



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.05.2017

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THE HONOURABLE **Mr. JUSTICE R.SURESH KUMAR**

W.P. (MD) .Nos.14712, 14713, 14716 and 14717 of 2013

In W.P. (MD) No.14712 of 2013:

M.Mariappan

..Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Finance
Fort St. George,
Chennai-600 009.

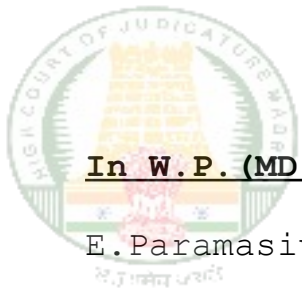
2. The Commissioner,
Treasury and accounts,
Panagal Buildings,
Saidapet, Chennai-600 015.

3. The District Treasury Officer,
Palayamkottai,
Tirunelveli District.

4. The Treasury Officer,
Sub-Treasury,
Palayamkottai,
Tirunelveli District.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the Order passed by the first respondent in his letter No.8851/Ka.Ka.2/2012-2, dated 15.03.2013 and the letter No.25170/Ka.Ka.2/2013-1, dated 05.07.2013 and the consequential order of the third respondent NA.KA.No.9411/2002/A2 (3) dated 19.08.2013 and quash the same and to direct the respondents to reinstate the petitioner as Night Watchman cum Masalchi and to regularize the services of the petitioner from 10.08.1992 and to pay the salary and all consequential benefits.

**In W.P. (MD) No.14713 of 2013:**

E.Paramasivan

..Petitioner

WEB COPY

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Finance
Fort St. George,
Chennai-600 009.
2. The Commissioner,
Treasury and accounts,
Panagal Buildings,
Saidapet, Chennai-600 015.
3. The District treasury Officer,
Palayamkottai,
Tirunelveli District.
4. The Treasury Officer,
Sub-Treasury,
Senkottai
Tirunelveli District.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 1st respondent in his letter No.8851/Ka.Ka.2/2012-2 dated 15.03.2013 and the letter No.25170/Ka.Ka.2/2013-1 dated 5.7.2013 and the consequence order of the 3rd respondent in NA.KA.No.9411/2002/A2(1) dated 19.08.2013, quash the same and to direct the respondents to reinstate the petitioner as Night Watchman cum Masalchi and to regularize the services of the petitioner with effect from 04.03.1988 and to pay the salary and to pay all consequential benefits and thus render justice.

In W.P. (MD) No.14716 of 2013:

S.M.Syed Mohammed lebbai

..Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Finance
Fort St. George,
Chennai-600 009.



2. The Commissioner,
Treasury and accounts,
Panagal Buildings,
Saidapet, Chennai-600 015.

3. The District treasury Officer,
Palayamkottai,
Tirunelveli District.

4. The Treasury Officer,
Sub-Treasury,
Palayamkottai
Tirunelveli District.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 1st respondent in his letter No.8851/Ka.Ka.2/2012-2 dated 15.03.2013 and the letter No.25170/Ka.Ka.2/2013-1 dated 5.7.2013 and the consequential order of the 3rd respondent in NA.KA.No.9411/2002/A2 dated 19.08.2013, quash the same and to direct the respondents reinstate the petitioner as Night Watchman cum Masalchi and to regularize the services of the petitioner with effect from 26.08.1995 and to pay the salary and to pay all consequential benefits and thus render justice.

In W.P. (MD) No.14717 of 2013:

S.Sankara Narayanan

..Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Finance
Fort St. George,
Chennai-600 009.

2.The Commissioner, '
Treasury and accounts,
Panagal Buildings,
Saidapet, Chennai-600 015.

3. The District treasury Officer,
Palayamkottai,
Tirunelveli District.

4. The Treasury Officer,
Sub-Treasury,
Palayamkottai
Tirunelveli District.

.. Respondents



PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 1st respondent in his letter No.8851/Ka.Ka.2/2012-2 dated 15.03.2013 and the letter No.25170/Ka.Ka.2/2013-1 dated 05.07.2013 and the consequential order of the 3rd respondent in NA.KA.No.9411/2002/A2(3) dated 19.08.2013, quash the same and to direct the respondents reinstate the petitioner as Night Watchman cum Masalchi and to regularize the services of the petitioner with effect from 03.03.1988 and to pay the salary and to pay all consequential benefits and thus render justice.

