



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**

W.P(MD)No.624 of 2017
and
W.M.P(MD)No.485 of 2017

S.Mahendrakumar

... Petitioner

vs.

1)The Principal Chief Conservator of Forests,
Panagal Buildings,
Saidapet,
Chennai.

2)Conservator of Forests,
Virudhunagar Circle, 187,
Malaipeetai Street,
Viruthunagar.

3)Divisional Forest Officer,
Social Forestry Division,
No.16, C.C. Salai Rajaji Nagar,
M.S.F Colony,
Viruthunagar.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to appoint the petitioner directly from the forest department till the regularisation of the service of the petitioner and to regularise his services.

For Petitioner : Mr.M.Vijayarathinam
For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader

ORDER

The prayer in this writ petition is for issuance of a Writ of Mandamus, directing the respondents to appoint the petitioner directly from the forest department and to regularise his services.



2.The petitioner submits that he has joined the Forest Range Office, Srivilliputtur, as a driver on 01.04.2006 and he has worked in that place for a period of three years. Thereafter, he has been transferred to Rajapalayam Forest Range Office and subsequently to various other places. It is the contention of the petitioner that in order to divest his duties, a Contractor has been introduced and that the petitioner has been asked to employ through the Contractor after 10 years of service directly under the Forest Department, which is a colourable exercise of power and that non regularisation of the services of the petitioner smacks victimisation. The petitioner has produced the documents in the typed set of papers showing that he was employed directly by the Forest Department and payment has been made by HR department. But however, the petitioner is said to have been working under contract basis from September 2012. The petitioner submits that thereafter, he was given employment directly at Virudhunagar from 01.05.2015 to 31.03.2015 and also at Madurai from 01.04.2016 to till date.

3.The respondents have filed a detailed counter affidavit and accepted the contention of the petitioner that he was employed as a Jeep Driver on daily wages from 01.08.2009 to 20.08.2012 at Rajapalayam Social Forestry Division and from 01.11.2014 to 28.02.2015 at Srivilliputtur Social Forestry Range of Virudhunagar Social Forestry Division and thereafter, he has been engaged through one contractor M.Ganesan. According to the respondents, G.O(Ms)No.22, Personnel and Administrative Department dated 28.02.2006, categorically states that services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 01.01.2006, have to be regularised and that the said G.O., has been superseded by G.O(Ms)No.74, Personnel and Administrative Department, dated 27.06.2013 stating that the service of full time daily wage employees who have completed 10 years of service after 01.01.2006, shall not be regularised. In view of G.O(Ms)No.74, it is the contention of the respondents that the petitioner would not be entitled to regularisation. The respondents has also relied upon a decision of the Hon'ble Supreme Court reported in 2006 (4) SCC page 1 (Secretary, State of Karnataka and others vs. Umadevi and others) and also the decision of the Apex Court in Hindustan Aeronautics Ltd., vs. Dan Bahadur Singh and others (Appeal(Civil)No.2195 of 2007) and contended that the petitioner who has completed 240 days, cannot seek for regularisation.

4.The petitioner, in reply, has relied upon a decision of this Court in W.A.No.1171 of 2012 dated 09.10.2014(The Managing Director vs. A.M.Abdul Rahim) wherein, some of the employees have been regularised based on G.O.Ms.No.1234, Forest and Fisheries Department, dated 20.10.1981, which pertains to daily rated employees who have been engaged without reference to employment exchange.



5.The fact that the petitioner has rendered more than two years of continuous service, is not in dispute. Even though the plea with regard to applicability of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, (hereinafter referred to as, 'the Act'), has not been taken, since it is a legal issue, this Court can consider the enactment and see whether a relief can be granted to the petitioner. As the petitioner has admittedly employed directly from 01.08.2009 to 20.08.2012 and thereafter for a short term, he was employed through a contractor and thereafter, again employed directly by the Forest Department, in terms of Section 3 of the Act, the petitioner is deemed to have attained permanent status.

6.The Apex Court in Hindustan Petroleum Corporation vs. Dolly Das, reported in (1999) 4 SCC 450, has held that when facts are not in dispute, there is no need for this Court to relegate the petitioner to approach the alternate forum. The relevant portion of the said judgment reads thus:-

'We may now advert to the contention that the writ remedy is not appropriate in this case. Where interpretation of a contract arises in relation to immovable property and in working such contract or relief thereof or any other fall out thereto may have the effect of giving rise to an action in tort or for damages, the appropriate remedy would be a civil suit. But if the facts pleaded before the court are of such nature which do not involve any complicated questions of fact needing elaborate investigation of the same, the High Court could also exercise writ jurisdiction under Article 226 of the Constitution in such matters. There can be no hard and fast rule in such matters. When the High Court has chosen to exercise its powers under Article 226 of the Constitution we cannot say that the discretion exercised in entertaining the petition is wrong.'

7.The job certificates issued to the petitioner enclosed in the typedset of papers are also not in dispute. As the petitioner has attained permanent status, he would be entitled to all the benefits as that of a regular employee and any Government order taking away the benefits under the Act is void ab initio and it is non est in law. The contention of the respondents that the petitioner would not be entitled to regularisation after completion of 240 days, is perfectly correct. The reference to 240 days in a period of 12 calender months, is only for the purpose of granting compensation under Section 25-F of the Industrial Disputes Act, 1947 and not for regularisation. But, however, as the petitioner has completed 480 days of continuous service in a period of 24 calender months, he is deemed to have attained permanent status and the petitioner is entitled to the relief. In Umadevi's case(supra), the Supreme Court has not taken



note of the State enactment which has the Assent of the President of India which came into force in 1982.

8. In view of the aforesaid discussion, the contention of the respondents that the petitioner would not be entitled to relief sought for cannot be accepted. Hence, I allow this writ petition and direct the respondents to regularise the services of the petitioner and extend the consequential benefits within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, W.M.P(MD)No.485 of 2017 is closed.

sd/
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1) The Principal Chief Conservator of Forests,
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M.S.F Colony,
Virudhunagar.

+1CC TO SPECIAL GOVERNMENT PLEADER, SR.NO.9694

+1CC TO M/S.M.VIJAYARATHINAM, Advocate, SR.NO.9931

W.P(MD)No.624 of 2017
21.02.2017

JM/CM MSA/13.03.2017/4P/6C