

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2018

CORAM:

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

W.A.No.800 of 2015
and
M.P.No.1 of 2015

- 1.The Secretary to the Government,
School Education Department,
Fort St.George,
Chennai - 9.
 - 2.The Director of School Education,
D.P.I. Complex,
College Road, Chennai - 6.
 - 3.The Chief Educational Officer,
Tiruvallur District,
Tiruvallur.
- ... Appellants
- versus
- Ruckmani ... Respondent

PRAYER: Appeal filed against the order passed by this Court dated 04.10.2013 made in W.P.No.27478 of 2013. Writ petition filed under Article 226 of the constitution of India praying for the issuance of a Writ of Mandamus directing the 1st respondent to regularize the service of the petitioner husband namely V.Jayaramu from the date of his initial appointment i.e. from 2.6.1982 in the post of Sweeper and consequently sanction and pay the family pension and other benefits along with arrears of pay as per rules in the light of the order passed in Writ Petition No. 15973/2012 with petition No.12131/2012 and G.O.(2D) NO.29 School Education (R-1) Department dated 29.6.2011 by considering the petitioner representation dated 5.7.2013 as per G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department dated 28.2.2006.

For Appellants : Mr.K.Karthikeyan,
Government Advocate

For Respondent : Mr.K.H.Ravikumar

J U D G M E N T
(Order of the Court made by R.SUBRAMANIAN, J.)

The challenge in this intra-Court appeal is to the order of the learned Single Judge dated 04.10.2013 made in W.P.No.27478 of 2013, in and by which, the learned Single Judge allowed the Writ Petition filed by the respondent seeking a direction to regularize the services of her husband viz., one V.Jayaramu from the date of his initial appointment viz., 02.06.1982 in the post of sweeper and consequently sanction family pension and the other benefits along with arrears of pay as per the Rules.

2. The case of the respondent before the Writ court was that her husband V.Jayaramu was appointed as a part-time Sweeper in the Government Higher Secondary School, Nelli Marathu Kandigai, Sathyavedu, Thiruvallore District on 02.06.1982. The said appointment was also approved by the Chief Educational Officer, Kancheepuram in his proceedings dated 09.01.1983. It is the claim of the respondent that the said V.Jayaramu was in continuous service, he was also admitted to Family Benefit Fund Scheme with effect from 01.07.1991 and a nomination was also obtained in favour of the respondent at the time of admission into the Family Benefit Fund.

3. The respondent would further claim that the Government issued G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department dated 28.02.2006, in and by which, the Government decided to regularize the services of those daily wage employees working in all Government Department who have completed 10 years of service as on 01.01.2006. Relying upon the said G.O.Ms.No.22 dated 28.02.2006, several similarly placed persons were regularized, however the services of the petitioner's husband were not regularized. The petitioner's husband died in harness on 20.12.2003. It is not in dispute that the petitioner's husband had completed 10 years of service on the date of his death viz., 20.12.2003 and he is entitled to the benefits conferred on such daily wage employees under G.O.Ms.No.22 dated 28.02.2006. The services of the petitioner's husband were not regularized, pursuant to the said G.O, only due to the fact that he had died in harness on 20.12.2003.

4. The Writ Petition was resisted by the respondents contending that the benefits conferred under G.O.Ms.No.22 dated 28.02.2006 cannot be extended to part time employees in view of the subsequent Government Order i.e., G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013, wherein, the Government had clarified that the part time employees cannot be conferred with the benefits of regularization as per G.O.Ms.No.22 dated 28.02.2006.

5. The learned Single Judge who heard the Writ Petition allowed the Writ Petition by his order dated 04.10.2013 following the earlier judgments of this Court, wherein, such benefit were extended to part-time employees also. It was also pointed out that an order passed in W.P.No.4859 of 2009 directing regularization of the part time employees was confirmed by a Division Bench of this Court in W.A.No.1520 of 2010 dated 24.02.2010 and a Special Leave Petition filed against the said judgment of the Division Bench in S.L.P.No.8231 of 2011 was also rejected by the Hon'ble Supreme Court. On the above said findings, the learned Single Judge allowed the Writ Petition directing regularization of the services of the husband of the respondent with a further direction to pay arrears of salary and other benefits. Aggrieved by the said order of the learned Single Judge, the Government is on appeal.

6. Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants would vehemently contend that, in view of G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, the directions issued by the learned Single Judge cannot be sustained. He would also refer to the judgment of the Hon'ble Supreme Court in State of Tamil Nadu Vs. R.Govindasamy and others, where the Hon'ble Supreme Court had pointed out that the conferment of regularization cannot be a measure adopted by the Government to legalize the otherwise illegal temporary appointments. In the very same judgment of the Hon'ble Supreme Court has also pointed out that the benefits which had been conferred on the employees earlier should not be withdrawn.

7. It is not in dispute that the husband of the respondent would have been entitled to the benefits of G.O.Ms.No.22 dated 28.02.2006 if he has been alive on the date of issuance of G.O and the services would have been regularized. Unfortunately, the respondent's husband died while in service on 20.12.2003. Because of this untimely death, the husband of the respondent could not avail of the benefits of G.O.Ms.No.22. It is seen from the Service Register produced by the respondent that the appointment of the respondent's husband was made in an existing vacancy and his appointment was also approved by the Chief Educational Officer even in the year 1983 and the deceased husband of the respondent was also admitted into the Family Benefit Fund scheme with effect from 01.07.1991.

8. Pointing out the above, the learned counsel for the respondent would contend that this case stands on a totally different factual background. We are inclined to agree with the learned counsel for the respondent. As already stated, it is not disputed that the husband of the respondent have served as night watchman in the Government school from 1982 till his death on 20.12.2003 which is nearly for a period of 20 years. The said service has to be recognized. It is also seen from the records

that he was admitted into the Family Benefit Fund scheme with effect from 01.07.1991.

9. We are therefore of the considered opinion that, the appellants should atleast regularize the services of the deceased husband of the respondent for the purposes of payment of family pension if not for other purposes. We therefore modify the order of the learned Single Judge allowing this appeal in part, to the effect that the appellants will regularize the services of the respondent as per G.O.Ms.No.22 notionally only for the purposes of payment of family pension under Rule 49 of the Tamil Nadu Pension Rules. The respondent will not be entitled to any other benefits on the basis of such regularization.

10. In fine, the appeal is partly allowed, directing the respondents to notionally regularize the services of the husband of the 1st respondent for the purposes of calculation of the family pension that would be payable to the respondent and pay her the family pension from the date of the order in the Writ Petition viz., W.P.No.27478 of 2013. The said exercise shall be completed within a period of eight (8) weeks from today and payment of the arrears shall be made within four (4) weeks thereafter sans interest. However, in the circumstances there will be no order as to costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dsa

To

- 1.The Secretary to the Government,
School Education Department,
Fort St.George,Chennai - 9.
- 2.The Director of School Education,
D.P.I. Complex,
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- 3.The Chief Educational Officer,
Tiruvallur District, Tiruvallur.

+ 1 cc to Mr. Government Pleader Sr.49945

+ 1 cc to Mr.K.H. Ravi Kumar, Advocate Sr.49442

W.A.No.800 of 2015

(CS-VII)

EU(20/08/2018)