

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2017

CORAM:

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.31332 of 2012

A.Poomaalai

... Petitioner

Vs.

1) The Secretary to Government,
Revenue Department,
Fort St. George,
Chennai 600 009

2) The Commissioner of Revenue
Administration,
Chepauk,
Chennai 600 005

3) The District Collector,
Collectorate,
Salem - 636 001.

4) The Tahsildar,
Attur, Attur Taluk,
Salem District.

... Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to G.O.(stand) No.170 Revenue [Service 8(2)] Department, dated 22.05.2012 passed by the first respondent and the consequential order in Na.Ka.13482/2008/A8 dated 21.09.2012 passed by the third respondent and quash the same consequently direct the respondents to regularise the petitioner's service with effect from 14.12.1994 in the cadre of night watchman and also direct the respondents to pay the arrears of pay, payable to the petitioner in pursuant to the regularization.

For Petitioner : Mr.M.Elango

For RR1 to 4 : Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

Heard Mr.M.Elango, learned counsel for the petitioner and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to G.O.(stand) No.170 Revenue [Service 8(2)] Department, dated 22.05.2012 passed by the first respondent and the consequential order in Na.Ka.13482/2008/A8 dated 21.09.2012 passed by the third respondent and quash the same consequently direct the respondents to regularise the petitioner's service with effect from 14.12.1994 in the cadre of night watchman and also direct the respondents to pay the arrears of pay, payable to the petitioner in pursuant to the regularization."

3. The case of the petitioner is as follows:-

The petitioner was appointed as night watchman in the Revenue Department of the fourth respondent's office on 14.12.1984 and since his appointment, the petitioner has been continuously working without any break till date. According to the petitioner, he was selected after being sponsored by the local employment exchange. On 08.01.1999, a proposal was sent by the Revenue Department for regularizing the services of several night watchmen, including the petitioner herein. In response to the proposal sent, except one employee namely V.Madhuraj, other persons including the petitioner were left out of regularization. After protracted correspondence, finally, the service of the petitioner came to be regularised vide G.O. (stand) No.170 dated 22.05.2012. According to the petitioner, similarly placed night watchmen were regularised on the date of completion of ten years of service as casual employee.

4. According to the petitioner, the Government vide G.O. (stand) M.S.No.22, P & A.R Department, dated 28.02.2006 has provided for regularization of casual employees working in various departments on completion of ten years of service. By applying the above said Government Order, hundreds of employees were regularised on their completion of ten years of service from the date of initial appointment. In fact, several orders were passed by this Court directing the department concerned to regularise those employees (temporary/casual employees) on their completion of ten years of service, in terms of G.O.(stand) M.S.No.22, P & A R Department dated 28.02.2006. However, in the case of the petitioner herein, his service was regularised only by an order dated 22.05.2012 and not on completion of ten years of service by him on 14.12.1994. Therefore, the petitioner is

before this Court seeking parity in treatment in the matter of regularization.

5. Learned counsel appearing for the petitioner would submit that in respect of similarly placed employees, their services were regularised from the date of completion of ten years of service. He would point out one instance in which one V.Madhuraj, who was earlier denied regularization, has approached this Court and the learned Single Judge of this Court has passed an order in his favour, granting him regularization on completion of ten years of service against which, the department had filed writ appeal in W.A.No.1117 of 2012. The learned Division Bench of this Court while dismissing the above Writ Appeal had clearly observed that, hundreds of similarly placed persons have approached this Court seeking regularization of employment in terms of G.O.Ms.No.22 P & A R Department dated 28.02.2006 and this Court had uniformly entertained their request and ordered regularization from the date of completion of ten years of service and all such orders were implemented and arrears of pay was also paid to those who approached this Court. While observing the Government Order as stated above, the writ appeal filed by the Government came to be dismissed as devoid of merits.