In all Writ petitions
For Petitioner

: Mr.A.S.Mujibur Rahman

For Respondents

: Mr.S.Kumar

Additional Government Pleader

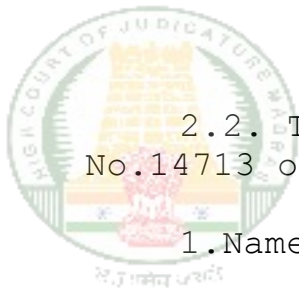
C O M M O N O R D E R

All these four writ petitioners are similarly placed and the relief sought for in these writ petitions are also similar. Therefore, all these four writ petitions are grouped together and heard together and are being disposed of by this common order.

2. The following service particulars would disclose the particular date, on which, the petitioners had been engaged as Part Time employees in the respondent Department and the years of service of the petitioners, at the time of termination in the year 2013.

2.1. The details pertaining to the petitioner in Writ Petition No.14712 of 2013:

- | | | |
|-----------------------|----|--|
| 1.Name | :- | Mariappan Part Time
Watchman cum Masalchi |
| 2.Mode of recruitment | :- | Employment Exchange |
| 3.Date of appointment | :- | 10.08.1992 |
| 4.Total Service | | |
| I) Part time work | :- | 10 years 9 months |
| ii) Full time | :- | 10 years 2 months |
| 5.Time scale fixed | :- | 30.05.2003 |
| 6. Last working Place | :- | Sub Treasury office
Palayamkottai |
| 7.Impugned order | | i) 15.03.2013
ii) 05.07.2013
iii) 19.08.2013 |



2.2. The details pertaining to the petitioner in Writ Petition No.14713 of 2013:

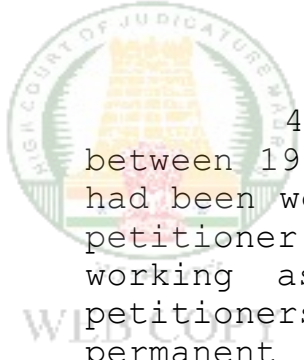
1.Name :- Paramasivam
Part Time Watchman
cum-Masalchi. DTO Tirunelveli
2. Mode of recruitment :- Employment exchange
3. Date of appointment :- 04.03.1988
4. Total Service
i) Part time work :- 10 years 9 months
ii) Full time :- 10 years 2 months
5. Time scale fixed :- 30.05.2003
6. Last working Place :- Sub Treasury office
Shencottai
7. Impugned order
i) 15.03.2013
ii) 05.07.2013
iii) 19.08.2013

2.3. The details pertaining to the petitioner in Writ Petition No.14717 of 2013:

1.Name :- Sankaranarayanan,
Part Time Watchman
cum-Masalchi. DTO Tirunelveli.
2. Mode of recruitment :- Employment exchange
3. Date of appointment :- 10.08.1992
4. Total Service
i) Part time work :- 5 years 2 months
ii) Full time :- 10 years 3 months
5. Time scale fixed :- 30.05.2003
6. Last working Place :- Sub Treasury office,
Tirunelveli
7. Impugned order
i) 15.03.2013
ii) 05.07.2013
iii) 19.08.2013

2.4. The details pertaining to the petitioner in Writ Petition No.14716 of 2013:

1.Name :- Syed Mohamed Labbai
Part Time Watchman cum Masalchi.
DTO, Tirunelveli.
2. Mode of recruitment :- Employment exchange
3. Date of appointment :- 26.08.1985
4. Total Service
i) Part time work :- 10 years 3 months
ii) Full time :- 10 years 3 months
5. Time scale fixed :- 29.05.2003
6. Last working Place :- Sub Treasury office,
Tirunelveli
7. Impugned order
i) 15.03.2013
ii) 05.07.2013
iii) 19.08.2013



4. Since these petitioners had been appointed in the year between 1985 and 1992 as Night Watchman and in that capacity they had been working for more than 10 years, except in the case of the petitioner in W.P.(MD)No.14717 of 2013 where the petitioner was working as such for 5 years and 2 months, all these writ petitioners were brought under the time scale of pay by way of permanent appointment on 30.05.2003, except W.P.(MD)No.14716 of 2013 where the petitioner was brought under time scale of pay on 29.05.2003. Since then, they have been continuously working as such by getting time scale of pay.

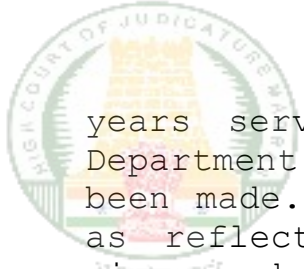
5. After that, the proposals for regularizing their services were sent to the Government by letter No.8851 dated 15.03.2013. The Government, after having considered the same, rejected outrightly. Thereafter a review was sought for from the Government. Once again the Government by reiterating their earlier stand, rejected the review by their letter No.25170 dated 15.07.2013.

