

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.300 of 2015

A.Abdul Ameer

.. Petitioner

-vs-

1. The State of Tamil Nadu
rep.by the Secretary
Rural Development & Panchayat Raj Department
Fort St.George, Chennai 600 009

2. The District Collector
Neelagiri District at
Udhagamandalam

3. The Commissioner
Gudalur

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for records relating to third respondent's letter Na.Ka.A1 No.2123/2008 dated 23.04.2008 and that of the consequential clarification made in Na.Ka.No.2424/2012 dated 11.2.2013, to quash the same and consequently direct the respondents to extend all benefits of pay scales and other accrued benefits thereto on the basis of the regularization of the services of the petitioner with effect from 10.1.1995 and to repay the installments already recovered.

For Petitioner :: Mr.S.P.Sudalaiyandi

For Respondents :: Mr.V.Jayaprakash Narayanan
Special Government Pleader
for R1 & 2
No appearance for R3

ORDER

The petitioner was appointed as Night Watchman with effect from 11.1.85 in the Gudalur Panchayat Union, The Nilgiris. As per the policy of the Government, since the services of Night Watchman are to be regularized on completion of ten years of service, the second respondent has rightly given the benefit of regularization to the petitioner on completion of ten years of

service on 10.1.95. But, all of a sudden, when the petitioner was enjoying the benefit of regularization and continuously working, he visited with the order revising and re-fixing the pay already drawn, on the basis of G.O.Ms.No.161, Rural Development (E7) Department dated 26.6.2000, wherein the first respondent is said to have issued a direction to bring the persons like that of the petitioner in the time scale of pay in the sanctioned post from the date of issuance of the said Government Order. Adding further, it was stated that in any event, the petitioner was at no point of time been issued with any notice either before revising and re-fixing his pay by the order dated 23.4.2008 or the consequential order dated 11.2.2013 for recovery. Again relying upon the counter affidavit filed by the third respondent, it was stated that the stand taken by the third respondent in paragraph-5 of the counter affidavit clearly shows that the impugned order revising and re-fixing the scale of pay of the petitioner has been made on the basis of G.O.Ms.No.161 dated 26.6.2000. When the petitioner has been regularized in service on completion of ten years of service with effect from 10.1.95 by the order passed by the second respondent, the monetary benefits also should be given only from the said date and not from the date of issuance of G.O.Ms.No.161 dated 26.6.2000. Again the learned counsel, placing on record an order passed in W.P.No.49613 of 2006 dated 9.11.2011 (M.Sakkarai v. The Government of Tamil Nadu represented by the Secretary, Rural Development Department and others), submitted before this Court that when the G.O.Ms.No.161 dated 26.6.2000 has been quashed and the said writ petition was allowed under similar circumstances, the impugned orders are liable to be set aside.

2. Heard the learned Special Government Pleader for the first and second respondents.

3. Admittedly, the impugned orders have been passed on the basis of G.O.Ms.No.161 dated 26.6.2000 and the stand taken by the third respondent in paragraph-5 of the counter affidavit also confirms the said position, wherein it is stated as follows:-

"5. I submit that in view of wrong date of regularization selection grade also wrongly given to the petitioner. I submit that the government order No.267 dated 22.12.1999 only stated to regularize the service of the person who have compleed 10 years of service but monetary benefit shall be given from the date of G.O.No.161 dated 26.06.2000 not from the date of completion of 10 years. The person appointed after 1.4.1987 the benefits shall be given only from 20.06.2000 (sic) not from the date of completion of 10 years of service."

4. When the validity of G.O.Ms.No.161 dated 26.6.2000 and the consequential recovery order were put to challenge by one Mr.M.Sakkarai in W.P.No.49613 of 2006, this Court has quashed the said G.O.Ms.No.161 dated 26.6.2000 as well as the consequential order passed by the Commissioner, Udumalpet Panchayat Union, the third respondent therein, by order dated 9.11.2011, under similar circumstances. Since the issue is squarely covered by the aforementioned order of this Court, the impugned orders are set aside and the writ petition stands allowed. Needless to mention that if any amount has already been recovered, the same shall be refunded to the petitioner within a period of four weeks from the date of receipt of a copy of this order, failing which it shall carry interest at the rate of 10% per annum. Consequently, M.P.Nos.2 & 3 of 2015 are closed. No costs.

Sd/-
Asst.Registrar(CS III)

/true copy/

Sub Asst. Registrar

ss

To

1. The Secretary to Government
Rural Development & Panchayat Raj Department
Fort St.George
Chennai 600 009
2. The District Collector
The Nilgiris District at
Udhagamandalam
3. The Commissioner
Gudalur Panchayat Union
The Nilgiris

+1cc to Mr.S.P.Sudalaiyandi,Advocate sr.18380

W.P.No.300 of 2015

lrs(co)
ss(5/4/2017)