2003 and quash the same in so far as it denies regularization from 1.01.1979 and also denies arrears of salary in the time scale of pay with effect from the said date to the mother of the petitioner herein and issue consequential direction to Respondents 1 and 2 to regularise the services of the petitioners mother from

01.01.1979 and pay arrears of salary and allowances to the petitioner herein together with interest at 12% per annum within a time frame.

PRAYER IN W.P.No.6340 of 2010: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, Calling for the records from the files of the 1st respondent bearing G.O.Ms.No.310 Higher Education (D1) Department dated 13.11.2002 and G.O.Ms.No.253 Higher Education (D1) Department dated 31.07.2003 and quash the same in so far as it denies regularization from 1.01.1979 and also denies arrears of salary in the time scale of pay with effect from the said date to the petitioner herein and issue consequential direction to Respondents 1 and 2 to regularise the services of the petitioner from 01.01.1979 and pay arrears of salary and allowances to the petnr. herein together with interest at 12% per annum within a time frame.

PRAYER IN W.P.No.6448 of 2010: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, to issue appropriate writ order or directions and in particular issue a writ in the nature of writ of certiorarified mandamus to call for the records relating to G.O.Ms.No.31 Higher Education (D1) Department dated 1.2.2005 and quash the same and consequently direct respondents 1 and 2 to regularize the services of the 1st petitioner and the husband of the 2nd petitioner with effect from 24.10.1982 and 6.8.1983 respectively and pay monetary benefits from the abovesaid dates together with interest at 12% per annum within a time frame and thus render justice.

For Petitioners : Mr.K.M.Ramesh

For Respondents : Mr.R.Govindasamy

Spl. Government Pleader

for respondents 1 and 2

Mr.D.Abdullah

for 3rd respondent

ORDER

In W.P.No.6339 of 2010, the petitioner seeks issuance of a writ of Certiorarified Mandamus to call for the records from the file of the first respondent bearing G.O.Ms.No.310, Higher Education (D1) Department, dated 13.11.2002 and G.O.Ms.No.253, Higher Education (D1) Department, dated 31.07.2003 and quash the same insofar as it denies regularisation from 01.01.1979 and

also denies arrears of salary in the time scale of pay with effect from the said date to the mother of the petitioner and issue consequential direction to respondents 1 and 2 to regularise the services of the petitioner's mother from 01.01.1979 and pay arrears of salary and allowances to the petitioner herein together with interest at 12% per annum.

2. In W.P.No.6340 of 2010, the petitioner seeks issuance of a writ of certiorarified mandamus, Calling for the records from the files of the 1st respondent bearing G.O.Ms.No.310 Higher Education (D1) Department dated 13.11.2002 and G.O.Ms.No.253 Higher Education (D1) Department dated 31.07.2003 and quash the same in so far as it denies regularization from 01.01.1979 and also denies arrears of salary in the time scale of pay with effect from the said date to the petitioner herein and issue consequential direction to Respondents 1 and 2 to regularise the services of the petitioner from 01.01.1979 and pay arrears of salary and allowances to the petitioner herein together with interest at 12% per annum within a time frame.

3. W.P.No.6448 of 2010 has been filed for issuance of a writ of certiorarified mandamus, to issue appropriate writ order or directions and in particular issue a writ in the nature of writ of certiorarified mandamus to call for the records relating to G.O.Ms.No.31 Higher Education (D1) Department dated 01.02.2005 and quash the same and consequently direct respondents 1 and 2 to regularize the services of the 1st petitioner and the husband of the 2nd petitioner with effect from 24.10.1982 and 06.08.1983 respectively and pay monetary benefits from the abovesaid dates together with interest at 12% per annum within a time frame and thus render justice.

4. The facts in brief insofar as W.P.No.6339 of 2010 are narrated as a lead case: The petitioner's mother was appointed as Scavenger/Sweeper on 01.03.1957 in the third respondent College, which is a private college within the meaning of Section 2(8) of the Tamil Nadu Private Colleges (Regulation) Act, 1976.

5. It is the case of the petitioner that by proceedings of the Regional Deputy Director of Collegiate Education dated 19.01.1988, the third respondent College was directed to send their proposal for extending time scale of pay to persons like the petitioner's mother, who were in service continuously for five years as on 01.01.1979. It is stated that pursuant to the same, the services of one Janaki, sweeper were approved by the order of the Director of Collegiate Education dated 11.05.1981.

6. It is stated that the name of the petitioner's mother was not forwarded by the third respondent college for reasons best known to the management, even though she was in continuous

employment, and therefore, the petitioner's mother along with similarly placed persons filed W.P.No.14157 of 1993, which was allowed by this Court, by order dated 27.06.2001. In view of the disobedience of the order, the petitioner's mother filed contempt petition. However, in view of the passing of G.O.Ms.No.310, Higher Education (D1) Department, dated 13.11.2002 and G.O.Ms.No.253, Higher Education (D1) Department, dated 31.07.2003 to the effect that the respondent authorities agreed to pay arrears to the petitioner's mother and two others from 25.02.1993, the contempt petition was closed.

