

RESERVED ON : 25.10.2016

DELIVERED ON : 12.01.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.11858 of 2010

B.Suresh

.. Petitioner

Vs

1. The Principal Secretary to Government,
Rural Development and Panchayat Raj (E7)
Department,
Secretariat, Chennai-600 009.

2. The Commissioner of Rural Development &
Panchayat Raj,
Pangal Buildings, Saidapet,
Chennai- 600 015.

3. The Collector,
The Nilgris District,
Udhagamandalam

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus, calling for the records pertaining to the order passed by the 1st respondent herein in Letter No.5999/E7/2009-7 Rural Development and Panchayat Raj (E7) Department dated 10.3.2010 and quash the same and consequently direct the respondents herein to regularize the petitioner period of temporary services as Steno-Typist from 27.9.1989 FN to 23.8.1994 AN as duty for all service benefits and

direct the respondents herein to issue orders retrospectively regularizing his service from 27.9.1989 with all consequential benefits.

For Petitioners : Mr.Ravi Shanmugam
For Respondent : Mr. V.Jaya Prakash Spl.G.P

ORDER

The prayer is for a writ of certiorarified mandamus, calling for the records pertaining to the order passed by the 1st respondent herein in Letter No.5999/E7/2009-7, Rural Development and Panchayat Raj (E7) Department, dated 10.3.2010 and quash the same and consequently direct the respondents herein to regularize the petitioner period of temporary services as Steno-Typist from 27.9.1989 FN to 23.8.1994 AN as duty for all service benefits and direct the respondents herein to issue orders retrospectively regularizing his service from 27.9.1989 with all consequential benefits.

2. The petitioner was temporarily appointed under 10 (a) (i) of the General Rules as Steno Typist on 27.9.1989 at the office of Deputy Registrar, Public Distribution System, Udgamandalam. As such, the petitioner also joined in service on 27.09.1989. From that date, he had been working continuously, though temporary in service

without any break or adverse remarks.

3. Subsequently, the petitioner since had participated in the competitive examination conducted by TNPSC for the post of Steno Typist, he had been selected and was appointed as Steno Typist at the respondent department on 24.8.1994, the date on which he joined service as Steno Typist on permanent basis. Therefore, only on the previous day i.e., on 23.8.1994, he was relieved from the erstwhile office where he was working and the very next day without any break he joined service as Steno Typist on permanent basis. Thereafter, his probation was declared by November 1996. Though at the time of relieving from the earlier service as Steno Typist (temporary basis), the petitioner was drawing Rs.1470/-, subsequently, on his appointment on permanent basis, his pay was fixed only as Rs.1200/-. Therefore, the petitioner had preferred a representation on 12.10.1994 to the respondents to regularise the period of the petitioner's service from 27.9.1989 to 23.8.1994 and to count the said period for the purpose of all service benefits including seniority, pay fixation, increment etc., His request was rejected in November 1994 by the Additional Collector and thereafter, again he gave representation on 03.07.1995 to the second respondent for the very same relief of regularising his services from 27.9.1989 to 23.8.1994. The second respondent also had rejected the request of

the petitioner on 13.1.1997. Challenging the said order, the petitioner preferred original application in O.A.No.3522/1998 before the Tamil Nadu Administrative Tribunal and the same was transferred to this Court and re-numbered as W.P.No.35908 of 2006. In the said writ petition, this Court by order dated 29.9.2009 directed the respondents, especially, the Government to pass appropriate orders on the representation of the petitioner within a time limit. Pursuant to the said orders of this Court, the first respondent passed the impugned order on 10.3.2010 by which the petitioner's request was rejected by adducing the reasons that both G.O.Ms.No.85, P & AR Department, dated 20.2.1990 as well as the Government letter of the department of P & AR dated 05.2.1996 would not be applicable for the facts of the case of the petitioner and therefore, the request of the petitioner was not considered and was rejected. Challenging the said order dated 10.3.2010 passed by the first respondent, the petitioner has come out with the aforesaid prayer.

4. Heard both sides.

5. M.Ravi Shanmugam, the learned counsel appearing for the petitioner would mainly contend that the issue raised in this writ petition is covered by a decision of this Court where a Division Bench

of this Court passed an order in W.A.No.928/2009 on 30.8.2010. In the said order, according to the learned counsel for the petitioner, a similar issue was considered and decided in favour of the employee. Therefore, his foremost submission is that the issue raised in this writ petition is covered.