6. Consequent upon the said two orders dated 15.03.2013, and 05.07.2013 passed by the Government, the third respondent has passed consequential order on 19.08.2013, whereby the services of the petitioners were terminated forthwith.

7. Though initially the said order of termination dated 19.08.2013, was put under challenge in these writ petitions, subsequently, the petitioners, by way of amendment to the writ petitions, amended the prayer by challenging the order of rejection passed by the Government dated 15.03.2013 as well as 05.07.2013.

8. Mr. A.S.Mujibur Rahman, learned counsel appearing for the petitioners would contend that the very reasons adduced both in the order dated 15.03.2013 and subsequent order dated 05.07.2013 are untenable. In this regard, the learned counsel would submit that the petitioners were not appointed as against any of the Government Orders referred in the said impugned orders dated 15.03.2013 and 05.07.2013. The learned counsel would further submit that the services of the petitioners were brought under time scale of pay on 29.05.2003 and 30.05.2003. Therefore, that orders, bringing the petitioners under the time scale of pay, cannot be construed, as if the petitioners were originally appointed on that date and based on which, the reasoning given by the first respondent in the impugned orders that such appointments were made during the ban period in violation of G.O.(Pt)No.212 P & AR Department, dated 29.11.2001, is totally untenable.

9. The learned counsel for the petitioner would further submit to the court in fact G.O.(Pt) No.22 P & AR, Department dated 28.02.2006, provides for regularisation of services of daily wage employees and even Part Time workers on their completion of 10



years service and based on the said G.O.(Pt) No.22, P & AR, Department dated 28.02.2006, number of such regularizations have been made. In most of the cases pursuant to the policy decision as reflected in G.O.(Pt) No.22, such regularizations had been given and in some cases, of-course pursuant to the orders passed by this Court in various litigations, such regularizations had been given. At any rate, G.O.(Pt) No.22 would never stand in the way of regularization of services to the petitioners and G.O.(Pt) No.212 would not be made applicable to the case of the petitioners as the petitioners were not appointed during the ban period and infact they had been appointed between 1985 and 1992. Therefore, the reasons adduced by the first respondent in the two impugned orders dated 15.03.2013 and 05.07.2013 are totally untenable and unjustifiable. Therefore based on which the consequential termination order issued by the third respondent also is totally unlawful and hence all these orders can be interfered with by this Court.

10. Per contra, Mr.S.Kumar, learned Additional Government Pleader, appearing for the respondents would rely upon the following averments made in the counter affidavit filed by the third respondent which are as follows:

"6. In order to get ratification of the appointment made in respect of the petitioner necessary proposals were sent from this office on 26.06.2007 and it was not favoured by the Government. The proposals were rejected by the Government in Lr.No.8851/TA 2/2012-2 dated 15.03.2013 and in Lr.No.25170/TA2/2013 dated 05.07.2013 for the reason that the appointment made was irregular since appointment made during the ban period as it was made without following the orders issued in G.O.(pt) No.212 P & AR Department 29.11.2001 G.O. (pt) No.49 P & AR Department dated 14.05.2012 and G.O.Pt No.22 P & AR dated 28.02.2006. Based on the instructions of the Government, the petitioner was terminated from the service in this office 9411/02 dated 19.08.2013 and relieved on 19.08.2013 FN itself. In the order of appointment itself it had been informed to the petitioner that it was temporary and services may be terminated at any time. When the Government held the appointment made as irregular one then, the petitioner has to abide by the follow up action taken by the appointing authority.

7.The provisions of rule 6(b) of TNBS Rules are applicable to those, whose services are held regular since the appointment made is held irregular, the applicability or rule 6(b) of TNBS Rule would not arise to the petitioner's case."



11. By quoting the aforesaid averments made in the counter affidavit filed by the third respondent, the learned Additional Government Pleader would submit that the petitioners, though claimed to be appointed between 1985 and 1992, those appointments were never been approved and no permission was given to the appointing authority to make such appointments. When the Government passed G.O.(Pt).No.212 P & AR Department, dated 29.11.2001, banning the very recruitment and appointment in Government services of the State itself, bringing these people under time scale of pay by a fresh appointment on permanent basis in the year 2003 by the third respondent is totally against the policy of the State Government as reflected in G.O.(Pt).No.212. Moreover, by virtue of G.O.No.74, P & AR Department, dated 27.06.2013, only those who have completed 10 years of service on permanent basis as on 01.01.2006 alone would be eligible to be considered for regularisation. Though the import of G.O.No.74, gives retrospective effect, the petitioners, assumed that, those who had been appointed in the year 2003 were considered for regularization. Admittedly, they have not completed 10 years period as on 01.01.2006 and therefore they were not eligible to be considered for absorption, if the import of G.O.No.74 is applied.

