



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P (MD) No.11078 of 2014

R.Alagirisamy

... Petitioner

Versus

1. State of Tamilnadu represented by
its Secretary to Government,
Rural Development Department,
Fort St.George, Chennai-600 009.

2. The District Collector,
Tirunelveli District,
Collectorate, Tirunelveli.

3. The Commissioner,
Palayamkottai Panchayat Union,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 3rd respondent in proceedings A1/318/2012, dated 29.06.2012 and quash the same and consequently direct the respondents to count period from 12.11.1999 to 31.08.2008 for seniority, monetary and all attendant service benefits within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.M.Saravanakumar

For respondent : Mr.TR.Janarthanan for R1 and R2
Additional Government Pleader
No appearance for R3

ORDER

The petitioner was originally appointed as a driver with the third respondent and the process of appointment was properly done and sponsored by the Employment Exchange. Totally seven persons were sponsored by the employment exchange among 7 persons, two of them participated for interview for the post of driver. The



petitioner was appointed as driver on 05.04.2009 and he joined the duty on 10.05.1999.

2. In the meanwhile, the Chairman of the third respondent Panchayat Union has challenged the petitioner's appointment by filing a writ petition. In view of the same, the writ petitioner was relieved from duty on 11.11.1999. Subsequently, the writ petition filed by the Chairman of the 3rd respondent Panchayat came to be dismissed. Therefore, the petitioner was re-instated into service on 26.08.2008 and he is continuously working. Thereafter, the petitioner gave a representation to the third respondent to regularise his service from 12.11.1999 to 31.08.2008, which was negatived by the third respondent by the impugned order. Challenging the same, the present writ petition is filed.

3. It is the contention of the learned Additional Government Pleader, since the petitioner has not worked for the above said period, the said period cannot be accounted for. Further, the learned Additional Government Pleader submitted that if the Court comes to the conclusion that no backwages is payable, the above-said period can be accounted for service benefits.

4. Heard the learned counsel on either side and also perused the materials available on record.

5. Admittedly, the writ petitioner was appointed in a lawful manner and he was relieved from service on the sake of somebody filing a writ petition challenging his appointment. Even no opportunity whatsoever was given to the petitioner at the time of his relieving. Thereafter he was reinstated into service after dismissal of the writ petition filed by the Chairman of the third respondent Panchayat and since then he is continuously working as Driver. These facts are not disputed. It is to be noted that for no fault of the writ petitioner, he has been relieved from service. Therefore, it cannot be stated that above said break in service period cannot be counted for any other purpose. It is to be noted that admittedly the petitioner is out of job from 12.11.1999 till 31.08.2008. Though he has been denied the work at no fault on him, this Court is of the view that the break in service with effect from 12.11.1999 to 31.08.2008 cannot be counted for backwages, but the service will otherwise can be recorded as a continuous one for claiming seniority and future benefits.

6. In this regard it is useful to refer the judgment of this Court in **D.Selvakumar Versus Deputy Inspector General of Police, Chennai & Ors** in **W.P.No.15639 of 2000, dated 04.12.2009**, wherein it is held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

The BREAK IN SERVICE w.e.f. 19.11.1993 to 02.08.1998 will not count for any purpose but the service will



otherwise be regarded as continuous".

7. This Court in another judgment in **R.Nagarathinam vs Government of Tamilnadu**, in **W.P.Nos.21987 and 21988 of 2006**, dated **26.10.2006** at paragraphs 12 to 15 held as follows:-

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"12.Fundamental Rule 26(a) specifically provides that all duty in a post on a time scale counts for increments in that time scale. Note 1 issued under F.R.26(a) under G.O.Ms.No.1072 P and A.R. (FR.III) Dept., dated 31.10.1986, makes the Rule position explicit in the following words: " Notel.- If an officiating Government Servant in a post, who has no substantive appointment is discharged from service for want of vacancy, he shall on appointment to the same post, draw the pay last drawn prior to his discharge from service. The periods prior to the discharge from service shall count for purpose of future increment in the time scale of pay of that post. "

13. A reading of the above Note 1 in F.R.26(a) makes it clear that even an officiating Government servant, who has no substantive appointment, is entitled to count his past service for the purpose of pay fixation as well as future increments. While that being the case even in respect of officiating Government servants who have no substantive appointment, a similar benefit cannot be denied to the petitioners who were actually Approved Probationers in the post of Field Assistants, by virtue of their regular appointment in the year 1981.

14. Since the Government had not considered the aforesaid Rule position while fixing the pay of the petitioners, at the bottom-most stage, on reappointment in the year 1993, treating the petitioners as fresh entrants, the action of the respondents is totally illegal. Therefore, the petitioners are entitled to the relief prayed for in the Original Applications, now transferred to this Court.

15. Accordingly, the writ petitions are allowed and the respondents are directed to condone the break in service suffered by the petitioners in the year 1989 and to grant the benefit of pay fixation as well as future increments by counting the entire period of service rendered by them from the date of their initial appointment in the year 1981, as duty for all purposes. Such an exercise shall be done by



the respondents and completed within a period of four months from the date of receipt of a copy of this order or on production of this order by the petitioner. No costs."

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8. Taking into consideration of the above judgments, this Court is of the view that for future increments and for all other purposes, the break in service period shall be taken into account. Further, the writ petitioner shall not be entitled to backwages. The third respondent shall pass appropriate order in this regard, within a period of two months from the date of receipt of a copy of this order. The writ petition is allowed with the above observation. No costs.

Sd/-

Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar

To

1. State of Tamilnadu represented by
its Secretary to Government,
Rural Development Department,
Fort St.George, Chennai-600 009.
2. The District Collector,
Tirunelveli District, Collectorate, Tirunelveli.
3. The Commissioner,
Palayamkottai Panchayat Union,
Palayamkottai, _ Tirunelveli District.

+1 cc to Mr.M.Saravana Kumar , Advocate in SR.No. 74539

+1 cc to The Special Government Pleader in SR.No.74793

jikr

AE/JC/SAR2/06.09.2017/4P/6C

**Order made in
W.P(MD)No.11078 of 2014
24.08.2017**