



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2017

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.5953 of 2016

V.Balaganesan

: Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Secretariat,
Chennai.
2. The Director of School Education,
Chennai-6.
3. The Chief Educational Officer,
Tirunelveli.
4. The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to pass an order of regularization on completion of 10 years of service i.e., with effect from 2004 with monetary benefits as per the order passed by this Court in W.P.No.4101 of 2007, dated 24.01.2008 with all consequential benefits.

For Petitioner : Mr.V.Panneer Selvam
For Respondents : Mr.N.S.Karthikagan
in both cases Additional Government Pleader

ORDER

This Writ Petition has been filed by the petitioner for issuance of a Writ of Mandamus directing the respondents to pass an order of regularization on completion of 10 years of service i.e., with effect from 2004 with monetary benefits as per the



order passed by this Court in W.P.No.4101 of 2007, dated 24.01.2008 with all consequential benefits.

2. Heard the learned Counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents.

3. The facts in this case are not in dispute. The petitioner was appointed as Sweeper cum Water Man by an order dated 18.11.1994 and joined on 21.11.1994. The Government issued order in G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 10.10.1988 directing to appoint in the regular time scale of pay in any one of the suitable posts in the Tamil Nadu Basic Services. It appears, in the meanwhile, the Government imposed ban on appointments. As a result, there was no appointment for some time. However, it was later clarified that the ban which was imposed need not apply to the Basic Services posts such as Gardener, Sweeper, Watchman, etc. In this regard, the Government also issued G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006 directing to regularise all the persons. Since the service of the petitioner was not regularised, he approached this Court earlier by filing a Writ Petition in W.P.No.14277 of 2008. This Court was pleased to allow the Writ Petition with a direction to regularise the petitioner's service on completion of ten years of service with time scale of pay within a period of four weeks. This Court further directed the fourth respondent to release the arrears of salary within four weeks time by an order dated 24.01.2008.

4. The grievance of the petitioner is therefore that the respondents have failed to comply with the direction of this Court. The learned Counsel for the petitioner also contented that the conduct of the respondents is contumacious and no lenient view can be taken in the present case. The learned counsel for the petitioner further requests this Court to condemn the attitude of the fourth respondent.

5. The fourth respondent in the present case has filed a counter. Even in the counter affidavit, the facts with reference to the dates are not in dispute. However, surprisingly the fourth respondent after admitting the factual details furnished by the petitioner in the affidavit filed in support of this Writ Petition, states that the petitioner's case is under process and that the Writ Petition is devoid of merits and liable to be dismissed as premature. I do not find any defects in this case, having regard to the fact that this Court has earlier issued a positive direction to the fourth respondent. By order dated 24.01.2008, this Court disposed of the Writ Petition in W.P.No.4101 of 2007 with the following directions:



"4.Hence, the writ petition is allowed with a direction to the fourth respondent to regularise the services of the petitioners on their completion of ten years of service with time scale pay. The regularization order is directed to be passed by the fourth respondent within four weeks from the date of receipt of a copy of this order and the arrears of salary payable to the petitioners pursuant to the regularization shall be paid within four weeks thereafter. Consequently, connected miscellaneous petitions are closed. No costs."

6.From the above order, it is clear that the fourth respondent was directed to regularise the service of the petitioner therein on the completion of ten years of service with time scale of pay. A further direction was issued to regularise within four weeks from the date of receipt of a copy of the order. The arrears of salary payable to the petitioner pursuant to the regularization also was directed to be paid within four weeks from the date of passing an order. Having regard to the above circumstances, I am unable to find any ground to resist the claim of the petitioner. Though the writ petition was allowed earlier total ignorance of earlier order and direction issued by this court, the respondents have given appointment to the petitioner. The order of appointment dated 08.04.2008 reads as if it is a fresh appointment. Except an assurance is given that the petitioner's services will be regularised with effect from earlier date after getting approval from the Director, the intention of the respondents was to give some relief on temporary basis. The learned counsel for the petitioner also further pointed out that the petitioner was not granted any relief in terms of the order of this Court earlier. Hence, this Writ Petition is allowed directing the respondents to pass orders regularising the service of the petitioner with effect from the date when the petitioner has completed ten years of service i.e., from 2004, with monetary benefits, within a period of four weeks from the the date of receipt of copy of this order. No costs.

Sd/-

Assistant Registrar)Writs)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Education Department,
Secretariat,
Chennai.

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

2. The Director of School Education,
Chennai-6.



3. The Chief Educational Officer,
Tirunelveli.

4. The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.

+1cc to Mr.V.Panneer Selvam, Advocate Sr.No.53077

+1cc to Spl.Government Pleader Sr.No.53094

srm/ia

vb/sv/05.05.2017/4p/7c

W.P. (MD) No.5953 of 2016
19.04.2017