12. Therefore, the learned Additional Government Pleader would submit that in view of the said Government Orders, the appointments made initially without any prior permission or approval of the Government and subsequently, during the ban period, these petitioners were brought under time scale of pay and they would not complete the period of ten years minimum required service for the purpose of consideration of regularisation as per G.O.No.74, there is no justification on the part of the petitioners to claim regularisation.

13. The learned Additional Government Pleader would further submit that since the very appointment made to these petitioners were irregular in nature without any approval or sanction from the Government, the Government has considered it in right perspective and accordingly taken a decision to reject the claim for regularisation.

14. It is his further submission that only pursuant to the said orders passed by the Government rejecting the request of petitioners for regularisation, the services become liable to be terminated. Accordingly the orders of termination were issued by the third respondent through the consequential order dated 19.08.2013. Therefore, the learned Additional Government Pleader would submit that since the petitioners were working temporarily, ~~the services were not regularized, which can be terminated at any time.~~ Therefore, pursuant to the orders of the State Government i.e. the first respondent, necessary termination orders



were issued on 19.08.2013. Therefore, such termination cannot be questioned on the ground that after some years of service, they are abruptly terminated.

15. This Court has considered all these rival submissions made by both the learned counsels appearing for the parties.

16. The respondents cannot deny the fact that these petitioners were originally appointed or engaged as Night Watchman between the year 1985-1992. After having three petitioners, served for more than 10 years and one petitioner for 5 years and 2 months, the third respondent thought it fit to bring them under Time Scale of Pay and that is the reason why on 29.05.2003 and 30.05.2003, these petitioners were brought under time scale of pay on permanent basis. Though such orders were passed on 29.05.2003 and 30.05.2003 bringing the petitioners under time scale of pay during the period of ban imposed by the State Government under G.O.(Pt).No 212 P & AR Department, dated 21.11.2001, the same cannot be considered as a fresh appointment within the period of said ban imposed by the State Government through the said Government Order.

17. The petitioners' appointment, as stated above, starts from 1985 and in most of the cases from 1992 and at the time when these petitioners were brought under the time scale of pay, they have completed more than a decade in respect of three petitioners. Therefore, the orders passed on 29.05.2003 and 30.05.2003, are only consequential orders bringing them under the time scale of pay and therefore, it cannot be considered as a fresh appointment. In view of all these factors, the first objection, raised by the respondents that these appointments were made to the petitioners during the ban period, which is against the spirit of issuance of G.O.(pt) No. 212 P & AR Department, dated 29.11.2001, is liable to be rejected.

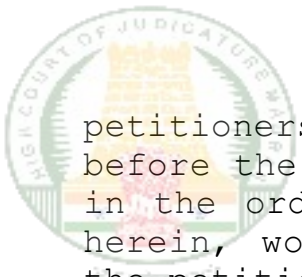
18. Insofar as the further reasons stated by the first respondent through the impugned orders dated 15.03.2013 and 05.07.2013 that the appointing authority has violated the provisions of G.O.(pt) No.49 as well as G.O.(pt) No.22 P & AR Department, dated 14.05.2012 and 28.02.2006 respectively is concerned neither the G.O.(pt) No.49, nor G.O.(pt) No.22 P & AR Department, can be put against the petitioners' appointment or continuance of service. The reason being that the G.O.(pt) No.49 was issued on 14.05.2012 whereas these petitioners were appointed in the year 1985 -1992. Insofar as G.O.(pt) No.22 is concerned, in fact the said Government Order is a beneficial Government Order for those who were appointed on temporary basis. The said G.O.(pt) No.22 was issued pursuant to the policy decision taken by the Government in 1992 that those who have completed 10 years of service even on daily wage basis should be brought under time scale of pay and their service should be regularised on completion of ten years of



service from their initial appointment. Only in consonance of policy decision taken by the Government under G.O.(pt) No.22, number of persons, who were working as temporary employees and even part time employees were brought under time scale of pay and their services were regularized on completion of ten years service from the initial appointment. Thousands of cases of this nature had been considered by the Government and on completion of ten years, regularizations were made in these cases. Ofcourse in some cases, such kind of gesture were shown by the Government pursuant to the orders passed by the court of law. At any rate, G.O.(pt) No.22 was uniformly applied in all such cases for those who have completed ten years of service from the date of initial appointment and their services were regularised and all benefits for their service were directed to be given.

