

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.32295 of 2012

Kannaiya Kumar

...Petitioner

Versus

1. The State of Tamil Nadu,
Repd by the Chief Engineer (Personnel),
Agriculture Engineering Department,
487, Anna Salai, Nandanam,
Chennai - 600 035.
2. The Superintending Engineer,
Agriculture Engineering Department,
Thiruvallur.
3. Narayanan,
Harvester Driver,
Office of the Assistant Executive
Engineer, AED,
Tiruvallur.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents 1 and 2 to regularize the services of the petitioner with consequential benefits on and from 19.09.2008.

For Petitioner :: Mr.M.Ramamoorthi

For Respondents:: Mrs.Sri Jeyanthi
Special Government Pleader
For R1 and R2.

Mr.G.Sankaran, For R3.

O R D E R

The writ petition had been filed seeking a Mandamus to direct the respondents 1 and 2 to regularize the services of the petitioner with consequential benefits on and from 19.09.2008.

2. This writ petitioner had been called for an interview in the office of the 2nd respondent namely the Superintending Engineer, Agriculture Engineering Department, Thiruvallur on 11.09.2008 vide Letter No:A/693/2008 for the post of Harvester. He was appointed on 19.09.2008. His employment continued without any break. He was then called for an interview again on 30.12.2011. He was not however, considered for appointment. The 3rd respondent was appointed to the post of Tractor cleaner. The petitioner has claimed that he has been in continuous service and consequently sought regularization of his services.

3. In the counter affidavit filed by the 1st respondent namely the chief Engineer (Personnel), Agriculture Engineering Department, The State of Tamil Nadu. It had been stated that the recruitment for the post of Tractor Cleaner is by direct recruitment or by recruitment by transfer. It had been stated that five candidates were nominated by the Employment Exchange and they attended the interview conducted on 23.12.2011. The ability of the candidates in cleaning, greasing and oiling of Machineries were examined. The petitioner was one of the candidates who were sponsored by the Employment Exchange. It was thereafter found that the 3rd respondent was the suitable candidate and appointment was given to him. It was stated that there was no post of Harvester Driver in the office of the respondents. It was further stated that the petitioner is covered only by the Fundamental Rules and consequently the provisions of the Industrial Establishment Act, 1981 is not applicable to the petitioner. It is stated that the petition should be dismissed.

4. Heard, arguments advanced by Mr. Mr.M.Ramamoorthi learned counsel for the petitioner and Mrs.A.Sri Jeyanthi, learned Special Government Pleader for the respondents 1 and 2 and Mr.G.Sankaran, learned counsel for the 3rd respondent.

5. It is a fact that the petitioner had been in employment from 19.09.2008. He had been called for an interview on 11.09.2008 by the 2nd respondent namely the Superintending Engineer, Agriculture Engineering Department, Thiruvallur by Letter No.A/693/2008. He was appointed to the post of Harvester. It is the specific stand in the counter affidavit filed by the respondents that there is no sanctioned post of Harvester Driver. Consequently, the petitioner was in Employment on Contract Basis. His services cannot be regularised, since there was no post for Harvester Driver. The sanctioned post is only for Tractor Cleaner. Opportunity for appointment as Tractor Cleaner was afforded to the petitioner who was sponsored by the Employment Exchange and he attended an interview on 23.12.2011

conducted by the Executive Engineer (Agriculture Engineering), Thiruvallur. Five candidates had been sponsored by the Employment Exchange. Their suitability and ability in cleaning, greasing and oiling of Machineries were tested. Finally, the Selection Committee appointed the 3rd respondent Narayanan as Tractor cleaner in the sanctioned post. That selection has not been challenged by the petitioner. That was in the year 2011. On the other hand the petitioner has sought regularisation in the post in which he is continuing to work namely Harvester Driver. Unfortunately, there is no post of Harvester Driver.

6. The learned counsel for the petitioner relied on the Division Bench Judgment of this Court in W.P.No.5980 of 2004 dated 03.08.2012 wherein, the Division Bench considered the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. According to the said Act any workmen who had completed 480 days of service in 24 calendar months is to be regularised. However, it must be pointed out that regularisation is possible only when there is a sanctioned post. In this case, the opening for appointment of sanctioned post was offered to the petitioner. But unfortunately, he was not found to be suitable for employment as Tractor Cleaner. The 3rd respondent was selected for that post. That selection, as stated above has been challenged by this petitioner.

7. The learned Special Government Pleader relied on (2017) 4 SCC 13, wherein the Hon'ble Supreme Court had reiterated the principles relied on the regularisation and had stated that temporarily appointed part time personnel, can have no right to seek regularisation particularly when the scheme of regularisation is missing from the rule book. In this case, since there is no post for Harvester Driver, the petitioner would only be covered under the Fundamental Rules. Rule 2 of the Fundamental Rules of the Tamil Nadu Government States as follows:

"2. The Fundamental Rules apply, subject to the provisions of Rule 3, to all Government Servants paid from the Consolidated Fund of the State and to any other class of Government Servants to which Government may by general or special order declare them to be applicable....."

8. The petitioner is paid only from the consolidated fund of the State and he is not paid a regular salary from the 2nd respondent Department. In view of these facts, I hold that regularisation as on date cannot be granted to the petitioner on the facts of the case. The writ appeal is dismissed.

9. However, it is hoped that the respondents would seek creation of a post of Harvester Driver and if it is done, they

may consider appointing the petitioner after due process, if he is found suitable to the said post. The writ petition is dismissed with the above observations. No costs.

vkx/msvm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Engineer (Personnel),
State of Tamil Nadu,
Agriculture Engineering Department,
487, Anna Salai, Nandanam,
Chennai - 600 035.

2. The Superintending Engineer,
Agriculture Engineering Department,
Thiruvallur.

+lcc to Mr. M.Ramamoorthi, Advocate, S.R.No.79330

+lcc to Mr.G.Sankaran, Advocate, S.R.No.79650

+lcc to the Government Pleader, S.R.No.79556.

W.P.No.32295 of 2012

NRI (CO)
KAK(07/01/2019)

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