7. The appointment of the petitioner in W.P.No.6340 of 2010 as Sweeper is stated to have been approved by order dated 11.05.1981 of the Director of Collegiate Education, and she claims to be eligible to be placed on time scale of pay with effect from 01.01.1979.

8. The case of the petitioners in W.P.No.6448 of 2010 is also on the same lines. The first petitioner in this writ petition and the husband of the second petitioner were employed as scavengers in the third respondent college.

9. It is the case of the petitioners that the said government orders are unjust and illegal inasmuch it denies regularization with effect from 01.01.1979, on which date they were eligible to be regularised in service. Hence, the present writ petitions for the relief stated supra.

10. It is the contention of the learned counsel for the petitioners that a person is entitled to become permanent once he/she completes two years of continuous service, even if no extension was granted with reference to their probation and, therefore, the denial of such regularization is unjust and illegal.

11. It is further contended that even though the Regional Deputy Director directed to send proposals for extending time scale of pay to persons who are employed on a continuous basis for five years as on 01.01.1979 and based on such proposal the service of one Janaki as Sweeper was approved, the same benefit was not extended to the other petitioners and the same is arbitrary and in any event, such regularization was not given effect to from 01.01.1979 in respect of all the employees in these writ petitions.

12. It is the contention of the learned Special Government Pleader appearing on behalf of respondents 1 and 2 that the services of the all the employees in these three cases were regularized with effect from 25.02.1993 and all dues payable to them have been paid and therefore their request to regularize the service from 01.01.1979 is not feasible of compliance. He

submitted that the claim to regularize the services retrospectively is not sustainable and invalid on the face of it.

13. I heard Mr.K.M.Ramesh, learned counsel for the petitioners, Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 and 2 and Mr.D.Abdullah, learned counsel for the 3rd respondent in all the writ petitions and perused the documents available on record.

14. At the time of hearing of the writ petition, the learned counsel produced a judgment passed by the Hon'ble Division Bench of this Court on 11.01.2012 in W.A.No.1434 of 2008 (The Government of Tamil Nadu and another v. M.Muniammal (died) and others).

15. A perusal of the said judgment shows that, under identical circumstances, in respect of the employees of the very same third respondent college, a learned Single Judge of this Court allowed the writ petition, being W.P.No.4048 of 2004, by order dated 14.08.2008, holding as under:

"9. It is found from the pleadings as well as the earlier order of this Court dated 27.6.2001 in W.P.No.14157/1993 that the petitioner has completed five years as on 1.1.1979 and as per the policy of the Government, those working in private college as contingent staff were entitled for permanent status and such staff would be brought to the regular time scale. There was a clear finding in the earlier decision that the petitioner had worked for the required number of years and it would enable her to claim permanency. It was only on the basis of the said order that the service of the petitioner was regularized initially from 25.2.1993. In the impugned order in G.O.Ms.No.310, dated 13.11.2002, it was indicated that the opinion given by the Government Pleader to regularise the services of the petitioner from 25.2.1993 has been taken as the cut off date. It is also found from the Government Order itself that in spite of the contention of the first respondent that the petitioner has not completed five years as on 1.1.1979, this Court has directed the Government to regularize the services of the petitioner and accordingly, the service of the petitioner was regularized. However, while fixing the cut off date, the first respondent adopted the date specified by the Special Government Pleader whose opinion was sought in the matter and on the basis of the cut off date given by the Government Pleader that petitioner was regularized with effect from 25.2.1993. In fact,

the Special Government Pleader took the said cut off date as it was only on the said date that the proposal had been given by the third respondent."

16. The challenge made to the said order passed by the learned Single Judge was dismissed by the Hon'ble Division Bench, upholding the order passed by the learned Single Judge, referred supra.

17. It is not in dispute that the employees in the case on hand are similarly placed to the employee in the above said writ petition and writ appeal. The said decision, in my considered opinion, applies on all fours to the employees in the instant case.

18. In such view of the matter, these writ petitions are allowed as prayed for, in terms of the orders passed by this Court, referred supra. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

vs

To

1. The Secretary to Government,
Government of Tamilnadu,
Higher Education Department,
Fort St. George,
Chennai - 9.

2. The Director of Collegiate Education,
College Road, Chennai - 6.

+3 Ccs to Mr.D. Abdullah, Advocate sr 69963, 69964, 69965.

+3 Ccs to Mr.K.M. Ramesh, Advocate sr 69008, 69009, 69007.

W.P.Nos. 6339, 6340 and 6448 of 2010

RRK (23/03/2018)