

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.22740 of 2010

R.Azhaharasan

.... Petitioner

Versus

- 1.The Government of Tamilnadu rep.
by Secretary to Government,
Environment and Forests Department,
Chennai-600 009.
 - 2.The Principal Chief Conservator of Forests,
Panagal Building,
Chennai-600 015.
 - 3.The Divisional Forest Officer,
Inter Face Forestry Division,
Salem, Salem District.
- Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Certiorarified Mandamus to call for the records of the second respondent, relating to the order in Pro.C.No.52469/2008 S2 dated 3.2009 (singed on 16.04.2009) quash the same and issue consequential direction to the respondents to regularise the services of the petitioner as Driver from the date of his initial appointment in 01.07.1997 with consequential benefits and to absorb him in regular establishment. सत्यमेव जयते

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.M.Santhanaraman
Addl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

'To issue a Certiorarified Mandamus
Certiorarified Mandamus to call for the records of

the second respondent, relating to the order in Pro.C.No.52469/2008 S2 dated 3.2009 (signed on 16.04.2009) quash the same and issue consequential direction to the respondents to regularise the services of the petitioner as Driver from the date of his initial appointment in 01.07.1997 with consequential benefits and to absorb him in regular establishment''.

2.The petitioner was appointed as driver in the Forest Department, on 01.07.1997 and he has worked in various divisions. He has been continuously employed as such, even as on date. In spite of the petitioner being continued in employment, his service has not been regularized in terms of instructions issued by the Government, particularly G.O.Ms.No.22 of P & A R Department, dated 28.02.2006.

3.According to the petitioner, he made a representation dated 27.08.2008 to the second respondent in this regard and the same has been rejected.

4. In the above said circumstances, the petitioner has approached this Court in W.P.No.22209 of 2008 dated 09.09.2009, seeking for regularization in the post of 'Driver'. The said writ petition was disposed of by this Court with a direction to consider the request of the petitioner for regularization, within a period of eight weeks from the date of receipt of a copy of the order. The second respondent, after consideration of petitioner's representation dated 27.08.2008, rejected the same by proceedings in Pro.C.No.52469/2008 S2 dated 03.2009 (signed on 16.04.2009) and the same is put into challenge in this writ petition.

5. Upon notice, Mr.Mr.M.Santhanaraman, learned Additional Government Pleader entered appearance for the respondents and filed his counter affidavit.

6. In the counter, it is stated that in para-4, it is admitted that the petitioner had been employed as driver and has been continued till date. First of all, in the counter affidavit, it is stated that he was engaged on daily wages and therefore, not covered under any service rules. The petitioner having already approached this Court seeking regularization and the writ petition having been disposed of by directing the authorities concerned to consider the representation and the same having been considered as rejected, he cannot seek the same prayer in this writ petition.

7. Per contra, learned counsel for the petitioner would submit that admittedly, the petitioner continued as driver in service from 1997 as on date, many of the drivers who were appointed like the petitioner had been regularised on application of G.O.Ms.No.22, P & A R Department, dated 28.02.2006, on the basis of the direction issued by this Court. Learned counsel for the petitioner relied upon the decision by this Court in W.P.No.19465 to 19458 of 2013 dated 04.09.2017 wherein this Court has considered similar claim of the drivers employed in the Forest Department and allowed the writ petition on the basis of earlier orders passed by this Court by the learned Single Judge as well as the Division Bench. The order passed by this Court in the above said writ petition, in regard to the facts and conclusion were in found in para 3 to 10 are extracted below:

"3.The case of the petitioners is as follows:

The petitioners were appointed as Driver on 27.07.1998 and 04.11.1998, in Dharmapuri Forest Division. According to the petitioners, they were appointed through Employment Exchange and they have been working continuously as Driver from the date of initial appointment till the date of filing the writ petitions and also till today.

4.It appears that the petitioners have approached this Court earlier and obtained certain directions to dispose of the representations for regularising their services but unfortunately, the claim of the petitioners was rejected by the second respondent on 07.10.2008. In the writ petition Numbers 19456 and 19457 of 2013, the first respondent passed an order on 09.05.2013, rejected the claim for regularisation on the ground that they have not completed 10 years of service as per the G.O.Ms.No.22 of P & A R Department dated 01.01.2006. The other writ petitioner case (W.P.No.22 of 2013) has not been rejected this Court seeking issue of Writ of Mandamus for regularisation of his service.

