



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.16058 of 2016 and

W.M.P.(MD)No.11741 of 2016

S.Seeni

...Petitioner

Vs.

- 1.The Principal Secretary,
Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Rural Development & Panchayat Raj,
Panagal Buildings, Saidapet,
Chennai - 600 015.
3. The District Collector,
Madurai District,
Madurai - 625 020.
4. The Block Development Officer,
Sedapatti Panchayat Union,
Sedapatti.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the third respondent by his impugned order in Na.Ka.No.29260/2016/2011, dated 15.07.2016, and quash the same and consequently, directing the respondents to regularize the services of the petitioner in Sedapatti Panchayat Union as Full time Masalgi with all attendant and consequential, monetary and service benefits.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.J.Gunaseelan Muthaiah,
Government Advocate.

ORDER

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus, to quash the order passed by the third respondent in Na.Ka.No.29260/2016/2011, dated 15.07.2016, and to direct the respondents to regularize the services of the petitioner in Sedapatti Panchayat Union as Full Time Masalgi with all attendant and consequential monetary and service benefits.



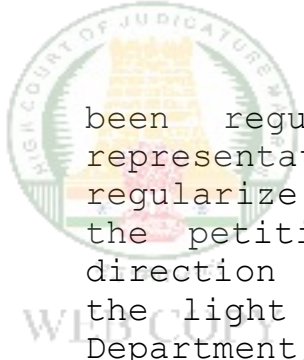
2. Heard, Mr.N.Dilip Kumar, learned counsel appearing for the petitioner and Mr.J.Gunaseelan Muthaiah, learned Government Advocate appearing for the respondents.

3. Brief facts that are necessary for the purpose of disposal of the Writ petition are as follows:-

The petitioner is belonging to Scheduled Caste. The petitioner is engaged as Masalgi(Sweeper) in Sedapatti Panchayat Union on 26.08.1995, in a vacancy. The appointment of the petitioner was on the basis of Resolution passed by the Panchayat Union and appointment order was issued on 09.09.1995. Though the petitioner was continuously employed and he has been making several representations to the authorities to regularize the petitioner's services, there was no response. In the year 2008, the petitioner had sent a representation to the District Collector. On the basis of G.O.Ms.No.39, Rural Development and Panchayat (E5) Department, dated 07.05.1993, the second respondent/District Collector vide proceedings in Na.Ka.No.49190/2013/C.t.6, dated 22.08.2013, petitioner was provided time scale of pay with effect from 07.05.2013. However, the representation of the petitioner to regularize the petitioner's service upon completion of ten years of service was not considered. However, several individual orders have been passed, based on the direction of this Court in respect of other cases. Despite, the subject being placed before the respondents, the grievance of the petitioner is that they have not considered the request of the petitioner to give relief in tune with various Government Orders and the orders passed by this Court in similar cases. Surprisingly, the petitioner stated that the respondents have passed the impugned order, dated 15.07.2016, stating that regularization cannot be granted in view of the fact that the petitioner is given Special Time Scale of Pay at Rs.1,300-3,000+Rs.300(G.P.). This order of the third respondent, is now challenged in the Writ petition.

4. The learned counsel for the petitioner relied upon the Judgment of this Court in the case of **F.Gulzar Basha Vs. The Secretary to Government, Rural Development and Panchayat Raj Department, Chennai, in W.P.No.8825 of 2011, dated 11.04.2011**, wherein, it has been held, as follows:-

"3. The case of the petitioner is that he had studied upto 10th standard; he was appointed as Masalgi on 09.02.1996 in the existing vacancy by the Commissioner, Polur Panchayat Union. In the year 2002, he was directed to work as Nigh Watchman and he was also issued with a certificate that he had completed ten years of service continuously from 09.02.1996. Though as directed by the Government in their proceedings, dated 29.06.2010, the District Collector, Thiruvannamalai, third respondent herein included the name of the petitioner in Sl.No.11 mentioning his post as Masalgi with effect from 09.02.1996, till date his service has not yet



been regularized. Therefore, the petitioner has made a representation to the respondents on 13.09.2000, requesting to regularize his service and till date there is no reply. Hence, the petitioner filed W.P.No.29013 of 2010 for issuance of a direction to the respondents to consider his representation, in the light of G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006 and this Court directed the second respondent herein to consider the petitioner's representation dated 13.09.2010. However, the second respondent in his proceedings dated 21.03.2011, rejected his request for regularization of service on the ground that the petitioner was working as part time Masalgi in Panchayat Union under consolidated pay and therefore G.O.Ms. No.22 is not applicable and also on the ground that he had not completed ten years of service as on 1.1.2006. Aggrieved over the said order, the petitioner has filed the present Writ petition.

