

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.A.No.240 of 2013

1.K.Yuvaraj
2.K.Thennarasu
3.S.Ramalingam
4.I.Kumar
5.B.Bakthavatchalam
6.R.Raju
7.K.Subbiah
8.R.Valarmani
9.U.Ramanathan
10.K.R.Anandakrishnan
11.K.Natarajan
12.S.Alagarsamy
13.M.Easwaran
14.K.Karuppasamy
15.S.Kalimuthu
16.M.Usharani

... Appellants

Vs

1.The Government of Tamil Nadu
rep. by its Under Secretary to
Government,
Youth Welfare and Sports
Development Department,
Secretariat, Chennai - 9.

2.The Deputy Director General,
National Cadet Corps,
National Cadet Corps Directorate,
Tamil Nadu, Pondicherry and
Andamans, Secretariat,
Chennai - 9. .. Respondents Respondents

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Appeal preferred under Clause XV of Letters Patent against the order dated 23.06.2011 made in W.P.No.25698 of 2010.

Prayer in W.P.No.25698 of 2010:

Writ of Certiorarified Mandamus to calling for the records relating to the proceedings of the 1st respondent in Letter No. 586/YW/2008-1 dt 14.9.2009 and quash the same and direct the respondents to grant monetary benefits to the petitioners from the date of their respective appointment

For Appellants ... Mr.L.Chandrakumar
for Mr.R.Kamaraj

For Respondents... Ms.A.Sri Jayanthi,
Spl. Govt. Pleader

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This writ appeal has been filed against the order of the learned single Judge, who declined to consider the case of the appellants that regularising the services rendered by them, though working on a consolidated pay, cannot be taken into consideration as continuity of service and for all other benefits.

2.The appellants were originally working on consolidated pay in the Survey and Land Records Department. Their services were regularized by the Government by order dated 29.04.2004 in the second respondent Department after relaxing Rules 28 and 26 of The Tamil Nadu Ministerial Service Rules, which speak about the age criteria and reservation. Thus, there is no difficulty in holding that the appellants' entry in the Department of Survey and Land Records was a back door one not involving the selection process and reservation. Therefore, the regularisation order clearly speaks that the appellants will not be entitled for any monetary benefits for the services rendered hitherto.

3.Subsequent to the aforesaid order, the appellants gave a representation seeking monetary benefit. It was once again rejected by the first respondent by the order dated 14.09.2009 as regularization itself was done by relaxing the Rules in their favour.

4.The appellants contended before the learned single Judge that the similarly placed persons have been regularized in other Departments. The abovesaid contention was rejected by the learned single Judge holding that there was an amendment to the Government Order in G.O.Ms.No.355 Tamil Development Culture and Endowments Department dated 02.12.2004 by way of amending paragraph 6 through another Government Order in G.O.Ms.No.302 Tamil Development, Religious Endowment and Information Department dated 20.08.2008, by which the individuals are eligible for grant of monetary benefits with effect from the date of issuance of Government Order, regularising their services under the Government.

5.Learned counsel appearing for the appellants would submit that the services of the appellants will have to be considered for the purpose of monetary benefits. The fact that they have put in sufficient years of service is not in dispute. Reliance has been made on the judgment of the Division Bench in W.A.Nos.168 and 169 of 2012 dated 08.08.2014.

6. Regularization order itself has been passed after giving due relaxation of Rules 28 and 26 of the Tamil Nadu Ministerial Service Rules. The entry of the appellants into the Department of Survey and Land Records was admittedly a back door one. Accepting the contention of the appellants would amount to regularising the back door entry from the said date, which will be totally impermissible in law. What has been given as a concession cannot be claimed as a matter of right. At the time of regularisation, relaxation was given with respect to age and reservation. The appellants, having accepted the aforesaid order and got the benefit, cannot challenge it subsequently. Though services have been regularised in the year 2004, the writ petition itself was filed in the year 2010. Though the appellants have made a representation, which was rejected in the year 2010, we are of the view that inasmuch as the appellants have accepted the regularisation, it is not open to them to challenge it thereafter.

7.Since regularization per se is a qualified one and in the absence of any law, which makes it mandatory on the respondents to take into consideration the services rendered by the appellants, who have admittedly worked on a consolidated pay, we do not find that the decision of the learned single Judge can be found fault with. The judgment

of the Division Bench (cited supra), in our considered view, cannot be taken as a binding precedent. There is no right that is vested with the appellants to seek such a relief. Having got the benefit of regularisation notwithstanding the fact that they made an entry without putting themselves through selection process and got the relaxation of Rules, it would be too farfetched for the appellants to insist that the services rendered by them on a consolidated pay will also be reckoned for the monetary benefits. Thus we do not find any merit in this writ appeal and the same is accordingly dismissed. No costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Under Secretary to
Government,
Youth Welfare and Sports
Development Department,
Secretariat, Chennai - 9.

2.The Deputy Director General,
National Cadet Corps,
National Cadet Corps Directorate,
Tamil Nadu, Pondicherry and
Andamans, Secretariat,
Chennai - 9.

+1cc to Mr.R.Kamaraj, Advocate SR.No. 88016

W.A.No.240 of 2013

A.SK(23/01/2019)

सत्यमेव जयते

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