

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.15138 of 2012

and

M.P.No.1 of 2012

Boopathy

... Petitioner

vs.

1.The Chief Educational Officer,
Cuddalore District,
Cuddalore.

2.The District Educational Officer,
Cuddalore District,
Cuddalore.

3.The Headmaster,
Government High School,
Palur, Cuddalore District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents 1 and 2 to regularize the service of the petitioner in permanent post of Night Watchman with effect from initial date of his initial appointment in the regular time scale of pay and grant all the consequential service an monetary benefits.

For Petitioner : M/s.S.Sivakumar

For Respondents : Mr.R.Govindasamy

Special Government Pleader

ORDER

The writ petition has been filed by the petitioner seeking for issuance of a Writ of Mandamus to direct the respondents 1 and 2 to regularize the service of the petitioner in permanent post of Night Watchman with effect from initial date of his initial appointment in the regular time scale of pay and grant all the consequential service an monetary benefits.

2. The case of the petitioner is that he belongs to most

backward class community and he studied upto VIII Standard and he registered his name in the employment exchange. Further the petitioner was appointed as "Night Watchman" by the 3rd respondent in the year 2002 on consolidated pay of Rs.200/- per month. The above said Night Watchman post is a part time in nature and sanctioned one and the petitioner has been appointed by the 3rd respondent and the salary has been paying through the Parent Teacher Association Fund and there is no irregularity in the appointment of the petitioner. Though the petitioner completed 10 years of service and his service has been appreciated by the superiors all along and there is no adverse remark as on date and the petitioner is the sole bread winner of the family and the job of the petitioner is the only source of the live hood of the petitioner.

3. The 3rd respondent has enhanced the consolidated pay from Rs.400/- to 1,000/- per month, since the petitioner is serving with full devotion and as such the petitioner is receiving Rs.1,000/- as consolidated pay per month. Further the petitioner submits that he is entitled for time scale of pay as per the Government Order. The petitioner made a representation to the respondents 1 and 2 through proper channel and the same has been forwarded to the 1st respondent and in turn the 1st respondent sent a reply dated 23.02.2004 and in the reply it was stated that request would be considered later since he joined the service after 28.02.1993.

4. The second respondent also sent a communication on 11.08.2004 wherein the second respondent has informed the petitioner that his request has not been considered at present since rules are not provided the same. The petitioner believed that his claim has not been considered due to the ban on recruitment.

5. Meanwhile, the Government has lifted the ban on recruitment and the Hon'ble Chief Minister has announced on the floor of the Assembly that the service of the employees working in various Government Departments on consolidated pay and daily wages basis who have completed more than 5 to 10 years of service respectively will be regularized. Based on the announcement made by the Hon'ble Chief Minister, the Government has issued an order in G.O.Ms.No.22, dated 28.02.2006 wherein the Government directed that the services of the daily wages employees working in all the Government Departments who have rendered 10 years of service as on 01.01.2006 be regularised by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned subject to their being otherwise qualified for the post. Pursuant to the orders, there are several orders have

been issued for the regularisation of employees of consolidated pay working in various department. But in respect of the petitioner, the respondents have failed to consider the claim. Therefore, the petitioner made a various request to consider the grievance of the petitioner and the 3rd respondent also sent a proposal in favour of the petitioner to the respondents 1 and 2 and as such no orders have been passed so far.

6. It is further case of the petitioner that respondents have failed to consider the claim of the petitioner and the existing Government order to a policy decision of the Government. Hence, the petitioner once again made a representation to the Hon'ble Chief Minister Cell on 11.02.2011 narrating all the facts and requested to regularise the service of the petitioner in the permanent post of Sweeper or watchmen or office Assistant post as possible. The said representation has been forwarded to the 1st respondent and so for the 1st respondent has not consider the petitioner claim till date.