6. Alternatively, the learned counsel for the petitioner would also make submissions on merits by stating that the very two reasons cited in the impugned order that the case of the petitioner would not be covered by the Government Order, namely, G.O.Ms.No.85, dated 20.2.1990 and the Government letter dated 05.2.1996 is palpably wrong as both the Government Order as well as the Government letter giving certain benefits to the temporarily appointed employees and such benefits cannot be denied to the petitioner who is in fact in better footing than the temporarily appointed employees, who have been subsequently regularised without having gone through the process of selection of the Tamil Nadu Public Service Commission as has been undergone by the petitioner.

7. The learned counsel for the petitioner heavily relied upon the import of GO. MS No. 85 P & AR Department wherein the State Government gave relaxation to Rule 6 under Fundamental Rule 22 (b)

so as to enable the Typists, Personal Clerks and Junior Assistants of Tamil Nadu Ministerial Service also who had been recruited to the same post of the said service through competitive examination held by the Service Commission during 1983 - 1986 alone, for fixation of their pay at the same stage at which pay was drawn by them immediately prior to their appointment through the Service Commission. Though such relaxation was given to persons who had been selected for the same post under the Tamil Nadu Ministerial Service during the year 1983 and 1986, the same can very well be extended to the petitioner also as the petitioner is similarly placed and in a number of cases, such extension has been given, ofcourse by case to case basis. Only in this regard, the learned counsel relied upon the said Judgment of this Court made in writ appeal referred to above where also the benefit given to those, who had been selected and appointed by the Service Commission between the years 1983 and 1986 was directed to be extended to the said appellant also in the writ appeal and therefore, the same benefit shall be extended to the petitioner also.

8. The learned counsel for the petitioner would also contend that apart from the said GO. MS No. 85, the Government issued clear instructions in Government letter No.U.O.Note No.16076/S/95-9

dated 05.2.1996. In the said letter, the Government after having considered the entire issue has given the following directions:-

" The whole issue has been examined in depth in the light of various judgments pronounced in such cases and the Government have decided to regularize the irregular appointments made before 5.2.1992 and to enforce stringent measures to curtail the practice of making irregular appointments

.....

4. The Departments of Secretariat are, therefore, requested to follow the following instructions scrupulously, while regularizing irregular appointments:

(i) The irregular appointments made after 5.2.1992 cannot be regularized and such proposals shall be rejected.

(ii) The directions of the Tamil Nadu Administrative Tribunal referred to in para 3 above shall be uniformly followed in all remaining cases (to be regularized) and retrospective regularization shall be done.

(iii) In such cases, orders should be obtained from the Minister concerned.

(iv) Disciplinary action shall be taken against Officers responsible for such irregular appointments."

9. By virtue of the said Government directives, those who had been appointed even by way of irregular appointment prior to 5.2.1992 can be regularised and once their service has been regularised all service benefits applicable to them shall also be extended to them.

10. Here in this case, according to the learned counsel for the

petitioner, the petitioner had not requested the respondent to regularise his services which was made temporary without having resorted to the route of direct recruitment by the Service Commission, as in the case mentioned in the said Government letter, but in fact, the request of the petitioner was to regularise the service between 27.9.1989 to 23.8.1994 for the purpose of all service benefits was made as subsequently, he has been selected and appointed permanently and joined service from 24.8.1994. In fact, the case of the petitioner, according to the learned counsel for the petitioner, is under better footing than those, who had been given the benefit of regularization, as those who had been appointed irregularly had been given the benefit of regularisation, provided, if they had been appointed prior to 5.2.1992. Therefore, according to the learned counsel for the petitioner, both the reasons given in the impugned order by the first respondent for rejecting the request of the petitioner are untenable and therefore, he wants interference of this Court on the impugned order.

