

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1133 of 2014
and MP No.1 of 2014

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Labour and Employment (E2) Department,
Secretariat, Chennai 9.
2. The Commissioner of Labour,
Teynampet,
Chennai 600 006.
3. The Chief Inspector of Factories,
Chennai 5.
4. The Inspector of Factories,
Hosur, Dharmapuri - 5. ... Appellants

versus

M.Sisubalan

... Respondent

Appeal filed against the order passed by this Court dated 20.04.2012 passed in W.P.No.11076 of 2012.

prayer in W.P.No.11076 of 2012:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records connected in G.O.ms.No.187 Labour and Employment (E2) Department dt.17.09.2010 of the 1st respondent and quash the same in respect of the regularization of the petitioner from the date of issuance of the Government order in so far as the petitioner is concerned and directing the respondents to regularize the service of the petitioner in the post of Night Watchman either from the date of initial appointment (or) from the date of completion of 10 years of service as given to others with all benefits.

For Appellants : Mr.V.Anandhamoorthy
Additional Government Pleader

For Respondent : Mr.G.Elanchezhiyan

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This Intra Court Appeal is the instance of the State, challenging the order of the learned Single Judge made in WP No.11076 of 2012 dated 20.04.2012 directing the appellants herein to regularise the service of the respondent on completion of 10 years of service with a time scale of pay.

The facts that led to the filing of the Writ Petition are as follows:

2.The respondent was appointed as a Night Watchman in the office of the 4th appellant on 02.07.1992. He has been working as such since then. He made a representation on 09.04.2012 seeking regularisation of the services in terms of G.O.Ms.No.22, P & AR (F) Department, dated 28.02.2006. Since the said request is not complied with, the respondent had approached this Court seeking regularisation as aforesaid.

3. Taking note of similar orders passed by this Court in WP (MD) No.11707 of 2006 dated 22.12.2006 which was confirmed in WA (MD) No.391 of 2007 on 25.10.2007 and orders in WP No.18126 of 2008 dated 29.07.2008, which was confirmed in WA No.230 of 2009 dated 03.08.2009, the learned Single Judge had allowed the Writ Petition directing regularisation of the services of the respondent.

4. Aggrieved, the State is before us by way of this intra Court Appeal.

5. Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the appellants and Mr.G.Elanchezhiyan, learned counsel appearing for the respondent.

6. Mr. V.Anandhamoorthy, learned Additional Government Pleader appearing for the appellants would contend that in view of the subsequent Government Order in G.O.Ms.74, P & AR (F) Department, dated 27.06.2013, the respondent cannot be

regularised as the same would amount to creation of supernumerary post. Very same issue was considered by the Division Bench of this Court in WA No.273 of 2016 dated 16.03.2016. The same contention raised by the learned Additional Government Pleader placing reliance on G.O.Ms.74, P & AR (F) Department, dated 27.06.2013 was rejected by the Division Bench. The Division Bench had concluded that the subsequent G.O. cannot take away the rights, which are already accrued to the respondent therein.

7. The Special Leave Petition filed by the State challenging the said judgment of the Division Bench in WA No.273 of 2016 was also dismissed by the Hon'ble Supreme Court on 25.01.2018. We see no reason to take a different view.

8. Hence the Writ Appeal fails and the same is dismissed, confirming the order of the learned Single Judge. However, in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

jv

To

1. The State of Tamil Nadu,
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Labour and Employment (E2) Department,
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2. The Commissioner of Labour,
Teynampet,
Chennai 600 006.

3. The Chief Inspector of Factories,
Chennai 5.

4. The Inspector of Factories,
Hosur, Dharmapuri - 5.

+1cc to M/S.G.Elanchezhiyan, Advocate Sr.42105

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BS (CO)
srg 20/07/2018



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