19. Therefore, the reasons cited in the impugned order of the first respondent that these appointments were made to the petitioners in violation of G.O.(pt) No.22 is also not held to be a good reason as those appointments were never opposed by the said Government orders.

20. The last such objection, according to the first respondent, as reflected in the impugned order dated 05.07.2013, is that as on 01.01.2006 none of these petitioners have completed 10 years of service and therefore, they were not eligible to claim the benefit of regularisation. This objection, according to the learned Additional Government Pleader, has been made by the first respondent in the context of G.O.(pt) No.74, dated 27.06.2013. The said Government order came in the year 2013. Though the said Government Order gives retrospective effect by showing that those who completed 10 years of service as on 01.01.2006 alone will be entitled to claim benefit of regularisation, the accrued right of the persons, who were in service on appointment prior to the said Government Order cannot be taken away by merely giving retrospective application of the Government Order. Moreover, in this case on hand, even that situation would not arise and in fact, admittedly these petitioners were appointed as Night Watchman, in the year 1985 to 1992. Insofar as the case of the petitioners who were appointed in the year 1985, 10 years period was over in the year 1995 itself. Even if the appointments were made in the year 1992, they have completed 10 years service in 2002, that is the reason why in all these cases, these petitioners were brought under the time scale of pay by an order of the District Treasury Officer, dated 29.05.2003 and 30.5.2003. Therefore, all these four petitioners admittedly have completed ten years service well before 01.01.2006. The said averments made in the impugned order and the stand taken by the Government, as argued by the learned Additional Government Pleader, that all these petitioners have not completed ten years of service as on 01.01.2006 and they are not entitled to get regularisation, is totally against the factual matrix of this case. As these



petitioners have very well completed ten years of service well before the cut off date i.e on 01.01.2006, the reason as reflected in the orders dated 15.03.2013 and 05.07.2013, which is impugned herein, would not stand in the way for giving regularisation to the petitioners.

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21. In view of these two orders dated 15.03.2013 and 05.07.2013 issued by the first respondent, the third respondent, being the Subordinate Official of the Government, had abruptly passed an order of termination on 19.08.2013, by which, the service of the petitioners have been abruptly terminated. As on 19.08.2013, all these petitioners have rendered more than twenty years of service. Such a long service, after having put them under time scale of pay from 2003, should have been taken into consideration and the issue could have been re-considered by the Government. Without resorting to any such exercise, the third respondent abruptly passed the termination order and in the result, all these petitioners were out of service from 19.08.2013. This Court feels that the way in which the case of the petitioners handled by the respondents i.e. both the third respondent as well as the first respondent is not in consonance with the established Procedure under law as well as their own Government Orders issued in this regard. None of the reasons cited in the impugned orders passed by the first respondent is tenable and sustainable. Therefore, both the impugned orders passed by the first respondent and consequential termination order passed by the third respondent are certainly unjustifiable and unlawful and therefore, they are liable to be quashed. Accordingly, all these orders are quashed.

22. In the result, the following orders are passed in these writ petitions:

- (i) the writ petitions are allowed;
- (ii) the respondents are directed to reinstate the petitioners in W.P(MD) Nos.14712, 14713 and 14717 of 2013. Insofar as the petitioner in W.P(MD) No.14716 of 2013 is concerned, since the petitioner has attained the superannuation, re-instatement at this juncture may not arise. However, the respondents shall take into account his service till his superannuation as a qualified service for the purpose of service benefits except back wages.
- (iii) Insofar as the other three petitioners, who are directed to be reinstated are concerned, their services for the period i.e from 19.08.2013 till their reinstatement shall be calculated as a duty period for getting service benefits. However, they are not entitled to claim salary for the said period.

<https://hcservices.ecourts.gov.in/hcservices> (iv) As indicated above, the petitioners' service shall be regularised on completion of 10 years from the date of their initial appointment and from that date onwards



they should be treated as permanent employees and accordingly they shall be entitled to get other service benefits, except salary difference.

(v) The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Finance
Fort St. George,
Chennai-600 009.

2. The Commissioner,
Treasury and accounts,
Panagal Buildings,
Saidapet, Chennai-600 015.

3. The District treasury Officer,
Palayamkottai
Tirunelveli District.

4. The Treasury Officer,
Sub-Treasury,
Palayamkottai
Tirunelveli District.

+4ccs to Mr.A.S.Mujibur Rahman, Advocate in SR.No.56503, 56504,
56505,56406

+2ccs to Special Government Pleader in SR.No.56520,56521

CM/RM/TSG/RMK

AE/MR KKR/SAR3/21.07.2017/12P/11C