

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2018

CORAM:

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

W.A.No.246 of 2014
and
M.P.No.1 of 2014

- 1.The Government of Tamil Nadu rep. by its
Secretary, Agriculture Department,
Fort St. George, Chennai - 9.
 - 2.The Director,
Office of the Director of Horticulture and
Plantation Crops, Chennai.
 - 3.The Additional Director,
Office of the Additional Director Horticulture and
Plantation Crops, Udhagamandalam.
 - 4.The Assistant Director,
Office of the Assistant Director Horticulture and
Plantation Crops, Udhagamandalam.
- Appellants / Respondents
- versus

M.Valarmathi ... Respondent/Petitioner

PRAYER: Appeal filed against the order passed by this Court dated 13.12.2012 made in W.P.No.20991 of 2009 filed under Article 226 of constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 25.08.2009 issued by the 4th Respondent and quash the same and consequently direct the Respondents to pay petitioner regular time scale and other benefits as available to regular worker and the difference in salary payable to the petitioner from 25.08.2009.

For Appellants : Mr.N.Manikandan
Government Advocate

For Respondent : Mr.S.Makesh

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 13.12.2012 made in W.P.No.20991 of 2009, in and by which, the proceedings of the 4th respondent dated 25.08.2009 were quashed and the appellants were directed to pay regular time scale of pay and other benefits available to the respondent as a regular worker from 25.08.2009.

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

2. The respondent joined as a temporary worker at the Botanical garden in Udagamandalam and has been serving as such since 1996. The State Government issued G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department dated 28.02.2006, providing for regularization of daily wages employees working in all Department who have rendered 10 years of service as on 01.01.2006. Pursuant to the said Government Order in G.O.Ms.No.22 dated 28.02.2006, the Secretary to Government, Agriculture Department issued a G.O.Ms.No.494 dated 29.11.2007, in and by which, the services of 1083 employees who had completed 10 years of service in the Government Horticultural Farms were directed to be regularized.

3. The name of the respondent was shown as item No.123 in the list of employees who were working in the Government Horticultural Farm viz., Botanical Garden, Ooty. Pursuant to the same, the service of the respondent was regularized and she was also paid salary as a regular employee till 25.08.2009, when the impugned order came to be passed. By the impugned order dated 25.08.2009, the Assistant Director of Horticulture, Botanical Garden, Ooty directed removal of the name of the respondent from the list of daily wages employees entitled to regularization appended to G.O.Ms.No.494 dated 29.11.2007, on the ground that she had not completed 10 years of qualifying service as on 01.01.2006. This removal, apparently is based on a legal notice said to have been issued by another temporary employee by name Sumathy who had claimed that the respondent had joined as a daily wage employee after her, but, her name had been included in the employees who were entitled to regularization as per G.O.Ms.No.494 dated 29.11.2007. Challenging the above said removal, the respondent had moved this Court by way of the above said Writ Petition in W.P.No.20991 of 2009.

4. The claim of the respondent was resisted by the appellants contending that the respondent had joined as a daily wage employee only on 01.03.1996 and therefore, she would not

have completed 10 years of qualifying service as on 01.01.2006. But there is no plausible explanation as to how the respondent's name was included in the list of qualified daily wage employees when the G.O.Ms.No.494 came to be issued on 29.11.2007. The only claim made is that another person by name K.P.Valarmathi was working as a daily wages employee from 01.01.1995 and the name of the respondent was included due to a bonafide mistake.

5. The learned Single Judge who heard the Writ Petition allowed the Writ Petition relying upon the earlier orders passed by this Court in W.A.No.230 of 2009 dated 03.08.2009. Aggrieved the appellants are before us by way of this Appeal.

6. We have heard Mr.N.Manikandan, learned Government Advocate for the appellants and Mr.S.Makesh for the 1st respondent.

7. Admittedly, the G.O.Ms.No.22 dated 28.02.2006 was issued by the Government paving way for regularization of all those employees who have completed 10 years of service as on 01.01.2006. This was followed by the Agricultural Department issuing G.O.Ms.No.494 dated 29.11.2007 listing out 1083 daily wages employees who are entitled to regularization, since they had completed 10 years of qualifying service as on 01.01.2006. It is not in dispute that the name of the respondent was found in the list appended to G.O.Ms.494 dated 29.11.2007. The services of the respondent was also regularized and she was put on a regular time scale of pay. She was also paid salary till 25.08.2009 as a regular employee. Based on a legal notice issued by another employee the 4th respondent issued the proceedings dated 25.08.2009, canceling the regularization which was subject matter of challenge in the Writ Petition.

8. The respondent would claim that she had put in 10 years of service prior to 01.01.2006. The appellants would claim that she joined only on 01.03.1996, therefore, she had not completed 10 years of qualifying service as on 01.01.2006. There is no material to show the exact date of appointment of the respondent as a temporary employee or as a daily wage employee. It is only based on the legal notice issued by another temporary employee, the Authorities have chosen to recall the regularization of the respondent. Having found that the respondent had completed 10 years of qualifying service and having included her name in the list of beneficiaries appended to the G.O.Ms.No.494 dated 29.11.2007, the appellants were not justified in recalling the benefit of regularization conferred on the respondent.

9. We find that the reason for recalling viz., a legal notice issued by counsel on instructions of another employee cannot be the basis for such recalling. Though it is contended

in the counter affidavit that there was one K.P.Valarmathi, who worked from 01.01.1995 and by mistake, the name of the respondent, being identical, was included in the list of beneficiaries in G.O.Ms.No.494 dated 29.11.2007 has been projected for the first time in the counter affidavit, the order dated 25.08.2009, which recalls the benefit does not set out such a reason. We are therefore of the considered opinion that the order recalling the conformant of regularization on the respondent is not just and proper. The attempt made to introduce further reasons for recalling the order in the counter affidavit cannot be accepted.

10. We are therefore of the view that the order of the learned Single Judge allowing the Writ Petition does not call for any interference. Hence, the Writ appeal is dismissed, however, without costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Secretary,
Government of Tamil Nadu,
Agriculture Department,
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+1cc to Mr.S.Makesh, Advocate Sr.43062

W.A.No.246 of 2014

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srg 23/07/2018



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