7. The petitioner also states that the petitioner was legally fighting with the respondents from 2004 onwards for his regularisation though the petitioner has been appointed with prior sanction but for the obvious reason the respondents have not regularised the service of the petitioner. It is bounden duty of the respondents 1 and 2 to obey the Government order but they failed to consider which is totally against by violating Article 14 and 16 of the Constitution of India. Therefore, the petitioner is approaching this Court for regularising his service in the permanent post of Sweeper with effect from initial date of appointment in the regular time scale of pay and grant all the consequential service an monetary benefits.

8. The counter affidavit has been filed by the second respondent on behalf of the other respondent by denying all the allegations set out in the affidavit.

9. The second respondent states that the petitioner was appointed as Night Watchman in the year 2002 by the Headmaster, Government High School, Palur on temporary basis. But he was not paid from Government funds. The petitioner himself admitted that he was paid from the School Parent Teacher Association Fund.

10. In the counter, it is further stated that the petitioner was appointed as Night Watchman on temporary basis and on consolidated pay and he was paid from the School Parent Teacher Association Fund since the job done by the petitioner cannot be considered as a Government Job. The District Educational Officer, Cuddalore, is the appointing authority and the posts such as Watchman and Sweeper can be filled up by sponsoring candidates from Employment Exchange after following

the Rules and Regulations. The petitioner claim cannot be considered as he was appointed on temporary basis and paid from School Parent Teacher Association Fund and they were not recruited through Employment Exchange.

11. It is admitted fact that the State Government have directed in G.O.22 P and A.R Department, dated 28.02.2006 that the service of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 01.01.2006 be regularised by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned subject to their being otherwise qualified for the post. The second respondent also states that the said provisions of the G.O.Ms.No.22 applicable is only to those who appointed and paid from contingencies of the Government Funds. The petitioner was paid from School Parent Teacher Association Funds and the provisions of the Government Order referred above cannot be made applicable to the petitioner.

12. The second respondent also states that when the petitioner's appointment does not come under the purview of the Government Order in G.O.Ms.No.22 and he cannot be appointed as Sweeper in the permanent post by regularising his service. The petitioner statement that the similarly situated persons who have been paid from Parent Teacher Association Fund were regularised is wrong and the petitioner deny the same which statement is misleading the Court as per G.O.111 part time employees were brought into time scale of pay and safeguard the interest of the school the petitioner was appointed in temporary basis and paid salary from the School Parent Teacher Association Fund. Similarly teachers are also being appointed and the salary paid from the School Parent Teacher Association Fund not from the Government Fund. Therefore, the request made by the petitioner cannot be considered. The respondents prayed for the dismissal of the writ petition.

13. I heard the submissions of M/s.S.Sivakumar, learned counsel appearing for the petitioner and Mr.R.Govindasamy, Special Government Pleader appearing for the respondents.

14. At the time of arguments, the learned counsel for the petitioner has produced the order of this Court in W.P.No.11007 of 2013 dated 16.02.2017.

15. In the said judgment, the learned Single Judge of this Court has passed the order stating that earlier the very same learned single Judge was passed order in W.P.No.20730 of 2012 etc., which reads as follows:

"The Parents Teachers Association (PTA) had

appointed various persons for the posts of Office Assistants, Night Watchmen, Watchmen, Sweepers, Water Supply Attendant, etc., on ad hoc basis and these appointed persons had been serving in various schools for more than ten years on consolidated wages of approximately Rs.1,500/- p.m. The Government of Tamil Nadu had issued an order in G.O.Ms.No.47, School Education Department, dated 02.03.2012 whereby 5000 Sweepers and allied non-Teaching Staff were sought to be recruited on Special Scale of Pay. Some of the persons who were earlier appointed by the PTA and who had been serving in the Schools for more than ten years, had made a representation to the respondents to consider them for regularization of their services. When the appointments under G.O.Ms.No.47 was sought to be made, the Government, in certain cases, had rejected the claim of these ad hoc appointees stating that they were not properly appointed and that the caste reservation and age criteria were not taken into consideration at the time of ad hoc appointments. Further, the Government had also pointed out that these appointments were made on the basis of PTAs recommendations and hence, their services cannot be regularized while the appointments under G.O.Ms.No.47, dated 02.03.2012 was contemplated to be made. Aggrieved against the rejections, these ad hoc appointees had filed these writ petitions before this Court.

