

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.12335 of 2013 and
W.M.P.No.27041 of 2016

S.Sanjeevi

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Fort St.George, Chennai 600 009.

2.The District Collector,
Thiruvallur District,
Thiruvallur.

3.Revenue Divisional Officer,
Thiruvallur 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 entire proceedings relating to the impugned order of the first respondent in G.O.(Permanent) No.36, Revenue (Service 8(2)) Department, dated 29.01.2009 and quash the same in so far as it restricts the notional date of regularization from 20.09.2000 and consequently direct the first respondent to regularize the service of the petitioner from the date of his first appointment namely 14.05.1983 with all attendant service benefits like monetary benefits, seniority, promotion etc.,

For Petitioner : Mr.M.Venkatachalapathy for
M.Sriram

For Respondents: Mr.Zakkir Hussain
Additional Government Pleader

O R D E R

Heard Mr.M.Venkatachalapathy, learned counsel appearing for the petitioner and Mr.Zakkir Hussain, learned Additional Government Pleader appearing for the respondents.

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

"To issue a Writ of Certiorarified Mandamus, to

<https://hcservices.ecourts.gov.in/hcservices/> call for the entire proceedings relating to the

impugned order of the first respondent in G.O. (Permanent) No.36, Revenue (Service 8(2)) Department, dated 29.01.2009 and quash the same in so far as it restricts the notional date of regularization from 20.09.2000 and consequently direct the first respondent to regularize the service of the petitioner from the date of his first appointment namely 14.05.1983 with all attendant service benefits like monetary benefits, seniority, promotion etc., "

3. The case of the petitioner is as follows:

The petitioner was appointed as Last Grade Servant in the Taluk Office of Thiruvallur on 16.10.1979. On 14.05.1983, the petitioner was appointed as Masalchi on daily wage basis at the office of the Revenue Divisional Office, Thiruvallur. He was sponsored by the Employment Exchange for appointment as such.

4. Although the petitioner had been continuously employed without any interruption, his service was not regularized for considerable time. Therefore, he approached the then Tamil Nadu Administrative Tribunal in O.A.No.3243 of 1997, seeking direction to the respondents to regularize his service as Masalchi from the date of his initial appointment and accord all service benefits. On abolition of the Tribunal, his original application was transferred to this Court and renumbered as W.P.No.26185 of 2005. This Court disposed of the writ petition by order dated 06.02.2006, directing the respondents to consider the representation of the petitioner and dispose of the same within a period of eight weeks.

5. However, the direction issued by this Court was not promptly complied with, after considerable delay G.O.(Per) No.36, Rev Service 8(2) Revenue Department, dated 29.01.2009 was issued for regularizing the service of the petitioner as Masalchi with effect from 09.02.2000, not from the date when he was originally appointed in the year 1983. Since the above said Government Order granting regularization only from 2000 and not from 1993, aggrieved by the same, the petitioner is before this Court, challenging the said Government Order.

6. The learned Senior Counsel appearing for the petitioner would submit that as per the G.O.Ms.No.107, P & AR Department, dated 05.02.1987, the contingent staff like the petitioner are entitled to be brought on regular establishment on completion of five years of service. The said Government Order contemplates providing of relaxation in case the same is necessary. According to him, several contingent staffs like the petitioner have been brought on regular establishment by applying the provisions of the said Government Order. However, unfortunately as regards the petitioner alone, the benefit of regularization has been granted only with effect from 09.02.2000 and not from 1983.

7. According to the learned Senior Counsel, although a prayer in the writ petition sought for the benefit of regularization to be given from 14.05.1983, i.e., the date of initial appointment, he would limit his prayer that the petitioner is atleast entitled to regularization from the date of completion of five years of service from the date of his initial appointment on 14.05.1988. According to the learned Senior Counsel, the petitioner is entitled to be regularized with effect from 1988, on completion of five years of service as per the aforesaid Government Order.

8. The learned Senior Counsel would draw this Court's attention to the impugned Government Order passed by the Government in which it is stated that his appointment was originally not regular in view of the ban imposed by the Government for recruitment vide G.O.Ms.No.52, Finance, dated 14.01.1977 and moreover there was no post of Masalchi in the Revenue Divisional Office, Thiruvallur. It was created only in 09.02.2000. Therefore, the petitioner was accommodated on regular basis from the said date and he cannot therefore claim for regularization on completion of five years of service from the date of his initial appointment.