11. Per contra, Mr.V.Jayaprakash, the learned Special Government Pleader appearing for the respondents would contend that no doubt, the relevant rule was relaxed by the Government, through GO. MS. No. 85 dated 20.2.1990 by which the relevant

provisions to Rule 22 (b) of the Fundamental Rules was relaxed for extending the benefit of those who had been selected and appointed in Tamil Nadu Ministerial Service for the same post can be given the benefit of calculating or computing their earlier services also, provided, this benefit shall be extended to those who had been selected and appointed on permanent basis by Service Commission between 1983 and 1986 alone. Therefore, for a group of people who had been subsequently selected by the service commission and appointed permanently between 1983 and 1986 alone, such relaxation was given by the Government in the said Government Order. Since thereafter, no such relaxation was given, Rule 22 (b) is squarely applicable to the case of the petitioner and therefore, his past services rendered temporarily pursuant to the appointment made under 10 (a) (1) cannot be counted for the purpose of regularization or continuity of the service.

12. The learned Special Government Pleader would also submit that if the plea raised by the petitioner is accepted and his services made temporarily prior to his regular selection and appointment is taken into account and such a temporary service is also regularised retrospectively from 27.9.1989, then, those who had been selected along with the petitioner or even prior to him on permanent basis

through Service Commission would be affected as by virtue of such permanent selection and subsequent appointment, if they had completed their probation and their probation also is declared successfully, then, all those seniors who had been appointed either prior to the permanent appointment of the petitioner or seniors appointed permanently along with the petitioner would be pushed back in one stroke and all these seniors would be surpassed by the petitioner, if the retrospective regularization as sought for by the petitioner is accepted and given to him. Such course of action is impermissible. In this regard, the learned Special Government Pleader would rely upon a decision of the Honorable Apex Court reported in **(2006) 6 SCC 558 in K.Madalaimuthu and another vs. State of Tamil Nadu and others.**

13. The learned Government Pleader rely upon paragraph 25 and 26 of the said judgment which reads thus:

"25. In the instant case, the authorities on the strength of the several government orders giving retrospective effect to the regularisation of the promotees, have taken the date of initial appointment of such promotees as the starting point of their seniority. In our view, such a course of action was erroneous and contrary to the well-established principles relating to

determination of seniority. In our view, the High Court took an erroneous view in the matter of applying Rule 4 of the General Rules and holding that the period during which the promotees had initially discharged the duties of District Registrars, though appointed temporarily under Rule 10(a)(i)(l), was to be counted for determining their seniority. The decision of this Court in L.Chandrakishore Singh relied on by Shri Venkataramani did not involve the question of persons appointed outside the service as a stop-gap arrangement. The fact situation of the said decision is different from the fact situation of the instant case which finds support from the decision cited by Mr.Rao.

26. We, therefore, set aside the order passed by the High Court and direct the respondents concerned to redetermine the seniority of the appellants in relation to the promotees after reckoning the starting point of seniority of such promotees from the date on which their services were regularised and not from the date of their initial appointment under Rule 10(a)(i)(l) of the General Rules."

14. In view of the said legal position and the pronouncement of the Hon'ble Apex Court, such a retrospective regularization as has been sought for by the petitioner cannot be granted and therefore, reiterating the said position only, the first respondent rejected the claim of the petitioner by passing the impugned order and hence, the

learned Special Government Pleader submitted that the impugned order is fully sustainable and needs no interference from this Court.

15. This Court has considered the rival submissions made by the learned counsel appearing for the petitioner as well as the respondents and also perused the materials placed before it.

16. The very short issue to be decided in this writ petition is as to whether the plea of the petitioner to regularise his services rendered earlier on temporary basis from 27.9.1989 to 23.8.1994 for regularization as a continuous duty period for the purpose of all his service benefits, is to be accepted or not.

17. The admitted facts are that the petitioner was originally appointed under 10 (a) (1) of the General rules of the Tamil Nadu State and Subordinate Services and joined in service as Steno Typist on 27.9.1989. He was continuously working till 23.8.1994 in the said position though temporarily and on that day, he got relieved and joined for the same post, namely, steno typist in the respondent Department on the next date i.e. on 24.8.1994 since he had been selected by the Service Commission and appointed permanently. There is no break in service for these years, namely, about 5 years of

the temporary services rendered by the petitioner and his service records shows that in all these years, he had been continuously working and his Earned Leave also was permitted for surrender.