2.Certain ad hoc appointees, whose recommendations were not considered, had also filed writ petitions, seeking Writ of Mandamus directing the respondents to regularize their services, since the Government had taken a decision to appoint 5000 Sweepers and allied employment under G.O. Ms.No.47 dated 03.02.2012.

3.I have considered the submissions made by the learned counsel for the petitioners as well as Mr.K.Venkata Ramani, the learned Additional Advocate General appearing on behalf of the respondents.

4.The PTA in the State of Tamil Nadu, which is a non-Government Organisation was established in the year 1964. The Association was organised with the object to develop good relationship and better co-operation between the parents and teachers, to guide children for their improvements in social, economic, cultural and educational activities, among other activities. Apart from the development of the students, the PTA also involves itself in the

improvement and development of the school. Whenever, the School Management is in shortage of finance to meet necessary expenses like paying an ad hoc appointment of teachers or expansion or construction of school buildings, the PTA also raises funds to assist in such activities. At times, whenever the situation arises whereby the Government is unable to provide fund immediately to aided schools owing to shortage in their budget and whenever the government, in principle, has agreed to provide funds, the PTA extends financial assistance during such situations.

5. In this background, in view of the acute shortage in the posts of Sweeper, Watchmen, Night Watchmen, Water Attender and Office Assistant, etc., the Government had in principle, agreed to fill up the said vacancies. However, since the process of filling up the vacancies took considerable time, the PTA had, on ad hoc basis, appointed various persons to these posts until the State Government sanctions these posts. In consequence of these ad hoc appointments and the Government having not taken an early decision to sanction these posts, the Ad hoc Appointees were continued to serve in Schools for more than 10 years and above.

6. Though the Government was quite conscious of the fact that various persons like that of petitioners have been serving in the post of Sweepers, Watchmen, Office Assistants, etc., for more than 10 years, curiously, an order in G.O.Ms.No.47, School Education Department, dated 02.03.2012, came to be passed whereby 5000 posts of sweepers and allied non-teaching staff were sought to be filled up through regular appointment. On a perusal of the G.O., it is seen that the Hon'ble Chief Minister of Tamil Nadu, had announced in the Legislative Assembly to appoint 5000 Sweepers and allied non-teaching staff in order to maintain cleanliness and healthy environment in all schools in the State of Tamil Nadu.

7. With this announcement in the background, the Government Order came to be passed and fresh appointments were sought to be made, without consideration of the existing ad hoc Appointees. It is rather unfortunate that the respondents had totally disregarded the long service put up by the Ad hoc Appointees like that of the petitioners, without any rationale in failing to regularise their services and opting to bring in new appointments. It is also seen that when the respondents had sought to reject the claim of some of the ad hoc appointees, the reason

adduced was that their appointments were not made on regular basis and that their names were neither recommended by the Employment Exchange nor were they appointed by adopting caste reservation or taking into consideration their age eligibility criteria.

8.I am unable to accept the reasoning of the respondents in this regard. Admittedly, there was a severe crisis whereby appointments to these posts was imminent and necessary for the welfare of the school children. It is also not in dispute that the respondents were contemplating to sanction the posts of Sweepers, Watchmen, Night Watchmen, Office Assistants, etc., It is in contemplation of such a sanction that the PTA had made these appointments, which was also one of the objects of the PTA. While that being so, the Government's decision to appoint 5000 new persons to these posts without considering the light of Ad hoc appointments, who were serving more than 10 years on meagre consolidated pay of Rs.1,500/- per month, is totally irrational. The Government Order was also passed on the basis of the announcement made by the Hon'ble Chief Minister in the Legislative Assembly to appoint 5000 Sweepers and allied non-teaching staff in order to maintain cleanliness and healthy environment in all schools in the State of Tamil Nadu and thereby, in the given situation, the proper method to be adopted by the respondents would have been to regularise the ad hoc appointments and then resort to new appointments while trying to adjust the 5000 appointments announced by the Hon'ble Chief Minister. As such, the respondents attempt to justify their rejection orders stating that the ad hoc appointments were not regular, is illegal. Accordingly, I reject the reasoning of the respondents in passing orders disallowing the claim of the ad hoc appointees.

