

In the High Court of Judicature at Madras

Dated : 17.11.2017

Coram :

The Honourable Mr.Justice S.M.SUBRAMANIAM

W.P.No.18961 of 2012

P.Nallasivam

... Petitioner

Vs

1. The Chief Engineer,
Agricultural Engineering Department,
Nandanam,
Chennai - 600 035.

2. The Secretary,
Agricultural Engineering Department,
Fort St.George,
Chennai - 600 009.

... Respondents

Prayer: Petition under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to pass orders on the representation dated 18.06.2012 seeking consideration of the claim of the petitioner for appointment to any eligible post under the Agricultural Engineering Department on merits and within a time to be stipulated by this Hon'ble Court.

For Petitioner : Mr.L.Chandra Kumar

For Respondents: Mr.K.Thanga Pandi
Government Advocate

ORDER

The relief sought for in this writ petition is for a direction to direct the respondent to pass orders on the representation dated 18.06.2012, in respect of the claim of the petitioner for appointment to the post under the Agricultural Engineering Department, on merits.

2. The learned counsel appearing for the writ petitioner made a submission that the petitioner has completed Diploma in Agricultural Engineering and he was appointed as Irrigation

Community Organiser on 28.10.1991 on daily wage basis. He worked till 11.01.1993. After some break, again, he was posted as Technical Assistant and the petitioner was discharging his duties between the years 1993-1994. At present, the petitioner is continuing under the Project Officer, District Water Shed Development Agency, Villupuram on consolidated pay of Rs.5,400/- p.m. The learned counsel for the petitioner states that the writ petitioner is working from the year 1991 till today and his initial appointment was through District Employment Exchange and now he is receiving the consolidated pay. In spite of his long services and the fact that he is fully qualified, the respondents have not considered the case of the petitioner for permanent absorption.

3. The legal principles in relation to the regularisation and the permanent absorption as settled by the Hon'ble Supreme Court of India is that appointment or regularisation can never be claimed as a matter of right. Regularisation or permanent absorption shall be extended to the employees, who were appointed only under the recruitment rules in force. In other words, an employee, who was not appointed in accordance with the service rules in force, the question of granting permanent absorption or regularisation will not arise at all. The Apex Court of India emphatically ruled the employees, who entered in public services through back door should be allowed to go out from the door from which they entered.

4. Thus, this Court of the opinion that irregular or illegal appointments can never be regularised nor any such employee can be permanently absorbed. The Constitution Bench of Hon'ble Supreme Court of India, settled the legal principles in this regard and subsequently, two judges Bench of the Hon'ble Supreme Court of India also reiterated that the High Courts exercising the powers under Article 226 of the Constitution of India cannot issue any directions to regularise the services of the employee who are otherwise not appointed in accordance with the recruitment rules in force. This being the law of the land as per the Judgment of the Hon'ble Supreme Court of India, this Court is not inclined to issue any direction for regularisation or permanent absorption.

5. However, the learned counsel for the petitioner urged this Court by stating that the writ petitioner was initially appointed through District Employment

Exchange, as per the rules and therefore his case shall be considered by the respondent.

6. Thus, without going into merits of the case, the first respondent is directed to consider the representation submitted

by the writ petitioner on 18.06.2012 and pass orders on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order. The writ petitioner is directed to enclose the copy of the representation along with the order passed in this writ petition.

7. Accordingly, the writ petition stands disposed of. However, no order as to costs.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

vv/vsi2

To

1. The Chief Engineer,
Agricultural Engineering Department,
Nandanam,
Chennai - 600 035.

2. The Secretary,
Agricultural Engineering Department,
Fort St. George,
Chennai - 600 009.

+1cc to Mr.L.Chandra Kumar Advocate, S.R.No. 82081
+1cc to the Government Pleader, S.R.No. 82883

W.P.No.18961 of 2012

TR(06/12/2017)

सत्यमेव जयते

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