6. In the light of the above, the learned counsel for the petitioner made a submission that, when one similarly placed employee V.Madhuraj, got the benefit of the order passed by the learned Single Judge, wherein, the same order was also confirmed in Writ Appeal, then, the present petitioner could not be denied of the same benefit as given to the said employee.

7. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents would submit that the G.O.Ms.No.22 P & A R Department dated 28.02.2006 can be applied only for the purpose of additional eligibility criteria for consideration for regularization and it cannot be automatically applied to all employees, on the completion of ten years of service.

8. The learned Additional Government Pleader draw the attention of this Court to paragraphs 18 & 19 of the order passed by the Supreme Court reported in (2017) 4SCC page 113 in the matter of State of Tamil Nadu vs A.Singamuthu, wherein the Honb'le Supreme Court has observed the following:-

" 18. The learned Single Judge erred in extending the benefit of G.O.Ms.No.22 dated 28.02.2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned Senior Counsel for the

appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is, from 01.04.1999 till the date of his regularization, that is, 18.06.2012, the financial commitment to the State would be around Rs.10,85,113 (approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned Senior Counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularised under various G.O.s and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularisation of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

19. It is pertinent to note that even the regularisation of services of part-time employees vide G.O.(Rt) No.505 Finance (AA-2) Department dated 14.10.2009 and G.O.(2D) No.32 Finance (T.A.2) Department dated 26.03.2010 was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of government order and not from the date of completion of their ten years of service. The Division bench also failed to take note that G.O.Ms.No.22 P & A R Department dated 28.02.2006 is applicable only to full time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part time employees. As per G.O.(Rt) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of government order regularising his service, that is, 18.06.2012. The impugned order of the Division bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside "

In view of the same, the learned Additional Government Pleader appearing for the respondents would submit that no relief to be granted to the petitioner.

9. Learned counsel for the petitioner clarified that the Hon'ble Supreme Court's decision will apply to part time employees and not to the petitioner, who is admittedly a full time employee. However, this Court finds that, as far as the case on hand is concerned, it is covered by the Division Bench

judgment of this Court. As aforesaid, since identically placed employee V.Madhuraj has been granted benefit and there cannot be any justification, if the same is denied to the petitioner herein.

10. The arguments put forth by the learned Additional Government Pleader appearing for the respondents could not be countenanced in law, for the simple reason that the said Government Order was the subject matter of consideration before this Court in a number of writ petitions and uniformly this Court has allowed all the writ petitions in favour of the employees and had directed regularization of service to those casual employees on their completion of ten years of service. The said orders were also implemented and all the benefits were extended to the employees. Such being the case, this Court does not find any reason to take a different view in the matter, that no intelligible differentia can be pointed out by the learned Additional Government Pleader for the respondents.

11. In all fours, the case of the petitioner is squarely covered by the earlier decision passed by this Court and also covered by the benefit as provided for under G.O.Ms.No.22 P & A R Department dated 28.02.2006. In the light of the above, this Court is inclined in allowing the writ petition and the Government Order Na.Ka.13482/2008/A8 dated 21.09.2012 passed by the first respondent is quashed, insofar as it denied the benefit of regularization from the date when the petitioner completed ten years of service from the initial appointment. There shall be consequential direction to the respondents to grant regularization in terms of G.O.Ms.No.22 P & A R Department dated 28.02.2006 and grant him all attendant benefits to the petitioner as given to the other similarly placed employees and this direction shall be complied with, by the respondents within a period of 3 months from the date of receipt of a copy of this order. Accordingly, the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1) The Secretary to Government,
Revenue Department,
Fort St. George,
Chennai 600 009

2) The Commissioner of Revenue
Administration,
Chepauk,
Chennai 600 005

3) The District Collector,
Collectorate,
Salem - 636 001.

4) The Tahsildar,
Attur, Attur Taluk,
Salem District.

+1 cc to M/s.M.Elango Advocate sr 85583
+1 cc to Govt Pleader sr 85665

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