IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.12.2017
CORAM

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

W.P.No.20330 of 2013

1.S.Perumal

2.G.Rajendran .. Petitioners

vs

1.State of Tamilnadu,
rep. by the Secretary to Government,
School Education (R1) Department,
Secretariat,
Chennai - 9.

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

3.The District Educational Officer,
Thiruvallur District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, to call for the records of the first respondent in connection with the order passed by him in G.O.(3D) No.145, School Education (R1), Department, dated 22.11.2011 and quash the same to the extent of regularising his service with effect from 22.11.2011 and direct the respondents to regularise the service of the petitioners with effect from the date of initial appointment or atleast with effect from the date of completion of 10 years of service with all monetary and service benefits as done in the case of all other similarly situated candidates by way of G.O.Ms.No.247, School Education (R1) Department, dated 03.10.2012.

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For Petitioner : Mr.R.Singaravelan
Senior Counsel
for M/s.M.Srividhya

For Respondents : Mr.K.Venkatramani
Addl. Advocate General
assisted by
Mr.A.Rajaperumal
Addl. G.P.

ORDER

This writ petition has been filed by the petitioners seeking to quash the order of the first respondent dated 22.11.2011 regularising the service with effect from 22.11.20011 and to direct the respondents to regularise the service of the petitioners with effect from the date of their initial appointment or at least with effect from the date of completion of 10 years of service with all monetary and service benefits.

2. The case of the petitioners is that the first petitioner was selected and appointed to the post of part-time sweeper in Government High School, Veeramangalam, Pallipattu Taluk, Thiruvallur District through an Employment Exchange and he joined the service on 25.8.1994. The second petitioner was appointed to the post of part-time sweeper by the Employment Exchange and he joined the service in Government High School, Vengal, Thiruvallur Taluk and District with effect from 31.08.1994.

3. It is stated that earlier when the first respondent declined to regularise the service of the petitioners and other similarly placed persons vide letters dated 16.07.2009 and 12.08.2009, they filed W.P.No.25782 and 25783 of 2009 before this Court. By an order dated 20.07.2010, this Court allowed the said writ petitions by setting aside the orders of the first respondent dated 16.07.2009 and 12.08.2009 and directed the respondents to issue suitable orders to regularise the services of the petitioners in the existing vacancies based on their seniority, if they are otherwise so qualified.

4. Pursuant to the order of this Court in W.P.Nos.25782 and 25783 of 2009, the first respondent passed the impugned Government Order, dated 22.11.2011 regularising the service of

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the petitioners with effect from the date of the Government Order. Aggrieved by the same, the petitioners have filed this writ petition.

5.I heard Mr.R.Singaravelan, learned Senior Counsel for M/s.M.Srividhya, learned counsel for the petitioner and Mr.K.Venkatramani, learned Additional Advocate General assisted by Mr.A.Rajaperumal, learned Additional Government Pleader for the respondents.

6. The respondents have filed the counter-affidavit stating that though the petitioners have completed 10 years of service before 01.01.2006, they are only part-time employees having the work for two hours a day and hence, they are not eligible to be brought under the ambit of G.O.Ms.No.22 P & AR Department, dated 28.02.2006. According to the respondents, the Government issued G.O.Ms.No.74, dated 27.06.2013 revising the orders issued in G.O.Ms.No.22, dated 28.02.2006 that 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 years of service as on 01.01.2006 shall be regularised against the regular vacancies in the sanctioned strength. Since the petitioners were only part-time employees, their service could not be regularised on their completion of 10 years of service.

7. Assailing the impugned order, the learned Senior Counsel for the petitioner submitted that on the basis of the orders passed by this Court in a batch of cases filed by similarly placed persons, namely part-time sweepers and part-time watermen/water women, the Government have passed an order in G.O.Ms.No.33, dated 20.03.2012 regularising the services with effect from the date of initial appointment.

8. The learned Senior Counsel also submitted that pursuant to the order passed by this Court in a batch of Contempt Petitions, the Government have chosen to pass an order in G.O.Ms.No.247, dated 03.10.2012 regularising the services of the petitioners therein with all monetary benefits with effect from the date of completion of 10 years of service. Similarly, under G.O.Ms.No.155, dated 27.12.2011, the Government regularised the service of some of the part-time employees working in the Education Department from the date of the vacancy in 1995. While so, in the case of the petitioners, the Government had passed the impugned order regularising the service only from the date of the impugned order which is contrary to the orders

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passed by this Court and implemented by the Government.

9. The learned Additional Advocate General appearing on behalf of the respondents submitted that since the petitioners were appointed as part-time sweepers and were working as such, they are not entitled to seek regularisation of their service on completion of 10 years of service.

10. Admittedly, the petitioners were working for more than 15 years continuously in the capacity of part-time employees.

11. It appears that when the first respondent declined to regularise the service of the petitioners, the petitioners have filed W.P.No.25782 and 25783 of 2009 before this Court. By an order dated 20.07.2010, this Court allowed the writ petitions, wherein a direction was issued to the respondents to issue suitable orders to regularise the service of the petitioners in the existing vacancies based on their seniority, if they are otherwise so qualified.

12. The petitioners were regularised in service vide G.O. (3D) No.145, School Education Department dated 22.11.2011. It is seen from the said Government Order, that the regularisation is ordered with effect from 22.11.2011.

13. The grievance of the petitioners is that they should be regularised with effect form the date of their initial appointment or at least with effect from the date of completion of 10 years of service with all monetary and service benefits, as done in the case of all other similarly situated candidates in G.O.Ms.No.247, School Education Department, dated 03.10.2012.