18. On his regular selection as had been appointed as Steno Typist, as stated supra, he had joined in the respondent department on 24.8.1994 and subsequently, his probation also was declared successfully. At the time of relieving from the temporary service on 23.8.1994, the petitioner was drawing a monthly salary of Rs.1470/- however, on his permanent appointment his salary was Rs.1200/-. Though the petitioner had been subsequently appointed and his service also got regularised, his pay is prejudicially affected as has been fixed lower pay than what he was drawing at the time of relieving from his temporary service. Therefore, he had made a request to the respondent and the said request was rejected. Ultimately, he had approached the Tamil Nadu Administrative Tribunal and the said case was transferred to this court and by order dated 29.9.2009, the request of the petitioner was directed to be considered by the respondents. Pursuant to the said direction of this Court, the present impugned order dated 10.3.2010 was passed. As has been pointed out by the learned counsel for the petitioner, the first respondent had given two reasons for rejecting the request of

the petitioner. Firstly, the respondent has stated that G.O. Ms.No. 85 dated 20.2.1990 was the one time relaxation given to those who had been selected by the Service Commission between 1983 and 1986 and therefore, the same shall not be made applicable to the petitioner. Secondly, the Government letter dated 5.2.1996 was to regularise the irregular appointments made before 5.2.1996 with retrospective effect and therefore, the said letter also would not be made applicable to the case of the petitioner.

19. Insofar as the first reason is concerned, the said G.O. Ms. No. 85, no doubt had given relaxation of the relevant rules for those who had been subsequently selected in permanent post by Service Commission between the year 1985 and 1986. Though such relaxation had been given for a set of people, who had been selected between the years 1983 and 1986, there is no acceptable reason given by the respondent not to give extension of such relief to those who had subsequently been selected by the Service Commission and in this regard, the Division Bench of this Court in the said Judgment made in W.A. No. 928 of 2009 dated 30.8.2010 has passed the following order in paragraphs 7,8 and 9 which is extracted hereunder:

"7. The learned Judge negated the claim of the appellant based on F.R. 22-B. The proviso to F.R. 22-B reads as follows:-

"Provided that if a Government servant has previously held substantively or officiated in -

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post on an identical time-scale or a temporary post on an identical time-scale, such post being same time-scale as a permanent post then the initial pay shall not be less than the pay other than special pay, personal pay or emoluments classed as pay by Government under rule 9(21)(a)(iii) which he drew on the last such occasion and he shall count the period during which he drew that pay on such last occasion and any previous occasions, for increment in the stage of time-scale equivalent to that pay."

8. It is also pertinent to note that F.R. 22-B has been relaxed by virtue of G.O. Ms. No. 85, Personnel & Administrative Reforms Department dated 20.02.1990 wherein the Government had passed orders that those members who were appointed in the Tamil Nadu Ministerial Service in the same cadre shall be fixed in the pay last drawn by them in the post prior to their appointment in relaxation of FR 22-B.

9. A reading of the above exception to F.R. 22-B would make it abundantly clear that the appellant is entitled for fixation of the pay last drawn by her in the Judicial Department. As rightly submitted by the learned counsel for the appellant, when the appellant's Earned Leave in Judicial Department was taken into account in Transport Department, it is to be assumed that her previous service is not erased off fully. In such case, her last drawn pay in the Judicial Department should have

been taken into account with effect from 07.9.1994. The respondents have committed error in rejecting the claim of the appellant. Therefore, we are of the view that the learned Judge has not considered the claim of the appellant in its proper perspective which needs to be interfered with."

20. If the said Judgment of this court referred to above is applied to the facts of the present case as in the case of the petitioner also there was no break in service between temporary service and permanent service as he was relieved from the temporary service on 28.3.1994 afternoon and joined in the regular service on the next day i.e., 24.8.1994 and in this case also, the Earned Leave surrender was permitted to the petitioner, it can be safely concluded that the import of the said order in the writ appeal will have coverage on the facts of the present case also.