9. According to the learned Senior Counsel, such reasoning by the Government is contrary to the provisions of G.O.Ms.No.107, P&AR Department, dated 05.02.1987 and once irregular appointment has been regularized by granting benefit of regularization, it should get back to the completion of five years of service as contingent staff and cannot be from the later date. According to the learned counsel, all other similarly placed contingent staff have been granted by applying the above said Government Order and granted regularization on completion of five years of service. Therefore, the present action on the part of the Government by singling out the petitioner alone is discriminatory, arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

10. Upon notice, learned Additional Government Pleader appearing for the respondents entered appearance and made his submissions. According to the learned counsel for the respondents, the petitioner having been appointed during the period of ban, cannot take advantage of his irregular appointment for the purpose of being regularized from that date. The learned counsel would also reiterate the reasons as said forth in the impugned order.

11. This Court has considered the rival submissions of the learned counsels appearing for the parties and perused the relevant materials and pleadings placed on record. The G.O.Ms.No.107, P & AR Department, dated 05.02.1987, is very

clear that the contingent staff who have completed five years of service are entitled to be brought on regular establishment. As rightly contended by the learned senior counsel for the petitioner that by applying the said Government Order, several employees have been granted the benefit of regularization on completion of five years of service as contingent staff. Moreover, once the Government had taken a decision to regularize the service of the employees like the petitioner, there cannot be a different treatment to the same set of employees in the matter of regularization.

12. In the instant case, it is an admitted position that the petitioner is fully covered by the provisions of the G.O.Ms.No.107, P & AR Department, 05.02.1987 and therefore, there is no justification for treating the petitioner differently and granting him the benefit of regularization from the future date i.e., 09.02.2000.

13. In view of the above discussion and narration, the impugned order dated 29.01.2009 is set aside and the respondents are directed to grant the benefit of regularization to the petitioner with effect from the date he had completed five years of service from the date of his initial appointment i.e., on 14.05.1983, with all consequential benefits on such regularization. However, it is made clear that the petitioner is not entitled to payment of difference of wages if any, for the said period, however entitled to all other service benefits including notional fixation of pay and allowance for the period. The said direction shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order.

14. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsk

To

1.Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai 600 009.

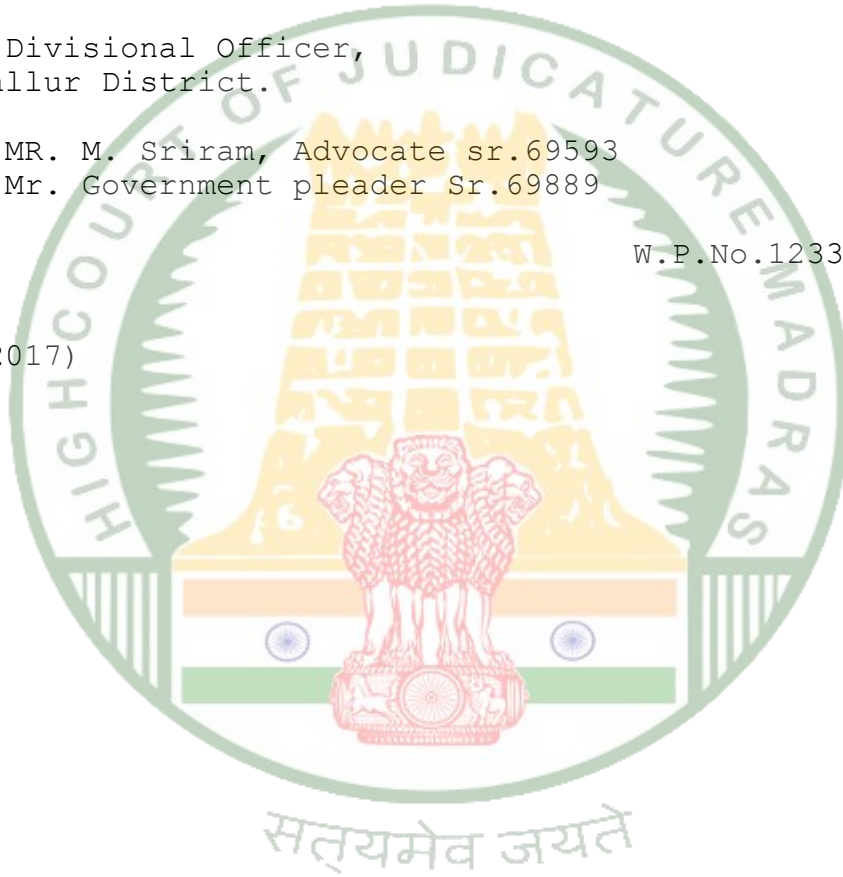
2.The District Collector,
Thiruvallur District,
Thiruvallur.

3.Revenue Divisional Officer,
Thiruvallur District.

+ 1 cc to MR. M. Sriram, Advocate sr.69593
+ 1 cc to Mr. Government pleader Sr.69889

W.P.No.12335 of 2013

VGII (CO)
EU(26/10/2017)



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