

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.815 of 2011

S.Lawrence

.. Petitioner

vs

1.Government of Tamilnadu,
Rep.by its Secretary,
Municipal Administration & Water
Supply Department,
Secretariat, Chennai 600 002.

2.The Director of Town Panchayats
Kuralagam Buildings,
Chennai 600 108.

3.The Executive Officer,
Kizhkulam Town Panchayat,
Kizhkulam Post,
Kanyakumari District.

.. 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 relating to the impugned order dated 13.02.2010 Ref.Na.Ka.No.16986 of 2005 /A3 passed by the second respondent and quash the same and consequently direct the 2nd respondent authority to regularize the service of the petitioner as water supply Assistant with effect from 01.09.1980 in the pay scale of Rs.200-5-300 as per G.O.Ms.No.1050/Fin.Pay Commission dated 05.10.1978 with all other attendant benefits.

For Petitioner : Mr.S.Thanka Sivan
For R1 and R2 : Mr.A.Zakhir Hussain
Government Advocate.
For R3 : Mr.J.Raja Kallifulla
(Senior Counsel)

O R D E R

The petitioner has filed the present writ petition challenging the impugned order of the second respondent, dated 13.02.2010 and for a consequential direction to the 2nd respondent authority to regularize the service of the petitioner

as water supply assistant with effect from 01.09.1980 in the pay scale of Rs.200-5-300 as per G.O.Ms.No.1050/Fin.Pay Commission, dated 05.10.1978 with all other attendant benefits.

2. According to the petitioner, on 01.09.1980 he was appointed as water supply attendant in Kizhkulam Town Panchayat, by the Executive Officer, Kizhkulam Post, Kanyakumari District. He sent a representation dated 13.02.1995 to the Executive Officer, Town Panchayat, Kizhkulam Post, Kanyakumari District for regularisation. The said representation was recommended by the Assistant Director, Nagarcoil through his proceedings Na.Ka.No.1351/05/P2, dated 25.04.1995 and sent the proposal to the first respondent through the second respondent seeking permission to appoint the petitioner as full time employee. The second respondent has no progress for such proposal. Again, the petitioner sent representations, dated 17.03.1997 and 23.07.1998 and the same were not considered. Hence, the petitioner filed W.P.No.20547 of 1998 to consider his representation.

3. This Court, by an order dated 02.09.1998 has directed the respondents to consider the representation of the petitioner and pass orders of his service within twelve weeks. However, the second respondent, by his proceedings Na.Ka.28795/98/A3 dated 22.02.1999 stated that the first respondent issued G.O.Ms.No.198, Municipal Administration and Water Supply Department, dated 16.10.1998. Though guidelines have been issued and following the said guidelines some post is created on consolidated pay of Rs.600/- per month in Kizhkulam Town Panchayat from the date of the said order. Aggrieved by the said order, the petitioner filed W.P.No.5541 of 2000 seeking to quash the said order. During the pendency of the said writ petition, the District Collector, Kanyakumari District through his proceedings dated 22.08.2008 passed an order of transfer for 13 persons at various panchayats and in pursuant to the said order, the petitioner was regularised with effect from 23.06.2006. Thereafter, the petitioner was senior Water Supply Assistant in the aforesaid Town Panchayat. Pursuant to the regularisation, by an order dated 26.10.2009 in W.P.No.5541 of 2000 granting liberty to the petitioner to make a representation to the second respondent within a period of eight weeks from the date of receipt of the said order and dispose the same. Thereafter, the second respondent has passed the impugned order and rejected the petitioner's representation. Challenging the said impugned order, the petitioner has preferred the present writ petition before this Court.

4. The learned counsel for the petitioner would submit that the second respondent was not considered the petitioner's request for regularisation of his service from the original

appointment, dated 01.09.1998, after completing three years of consolidated service, similarly placed persons have already been regularised with effect from the date of completion of the aforesaid three years period.

5. In support of his contention, the learned counsel for the petitioner has produced the order in W.P.No.9403 of 2013, dated 26.06.2013, wherein, this court considered the Government Orders and granted relief to the similarly placed persons and directed the 2nd respondent to regularise the service of the petitioner on completion of three years from the date when the other similarly placed persons were appointed on consolidated pay into regular time scale of pay, within a period of three months from the date of receipt of the said order. Therefore, the aforesaid order passed by this Court is applicable to the present case on hand.

6. The learned Senior counsel appearing for the third respondent strongly objected that at the time of original appointment, there is no sanctioned post with the panchayat. The petitioner originally appointed as a part time employee for the payment of Rs.1/- per day and subsequently at request made by the similarly placed persons, the Government has sanctioned and created the post and passed in G.O.Ms.No.198 dated 26.10.1998 and the guidelines issued in the aforesaid Government orders, to appoint the petitioner in a consolidated pay at the rate of Rs.1700/- p.m. Thereafter, the petitioner's service was regularised with effect from 23.06.2006. The present relief prayed for by the petitioner, by regularise the service from the date of original appointment, after completion of three years service, with consolidated pay, but the same would not be granted by the Government. In placing reliance on the decision of the Hon'ble Supreme Court in State of Haryana and others vs. Charanjit Singh and Others reported in (2006) 9 SCC 321 and another decision of the Hon'ble Supreme Court in State of Rajasthan and others vs. Daya Lal and others reported in (2011) 2 SCC 4129. In para-12 of the Judgement, it has been reads as follows:

12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in

pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for

absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

7. According to the learned counsel for the respondents, the petitioner cannot seek regularisation with retrospective from the date of original appointment or from the date of completion of three years service or as completion of consolidated service from the date of three years, on par with similarly placed employees.

8. In the light of the decision of the Hon'ble Supreme Court (cited supra), this Court is of the view that the writ petitioner is not entitled for regularisation of service from the date of original appointment or from the date of completion of three years service on consolidated pay.

D.KRISHNAKUMAR, J.
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9. At this stage, the learned counsel for the petitioner seeks liberty of this Court to approach the first respondent to seek relief, in the light of the order passed in W.P.No.9403 of 2013, dated 26.06.2013.

In fine, the writ petition stands dismissed with liberty to the petitioner to make fresh representation to the first respondent, if so advised. No costs.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Municipal Administration & Water
Supply Department,
Secretariat,
Chennai 600 002.

2.The Director of Town Panchayats
Kuralagam Buildings,
Chennai 600 108.

3.The Executive Officer,
Kizhkulam Town Panchayat,
Kizhkulam Post,
Kanyakumari District.

+lcc to Mr.Raja Kalifullah, Advocate, S.R.No. 78735

+lcc to Mr.S.Thankasivan, Advocate, S.R.No.78890

+lcc to the Government Pleader, S.R.No. 79934

W.P.No.815 of 2011

BR(CO)
GN(12/02/2019)



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