4. The learned counsel for the petitioner submitted that the Government issued G.O.Ms.No.22 P&AR Department, dated 28.02.2006 and ordered to regularize those persons working in part time post or in full time post on temporary basis, on their completion of ten years of service and therefore the petitioner is entitled to get his services regularized with time scale of pay on completion of ten years of service. He furthered submits that similar issues were considered by this court in the following decisions:

(i) W.P.(MD)No.11707 of 2006, dated 22.12.2006, confirmed in W.A.(MD)No.391 of 2007 dated 25.10.2007 and the said order was already implemented by the Department on 30.11.2007.

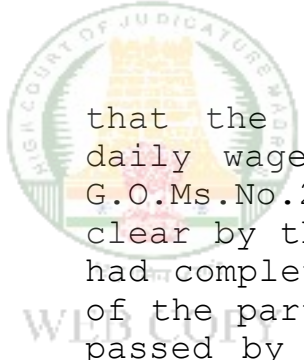
(ii) W.P.No.18126 of 2008 dated 29.07.2008, confirmed in W.A.No.230 of 2009, dated 03.08.2009, taking note of G.O.Ms.No.22, dated 28.02.2006, and held that on completion of ten years of service, services of a party-time employees shall be regularized by the department from the date of completion of ten years. In paragraphs 7 to 9 of the said Judgment, the Division Bench held as follows:-

'7. The main submission of the learned Government Advocate is that the proposals for regularization of the part time employees are pending before the Government. When the proposals are pending under consideration before the Government, there is no need to give any direction to the Government to regularize the services of the respondent.

8. We do not find any force in the said submission made by the learned Government Advocate. On a perusal of the entire materials, it could be seen that the respondent was working for the past 13 years as a part time employee in a Higher Secondary School. Para 3 of G.O.Ms.No.2 P&AR(F) Department, dated 28.02.2006, reads as follows:-

'3. The Departments of Secretariat may therefore be directed to pursue action to regularize the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 1.4.2006. ... '

9. Though in the letter dated 20.02.1995 it has been stated



that the regularization shall not apply to the appointment on daily wages employees, if any, made on or after 01.03.1993, in G.O.Ms.No.22 P&AR(F) Department, dated 28.02.2006, it was made clear by the Government to regularize the part time employees, who had completed 10 years of service. In fact, the services of some of the part time employees were regularized pursuant to the orders passed by this Court in the earlier Writ petitions. Under those circumstances, we do not find any justification in delaying the regularization of the services of the respondent by saying that the proposal for regularization of part time employees is pending for consideration before the Government. On that ground, the respondent cannot be made to wait for a long period, especially when he had completed 13 years of service, which is more than that as the required service mentioned in G.O.Ms.No.22, dated 28.02.2006. Under such circumstances, we do not find any infirmity in the directions given by the learned Single Judge. Hence, we are not inclined to entertain this appeal.

Accordingly, this appeal fails and is dismissed. No costs. Consequently, connected M.Ps are closed. A copy of the order shall be communicated to the State Government (Secretary), School Education Department, to issue the necessary orders in compliance with the order passed by the learned Single Judge, within a period of two months from the date of receipt of a copy of this order.' The special leave petition in SLP No.1972/2009 filed against the said Judgment was dismissed by the Hon'ble Supreme Court during March, 2010. The said order was already implemented.

(iii) W.P.No.13499 of 2008, dated 12.06.2008, confirmed in M.P.No.1 of 2008 in W.A.(SR)No.75291 of 2009, dated 07.10.2009, wherein, the Division Bench held thus.

'3... We have also noted that even on merits, the first appellant Director of School Education does not have any case. The respondent herein was employed as a Part-Time Sweeper in a Government Girls High School and her appointment was approved by the Inspector of Girls School, Kancheepuram, was back on 19.12.1999. The respondent had prayed for regularization of her services by filing the Writ petition. The learned Single Judge has noted that there is a Government Order in Reforms Department, dated 28.02.2006, which requires the Government Departments to regularize daily wage employees who have rendered ten years of service as on 1.1.2006. The respondent herein fully satisfied that requirement and had, therefore, prayed her regularization right from the initial date of her appointment. The learned Single Judge has granted regularization only after her completion of ten years of service, in tune with the above Government order. This being so, in fact on merits, the first appellant-Director of School Education has no reason to have any grievance with the order passed by the learned Single Judge, apart from the fact that he does not have any case.'

