

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2017

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THE HON'BLE MR. JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.A. No.2551 of 2010
and
M.P.No.1 of 2010

- 1.The Assistant Executive Engineer,
Agricultural Engineering Department,
Dharmapuri.
 - 2.The Chief Engineer,
Agricultural Engineering Department,
487, Anna Salai, Nandanam,
Chennai - 35.
 - 3.The Secretary to Government,
Agriculture Department,
Fort St. George, Chennai - 9. ..Appellants/Respondents
- Vs.
- K.Natarajan ..Respondent/Petitioner

Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 20.03.2009 made in W.P.No.40007 of 2006.

WP.No.40007 of 2006:Petition filed under Article 226 of the Constitution of India by transfer of O.A.No.969/1999 from the file of the Tamil Nadu Administrative Tribuna praying to issue a Writ of Certiorarified Mandamus to call for records relating to the order of the 1st respondent dated 15.12.88 issued in the G.O.Ms.No. 1844 Agriculture AEIII Dept and quash the same so far as it relates to date of regular absorption with effect from 15.12.88 and direct the respondent to regularise the service of the petitioner with effect from 2.11.82 and to award all the consequential benefits

For Appellants .. Mr.P.S.Sivashanmugha Sundaram,
Spl. Govt. Pleader

For Respondent .. No appearance

JUDGMENT

(Judgment of the Court was delivered by
NOOTY. RAMAMOHANA RAO, J.)

This writ appeal is preferred by the State and its Chief Engineer in the Agricultural Engineering Department and the Assistant Executive Engineer of that Department. They are aggrieved by the order and judgment rendered by the learned single Judge on 20.03.2009 in W.P.No.40007 of 2006. As is the case before the learned single Judge, none appeared on behalf of the respondent/writ petitioner even before us. Therefore, we directed the case to be listed for dismissal today, duly printing his name in the cause list. Even then, there was no response. When his name is called, there is also no response in afternoon session today. Since the writ appeal is an old matter, we have preferred to proceed further and decide the issue on merits on the available material on record.

2.The writ petitioner has challenged the correctness of the orders of the State Government contained in their G.O.Ms.No.1844 Agriculture (AE III) Department dated 15.12.1988.

3.The State Government, upon reviewing the pitiable working conditions of certain staff working in the Agricultural Engineering Wing of the State, has taken a policy decision and announced the same by their G.O.Ms.No.52 Finance (F.R.II) Department dated 14.01.1977 bringing the menials paid from the contingencies to the regular establishment. It was also decided by the State to abolish the system of employing the contingencies. After the implementation of the above policy decision, the Chief Engineer of the Agricultural Wing has taken up the matter with the State Government with regard to regularising the services of the eleven individuals, one of them being the writ petitioner. In all these cases, the appointments have been made as contingent employees after the decision of the State Government announced through G.O.Ms.No.52 Finance (F.R.II) Department dated 14.01.1977. But, however, taking a humanitarian consideration and the fact that such employees have been working for more than ten years, however with breaks, the proposal of

the Chief Engineer for sanction of seven posts of Watchman on regular basis under Tamil Nadu Basic Services has been acceded to by the State Government. Orders have been passed by the State Government through their G.O.Ms.No.1844 Agriculture (AE III) Department dated 15.12.1988 relaxing the Special Rules for Tamil Nadu Basic Services in favour of seven persons whose names and particulars have been mentioned in the Annexure to the said Government Order to enable them to be appointed as Watchman in Agricultural Engineering Department from the date of issue of those orders. In fact, these orders contained in G.O.Ms.No.1844 Agriculture (AE III) Department dated 15.12.1988 have been issued by the Governor duly exercising the power available to him under Rule 48 of the General Rules of Tamil Nadu State and Subordinate Service Rules by way of relaxation. The name of the writ petitioner is the 7th name that is found in the annexure to the said Government Order. From the policy decision of the State Government, it emerges that the State Government, as one time measure, has relaxed the Tamil Nadu Basic Service Rules to enable the contingent employees engaged as such, contrary to its earlier policy decision, abolishing such recruitment of contingents, through G.O.Ms.No.52 Finance (F.R.II) Department dated 14.01.1977. The State Government has specifically authorised the appointment of the seven persons whose particulars are annexed to the said Government Order from the date of issuance of the Government Order viz., 15.12.1988. Therefore, the writ petitioner would not have, contrary to the policy decision of the State Government, asked for regularisation of his service with effect from the date of completion of five years of continuous service as a contingent employee. The very fact that the State Government has conceded to the request of the Chief Engineer of Agricultural Engineering Department is rested upon the fact that though the contingent recruitment is resorted to in spite of abolishing such recruitment through G.O.Ms.No.52 Finance (F.R.II) Department dated 14.01.1977, only because such irregularly appointed individuals have completed ten years of service. Thus, but for the fact that ten years of service has been put in by such employees, the State Government, perhaps would not have relaxed the Tamil Nadu Basic Service Rules in their favour in terms of Rule 48 of the Tamil Nadu State and Subordinate Service Rules.

4. Whereas the learned single Judge, in our opinion, has considered the matter from a different perspective altogether. The learned single Judge has noticed the earlier judgments of this Court, wherein, consistently, a view was expressed with regard to regularisation of services of the employees who have completed five years of service. But, in the instant case, the State Government, in exercise of its power under Rule 48 of the Tamil Nadu State and Subordinate Service Rules, has relaxed the conditions relating to recruitment to enable the seven persons mentioned in the annexure to the said Government Order to be

appointed as Watchman with effect from the date of the said G.O.Ms.No.1844 Agriculture (AE III) Department dated 15.12.1988. Contrary to the said relaxation, the writ petitioner's services could not have been regularised with effect from the date earlier to the said date viz., 15.12.1988. We are therefore of the opinion, the order passed by the learned single Judge cannot be sustained in law and accordingly, we allow this writ appeal and set aside the order passed by the learned single Judge and dismiss the writ petition, authorising regularisation of the writ petitioner's service as Watchman only with effect from 15.12.1988 the date on which G.O.Ms.No.1844 Agriculture (AE III) Department was issued. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Executive Engineer
Agricultural Engineering Department
Dharmapuri

2.The Chief Engineer
Agricultural Engineering Department
No.487 Annasalai Nandanam
Chennai-600 035

3.The Secretary to Government
Agriculture Department,
Fort St.George Chennai-600 009

+1 cc to the Government Pleader sr 49116

W.A.No.2551 of 2010

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