

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.11.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 16386 of 2015

V.Perumal

...Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. by its Secretary Highways Department
Secretariat Chennai-9.
- 2.The Chief Engineer(General),
Highways Department, Chepauk, Chennai-5.
- 3.The Divisional Engineer,
Highways, C&M, Ariyalur-621 704.
- 4.The Assistant Divisional Engineer,
Highways, C&M, Perambalur. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus Calling for the records connected with the impugned order passed by the 1st respondent in G.O.(Ms) No.96 Highways (A) Small Ports (H.M2) Department dated 25.5.2009 and the consequential Memo No.57507/ Nir6(3)/1990 dated 27.5.2009 of the 2nd respondent in so far as the petitioner concerned and quash the same and consequently direct the 1st respondent to regularize the service of the petitioner on completion of 5 years of service w.e.f. 4.5.1982 instead of 4.5.1987 in terms of G.O. Ms.No.107 P&AR (Per.F) Department dated 5.2.1987 with attendant monetary and other service benefits including pension benefits.

For Petitioner : Mr.R.Rengaram Anujam

For Respondents: Mr.R.S.Selvam, Government Advocate

O R D E R

The order of regularisation issued by the 1st respondent regularising the services of the writ petitioner in G.O.(Ms) No.96, Highways (A) Small Ports (H.M2) Department dated 25.5.2009 and the consequential Memo of the 2nd respondent

dated 27.5.2009 was under challenge in this writ petition. Further, permission is sought for to direct the 1st respondent to regularise the services of the writ petitioner on completion of 5 years of service with effect from 4.5.1982 instead of 4.5.1987.

2. The writ petitioner was initially appointed to the post of Watchman on temporary basis. However, the writ petitioner was not appointed in accordance with the recruitment rules in force. At the first instance, he was allowed to continue in service for number of years. When the writ petitioner was continuing as a temporary employee, the Government issued G.O.Ms.No.107, Personal and Administrative Reforms (per.F.) Department 05.02.1987, directing the authorities to bring the contingent staff and menials paid from contingencies to the regular establishments on completion of their 5 years of service. Thus, the case of the writ petitioner was also considered and a proposal was submitted by the competent authority and the Government passed an order in G.O.Ms.No.96, Highways Department dated 25.05.2009. Accordingly, the services of the writ petitioner was regularised with effect from 04.05.1987.

3. The learned counsel appearing for the petitioner states that the writ petitioner was initially appointed on 02.05.1977 and therefore, he is entitled to be regularised on completion of 5 years of his service with effect from 04.05.1982. Contrarily, the Government granted regularisation in favour of the writ petitioner only with effect from 04.05.1987. Therefore, the writ petitioner was constrained to move the present writ petition.

4. The learned Government Advocate appearing on behalf of the respondents states that the case of the writ petitioner was considered in accordance with the Government orders and the scheme of regularisation granted itself was a concession, in respect of these temporary employees. In this regard Paragraph No.5 of the counter affidavit filed on behalf of the respondents are extracted hereunder:

''5.It is humbly submitted that the allegations contained in paragraph 6 and 7 of the affidavit filed in support of the writ petition are denied as false. The allegation that vide G.O.(Ms).No.107, Personnel and Administrative Reforms Department, dated 05.02.1987, the contingent staff and menials paid from contingencies be regularized on completion of five years of service is denied as false. It is humbly submitted that the said G.O.Ms.No.107, personnel and Administrative Reforms Department, dated 05.02.1987 in Clause (i) clearly states that the contingent workers may be brought to regular establishment on completion of five years of service as on 01.01.1977. But admittedly, the petitioner

joined service only on 04.05.1977. Hence, the claim of the petitioner is unsustainable and misleading. It is humbly submitted that the allegation that the petitioner had given various representations to the respondents requesting them to regularize his service on completion of five years is denied as false. The petitioner has never made any such representations either orally or in writing. Furthermore, the claim of the petitioner is highly belated besides being misleading. The petitioner cannot resort to claim the alleged salary after the lapse of 33 years.''

5. This Court is of an opinion that the regularisation or permanent absorption cannot be granted in violation of the recruitment rules. However, prior to the Constitutional Bench judgment of Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Umadevi and others reported in 2006 (4) SCC Page No.1, the State Government and the Courts were granting benefit of regularisation or permanent absorption in favour of the temporary employees. The Government also granted the benefit of regularisation in respect of the daily wage employees and the temporary employees so also the Court also passed number of orders granting regularisation. However, the Constitution Bench of the Hon'ble Supreme Court of India willfully come down and state that the provision of granting regularisation in violation of the recruitment rules in force are to be deprecated.

6. This Court is of an opinion that the persons who were not appointed in accordance with the rules in force cannot be regularised, in view of the fact that if regularisation is not granted in accordance with law, then the rights of all other meritorious candidates who are all aspiring to secure public employment through open competitive process will be affected. Thus, the benefit of regularisation granted to the writ petitioner itself was a concession and therefore, the writ petitioner cannot seek any further regularisation with retrospective effect. The Government has already granted regularisation in favour of the writ petitioner in G.O.Ms.No.90 dated 25.05.1999 with effect from 04.05.1987. Thus, the very claim itself is untenable.

7. This apart, the writ petitioner was allowed to retire from service on 31.03.2010. The regularisation was granted in G.O.Ms.No.96, dated 25.05.2009. The writ petition is filed on 08.01.2005. Thus, the writ petition itself is highly belated and liable to be rejected on the ground of laches. The petitioner has chosen to file the present writ petition after a lapse of five years from the date of his retirement and therefore, this Court is not inclined to consider the writ petition both on merits as well as on the ground of delay.

8. Accordingly, the writ petition stands dismissed.
However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary Highways Department
Secretariat Chennai-9.

2.The Chief Engineer (General),
Highways Department, Chepauk, Chennai-5.

3.The Divisional Engineer,
Highways, C&M, Ariyalur-621 704.

4.The Assistant Divisional Engineer,
Highways, C&M, Perambalur.

+1cc to Mr.R.Rengaramunujam, Advocate, S.R.No. 76245

+1cc to the Government Pleader, S.R.No. 76496

W.P.No.16386 of 2015

KGK (CO)
GN(30/11/2018)

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