<https://hcservices.sco.nic.gov.in/hcservices> The said order was also implemented by the department.

(iv) Common order in W.P.(MD)No.9726 and 9727 of 2006, dated 24.06.2008, confirmed in W.A.(MD)No.151 and 225 of 2009, dated

23.06.2009. The special leave petition filed against the said order was dismissed by the Supreme Court on 11.02.2010. The said order was also implemented.

(v) Order in W.P.No.20662 of 2010, dated 15.09.2010 implemented by the DEO, Perambalur on 04.11.2010.

(vi) Order in W.P.No.23080 of 2008, dated 23.12.2008 confirmed in Writ Appeal No.2414 of 2010, dated 26.11.2010.

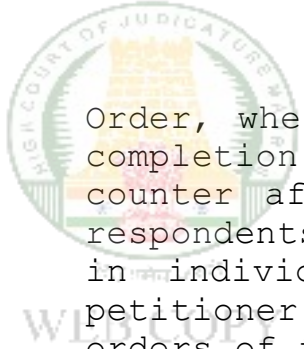
(vi) Order in W.P.(MD)Nos.1773 and 1774 of 2008, dated 4.12.2008, confirmed in W.A.(MD)Nos.69 & 70 of 2010, dated 20.1.2011.

5. The learned Additional Government Pleader appearing for the respondents submitted that since the issue is covered by the decisions cited supra, petitioner is entitled to get his services regularised in accordance with G.O.Ms.No.22 P&AR Department, dated 28.02.2006.

6. In view of the said submissions, the Writ petition is allowed with direction to the respondents to regularize the services of the petitioner on his completion of ten years of service with times scale of pay. The regularization order is directed to be passed by the respondents within a period of four weeks from the date of receipt of a copy of this order. The arrears of pay, payable to the petitioner pursuant to the regularization shall be paid to the petitioner within four weeks therefrom. No costs. Consequently, connected Miscellaneous petition is closed."

5. The learned counsel for the petitioner also produced before this Court, Government Order in G.O.Ms.No.42, Rural Development and Panchayat (Pa.Aa.7) Department, dated 28.06.2011. The Government has dealt with several individual cases and regularize the services of the individuals upon completion of ten years of service. The learned counsel for the petitioner also relied upon the Government Order in G.O.(2D).No.4, Rural Development and Panchayat (E5) Department, dated 12.01.2012, implementing the order passed by this Court in W.P.No.29013 of 2010, dated 21.12.2010. Again the learned counsel for the petitioner relied upon the Judgment of a learned Single Judge of this Court in the case of **M.Thavamani Vs. The Principal Secretary to Government, Rural Development and Panchayat Raj Department, Chennai, in W.P.No.12040 of 2012, dated 27.04.2012**, wherein the learned Special Government Pleader appearing for the respondents had conceded the position that the issue is covered by earlier decision of this Court and the Writ petition filed by a person who joined as Masalgi in Usilampatti Panchayat Union, Madurai, in an existing vacancy on 01.03.1997 and continuously working was allowed.

6. Having regard to the fact that the issue has already been decided by this Court in few Judgments and the orders of this Court have already been implemented by the respondents, the contention of the respondents relying upon the specific Government



Order, whereby, the Special Time Scale of Pay has been fixed upon completion of three years in service does not hold water. The counter affidavit filed by the third respondent, shows that the respondents have admitted implementation of orders of this Court in individual cases. However, it does not explain how the petitioner can be discriminated by denying the benefit of previous orders of this court in similar cases.

7. Hence, this Writ petition is allowed and the impugned order passed by the third respondent in Na.Ka.No.29260/2016/C.t11, dated 15.07.2016 is quashed and a direction is issued to the respondents to regularize the petitioner's services in Sedapatti Panchayat Union, with effect from 09.09.1995 as Full Time Masalgi with all other attendant and consequential monetary and service benefits, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(AE)

/ True Copy /

Sub Assistant Registrar(C.S.)

To

- 1.The Principal Secretary,
Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Rural Development & Panchayat Raj,
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3. The District Collector,
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4. The Block Development Officer,
Sedapatti Panchayat Union,
Sedapatti.

+1cc to M/S.N.DILIP KUMAR, Advocate SR.No.61988
+1cc to Special Government Pleader, SR.No.62370
+1cc to Special Government Pleader, SR.No. 62199
pmu
MAS/MR-KKR/SAR2:17.07.2017:6P-8C

ORDER MADE IN
W.P. (MD) No.16058 of 2016 and
W.M.P. (MD) No.11741 of 2016
23.06.2017