14. In the affidavit filed in support of the writ petition, the petitioners have categorically stated that similarly placed persons have filed W.P.No.4859 of 2009 and the learned Single Judge of this Court ordered regularisation of service with effect from the date of initial appointment. As against the order of the learned Single Judge, the Government preferred appeal in Writ Appeal No.1520 of 2010. By the judgement dated 25.10.2010, a Division Bench of this Court confirmed the order of the learned Single Judge. As against the order of the Hon'ble Division Bench, the Government preferred S.L.P.No.8231 of 2011 and the Hon'ble Supreme Court, by an order dated 12.05.2011, confirmed the orders of the Ho'nble Division Bench.

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15. Pursuant to the orders of this Court as well as the Hon'ble Supreme Court, the Government issued G.O.Ms.No.123, dated 17.08.2011 regularising the service of the petitioner in the writ petition, referred to above, from the date of appointment and was granted regularisation from 1990 with arrears on full time basis. The said fact has not been denied by the respondents in their counter.

16. As rightly contended by the learned counsel for the petitioners, this writ petition is squarely covered by the decision in W.P.No.4859 of 2009, dated 24.02.2010.

17. It appears that similar issues were considered by this Court in W.P.No.19126 of 2008, dated 29.07.2008, confirmed in W.A.No.230 of 2009, dated 3.8.2009, taking note of G.O.Ms.No.22 dated 28.02.2006 and held that on completion of 10 years of service, services of part-time employee shall be regularised by the department from the date of completion of 10 years. In paragraphs 7 and 8, the Division Bench held as under:

> "7. The main submission of the learned Government Pleader is that the proposals for regularisation of the part time employees are pending before the Government. When the proposals are pending under consideration before the Government there is no need to give any direction to the Government to regularise the services of the respondent.
>
> 8. We do not find any force in the said submission made by the learned Government Advocate. On a perusal of the entire materials, it could be seen that the respondent was working for the past 13 years as a part time employee in a Higher Secondary School. Para 3 of the G.O.Ms.No.22 P & AR Department, dated 28.2.2006, reads as follows:
>
> > "3.The Departments of Secretariat may therefore be directed to pursue action to regularise the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 1.4.2006 ... "

18. From the above, it is clear that the Government had decided to regularise the part time employees, who had completed 10 years of service. In fact, the service of some of the part-time employees were regularised pursuant to the orders passed by this Court. The details are as under:

(i) W.P.No.13499 of 2008, dated 12.6.2008, confirmed in M.P.No.1 of 2008 in W.A.SR No.75291 of 2009, dated 7.10.2009. The said order was implemented by the Department.

(ii) W.P.(MD) Nos.9726 & 9727 of 2006, dated 24.6.2008, confirmed in W.A.(MD) Nos.151 & 225

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of 2009, dated 23.6.2009. The said order was implemented.

(iii)W.P.No.23080 of 2008, dated 23.12.2008, confirmed in W.a.No.2414 of 2010, dated 26.11.2010. The said order was also implemented.

(iv)W.P.Nos.27488 to 27490 of 2010 etc. batch, dated 02.10.2010, implemented through G.O.Ms.No.99, School Education Department, dated 08.6.2011 and G.O.Ms.No.121, School Education Department, dated 08.8.2011. The said order was implemented by the Government.

(v)W.P.(MD) Nos.1773 & 1774 of 2008, dated 04.12.2008, confirmed in W.A.(MD) Nos.69 & 70 of 2010, dated 20.1.2011. The said order was also implemented by the Government.

19. There is no denial on the side of the respondents that the orders passed in the aforesaid writ petitions are applicable to the case on hand.

20. It is also evident that persons similarly placed i.e., part-time employees/part-time sweepers, as case may be, employed in the Government Schools were granted regularisation of their service on completion of 10 years of service by relaxing the rule whenever required in terms of G.O.Ms.No.22 P & AR Department, dated 28.02.2006 and they were paid arrears of full time salary. Having passed such orders in the cases of similarly placed persons, the Government has to apply the same yardstick in the case of the petitioners herein. The reasons given for regularising the service of the petitioners with effect from the date of passing the Government Order are not convincing and the same has to be set aside.

21. It is to be noted that in the writ petition, the petitioners have sought regularisation from the date of initial appointment or at least with effect from the date of completion of 10 years of service. In view of G.O.Ms.No.22, P & AR Department, dated 28.02.2006, which requires the Government Departments to regularise daily wage employees who have rendered 10 years of service as on 01.01.2006 and following the same, in several writ petitions, this Court directed the Government to regularise the service of the part-time employees only after their completion of 10 years of service, it would be appropriate to extend the said benefit to the case of the petitioners also i.e., regularisation is to be made on completion of 10 years of service.

22. Accordingly, the writ petition is allowed and the impugned order passed in G.O.(3D) No.145, School Education (R1)

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Department dated 22.11.2011 is quashed in respect of regularising the service of the petitioners from 22.11.2011. The respondents are directed to regularise the service of the petitioners with effect from the date of completion of 10 years of service and to pay all service and monetary benefits in accordance with law in G.O.Ms.No247, School Education (R1) Department, dated 03.10.2012. 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. Consequently, M.P.No.2 of 2013 is closed.

s/d-
Assistant Registrar(CS VIII)

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Sub-Assistant Registrar

vs

To

1.The Secretary to Government,
School Education (R1) Department,
Secretariat,
Chennai - 9.

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

3.The District Educational Officer,
Thiruvallur District.

+1 CC to M/s.M.Srividhya, Advocate sr 55875.

W.P.No.20330 of 2013
and
M.P.No.2 of 2013

SP(16/05/2018)

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