5.The sum and substance of the writ petitions is that the rejection of the request for regularisation as per G.O.Ms.No.22 of P & A R Department, dated 01.01.2006, is invalid and cannot be countenanced in law. According to the learned counsel appearing for the petitioners, one of the Drivers, viz., S.Murugan, whose claim was also rejected under the same impugned order dated 09.05.2013, has approached this Court in W.P.(MD) No.11106 of 2013, wherein, this Court by order dated 01.12.2016, allowed the writ petition by quashing the same impugned order, insofar as the

petitioner is concerned, held that the petitioner therein is entitled to regularisation from the date of initial appointment on completion of ten years of service on that date.

6. Upon notice, learned Additional Government Pleader entered appearance and submitted that the petitioners herein are not entitled to regularization since they had not completed ten years of service as on 01.01.2006, in terms of G.O.Ms.No.22 of P & A R Department, dated 01.01.2006.

7. At this, the learned counsel appearing for the petitioners would submit that the said objection was also raised in respect of the other driver who was approached this Court earlier in W.P.(MD) No.11106 of 2013 and this Court in the said order dated 01.12.2016, had repulsed and overruled such argument stating that the petitioner therein was entitled to regularization on completion of ten years of service from the date of his initial appointment. The learned counsel for the petitioner would further submit the order passed by the learned Single Judge was confirmed in W.A.(MD).No.686 of 2017, vide order dated 12.07.2017.

8. Since the petitions herein are squarely covered by the order passed by this Court as aforesaid, this Court cannot take a different view in the matter. Moreover, the objection raised by the learned counsel appearing for the respondents was considered and overruled and therefore, the similar objection which is raised by the learned counsel for the respondents cannot be entertained as being valid and substantive.

9. In view of the above submissions, this Court has no hesitation in allowing these writ petitions and the impugned order passed by the first respondent dated 09.05.2013, insofar as the two petitioners are concerned, are set aside and all the petitioners are directed to be regularised from the date of completion of ten years from the date of initial appointment with all attendant and consequential benefits. The direction shall be complied with by the first respondent within a period of two months from the date of receipt of a copy of this order.

10. With the above direction, the writ petitions are allowed. No costs. Consequently, connection miscellaneous petitions are closed."

8.Learned counsel for the petitioner would submit that the above said order is a valid one.

9.At this, the learned Additional Government Pleader appearing for the respondents would submit that in the instant case, the petitioner was not recruited by the Employment Exchange. Therefore, he cannot seek a direction whatsoever in the above orders. The said submissions on behalf of the respondents is unacceptable for the reason that the petitioner having been appointed by the respondent administration and extracted the work admittedly till date for nearly 20 years, it is not open to the respondents to raise an issue of sponsorship of employment exchange. Moreover, as particularly pointed out by the learned counsel for the petitioner that the issue is directly covered by the orders passed by the learned Single Judge as well as Division Bench as found in the observations made in the aforesaid decision by this Court on 04.09.2017.

10.In view of issue being covered in the above said orders, this Court cannot take a different view in the instant case and therefore, this Court has no hesitation in allowing the writ petition and the impugned order Pro. C.No.52469 of 2008 S2 dated .03.2009 (Singed on 16.04.2009) is set aside, with a consequential direction to the respondents to regularise the service of the petitioner as driver from the date of petitioner's initial appointment with all attendant benefits.

11.It is also made clear that on such regularization, the petitioner is not entitled to arrears of differential wages, however he is entitled to other service benefits on such regularisation. The said direction shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

12.In view of the above observations and directions, this Writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Government of Tamilnadu
Environment and Forests Department,
Chennai-600 009.

2.The Principal Chief Conservator of Forests,
Panagal Building,
Chennai-600 015.

3.The Divisional Forest Officer,
Inter Face Forestry Division,
Salem, Salem District.

+lcc to Mr.R.Jayaprakash, Advocate SR.No.89982

SSI (CO)
sm:19.1.2018

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