9.At this juncture, Mr.K.Venkata Ramani, the learned Additional Advocate General, appearing on behalf of Respondents, on written instructions would bring it to my notice that pursuant to G.O.Ms.47, dated 02.03.2012, the Government had already appointed 1495 Watchmen and 2213 Sweepers on 23.11.2012 and the remaining 506 vacancies of night watchman and 786 Sweepers are sought to be filled up after getting appropriate orders from the Government. While that being so, there is no impediment on the part of the respondents to consider the case of the ad hoc

appointees who have been serving various schools for the past 10 years.

10.As such, the petitioners in this writ petition, who had also put in service of more than 10 years as ad hoc appointee on consolidated pay, is entitled to be regularised in the said post. Consequently, the Secretary to Government, Department of Education, Government of Tamil Nadu, Chennai, is hereby directed to regularise the service of the petitioners with effect from the date of completion of 10 years of ad hoc service, within a period of six weeks from the date of receipt of a copy of this order.

11.With the above said direction, the writ petition stands allowed. "

16. Per contra, the learned Special Government Pleader appearing for the respondent represented that the petitioner was working from 01.01.2001 till 25.11.2012 and now the petitioner is not in service. Therefore, his request for regularisation of her service is not maintainable.

17. But, the learned counsel for the petitioner submitted that as per the interim order granted by this Court dated 12.10.2012, he is continuing his service till date without any interference.

18. I am also gone through the order passed by this Court in M.P.No.1 of 2012 in W.P.No.15138 of 2012, dated 12.10.2012 which reads as follows:

"The petitioner is in service from 2001 for the past eleven years. Hence, Interim Injunction is granted."

Therefore, the contention of the Special Government Pleader is not acceptable one. सत्यमेव जयते

19. It is admitted fact that this Court in W.P.No.20370 of 2012 filed by 42 writ petitioners have issued a direction by regularizing the service of them. Pursuant, to the order passed in W.P.No.20730 of 2012, this Court also passed the another order in W.P.No.11007 of 2013 dated 16.02.2017.

20. The learned Special Government Pleader states that challenging the order of this Court in W.P.No.11007 of 2013, the respondent are going to file an appeal. Therefore, the order passed in the said writ petition in W.P.No.11007 of 2013 dated 16.02.2017 is not applicable to the petitioner's case. But the learned Special Government Pleader has not produced any copy of

the appeal or number of the appeal or a appeal number. But, till date the respondents have not furnished the copy of the appeal. Therefore, the orders of this Court in W.P.No.20730 of 2012 and W.P.No.11007 of 2013, dated 16.02.2017 are squarely applicable to the petitioner's case and the respondents cannot deprived the legitimate right of the petitioner.

21. In the result:

(a) The writ petition is allowed;

(b) The respondents are directed to regularize the service of the petitioner in permanent post of Night Watchman with effect from initial date of appointment in the regular time scale of pay and grant all the consequential service and monetary benefits;

(c) The said exercise shall be done within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Educational Officer,
Cuddalore District,
Cuddalore.

2.The District Educational Officer,
Cuddalore District,
Cuddalore.

3.The Headmaster,
Government High School,
Palur, Cuddalore District.

+1cc to Mr.S.Sivakumar*, Advocate, S.R.No.50225

+1cc to the Government Pleader, S.R.No.51019

W.P.No.15138 of 2012

RRK(05/12/2017)