21. That apart, insofar as the second reason is concerned, the Government letter dated 5.2.1996 would not be made applicable to the case of the petitioner and in that view of the matter, the request of the petitioner had to be rejected is concerned that reason of the first respondent is totally unjustifiable on the face of it. Because Government letter dated 5.2.1996 reflected the Government's decision to regularise the irregular appointment made before

5.2.1992. Whatever be the irregular appointment made by various departments and various authorities of the State Government prior to 5.2.1992 were directed to be regularised. In fact, the said Government letter was issued pursuant to the directives of the Tamil Nadu State Administrative Tribunal as well as the Hon'ble Supreme Court of India in several cases. When a blanket permission was given to regularization of services which were made irregularly prior to 5.2.1992, the reasoning now given by the first respondent that such benefit cannot be extended to the petitioner blindly, is totally unacceptable for the reason that the petitioner also was temporarily appointed in the year 1989 i.e., well prior to 05.2.1992. When the very irregular appointments themselves made prior to 05.2.1992 had been directed to be regularised by virtue of the policy decision reflected in the Government letter, why the first respondent has refused to extend such a benefit to the petitioner, who had been appointed before 1992 i.e., 27.9.1989 under 10 (a) (1) of the General Rules of Tamil Nadu State and Subordinate Services and subsequently, had been permanently selected and appointed from 24.8.1994. In fact the benefits sought to be extended through the said Government letter is for those, who had been temporarily appointed or irregularly appointed who have never been permanently appointed by selection made by the Service Commission. When that

being so, the petitioner, though was initially appointed temporarily has been subsequently appointed on permanent basis through the selection by Service Commission, is in far better footing than those who had been given such a benefit under Government letter and therefore, the denial of such benefit to the petitioner only for the said temporary period of service from 27.9.1989 and 23.8.1994, is totally unlawful and unjustifiable and therefore, this reason adduced by the first respondent in the impugned order is liable to be interfered with.

22. In this regard, the learned Special Government Pleader would rely upon the Judgment reported in **2006 (6) SCC 558** (stated supra) and according to him, if the services of the petitioner is regularised retrospectively from the date of his original appointment made, temporarily, i.e., from 27.9.1989, that will give undue benefit and advantage to the petitioner by which he would be placed above number of his seniors, who had been subsequently appointed on permanent basis and their probation would have been declared so well before the probation of the petitioner. Therefore, only in that context, the Hon'ble Apex Court in the Judgment cited supra has given the finding that the giving retrospective regularization to the promotees from the date of the initial appointment of such promotees as the starting point of their seniority, who had been subsequently,

appointed on permanent basis as their probation also would have been declared so, well before the probation of the petitioner, may not be justifiable. Therefore, only in that circumstances, the Hon'ble Apex Court in the Judgment cited supra has given a finding that the retrospective regularization of the promotees from the date of initial appointment of such promotees as the starting point of their seniority could be erroneous and contrary to the well established principles relating to regularization and seniority. Therefore, the Hon'ble Apex Court in fact disapproved such course of action adopted by the Government. As such the retrospective regularization giving undue benefit of seniority for those who had been given such benefit would be *dehors* of the Rule and therefore, such benefit has been negated by the said decision of the Hon'ble Apex Court.

23. In this regard, this Court is of the considered view that the submission of the learned Special Government Pleader by relying upon the said Judgment of the Hon'ble Apex Court for justifying the denial of seniority to the petitioner from the date of his original appointment on temporary basis, would have some force.

24. In the result, this writ petition is decided with the following orders:

(i) The impugned order is liable to be quashed, accordingly is

quashed;

(ii) The petitioner shall be entitled to seek regularization of his services as a continuous duty from 27.9.1989 to 23.8.1994 and consequently, the petitioner shall be eligible to claim salary benefits and other financial benefits including increment and fixation of pay;

(iii) However, the petitioner by virtue of such regularization of his service from 27.9.1989 shall not be entitled to claim seniority than any other person, who had been selected and appointed permanently prior to the appointment of the petitioner on permanent basis i.e., on 24.8.1994. In other words, no senior than the petitioner considering his permanent date of joining service i.e., 24.8.1994 shall be put on disadvantageous position pertaining to their seniority because of the regularization given to the petitioner's services from 27.9.1989;

(iv) For all other service benefits other than the seniority under clause 3 of the direction above, the petitioner shall be entitled to and accordingly, his pay benefits and other financial benefits shall be calculated and if any difference of pay is noticed the same shall also be calculated and the arrears shall be given to the petitioner.

(v) The above directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order.

25. Resultantly, the writ petition is allowed to the extent indicated above. No costs.

12.01.2017

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R.SURESH KUMAR,J.

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To

1. The Principal Secretary to Government,
Rural Development and Panchayat Raj (E7)
Department,
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2. The Commissioner of Rural Development &
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**Pre-Delivery Order in
W.P.No.11858 of 2010**

**Delivered on
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