

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2018

CORAM:

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

W.A.Nos.871 to 879 of 2014
and

M.P.Nos.1, 2, 2, 2, 2, 2, 2 and 2 of 2014

1. The Government of Tamil Nadu,
rep. by the Secretary to the Government,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai - 600 009.
2. The Principal Secretary/
Commissioner of Commercial Taxes Department,
Chennai - 600 005.
3. The Joint Commissioner of Commercial Taxes,
Vellore Division, Vellore,
Vellore District.

... Appellants/Respondents
in all Appeals

versus

A.Jahangir	... Respondent in WA.871 of 2014
G.Radha	... Respondent in WA.872 of 2014
V.Subramanian	... Respondent in WA.873 of 2014
V.Appavu	... Respondent in WA.874 of 2014
**V.Chennakrishnan	... Respondent in WA.875 of 2014
M.Dharmalingam	... Respondent in WA.876 of 2014
P.Natarajan	... Respondent in WA.877 of 2014
*R.Hari Narayanan	... Respondent in WA.878 of 2014
K.Jayaraman	... Respondent in WA.879 of 2014

PRAYER in W.A.No.871 of 2014: Appeal filed against the order passed by this Court dated 14.06.2012 made in W.P.No.10034 of 2012, W.P.No.10035 of 2012, W.P.No.10036 of 2012, W.P.No.10037 of 2012, W.P.No.10038 of 2012, W.P.No.10662 of 2012, W.P.No.10663 of 2012, W.P.No.10665 of 2012.

Prayer in Writ Petitions (Common Prayer):- These Writ Petitions filed under article 226 of the Constitution of India, praying this court to issue a Writ of certiorarified mandamus calling

for the records relating to the impugned order of the first respondent in G.O.(2D)No.173, Commercial Taxes and Registration (A1) Department, dated 15.11.2011 and quash the same insofar as regularisation of petitioners services from the date of issue of the said order is concerned and direct the respondents to regularise the services of the petitioners in the post of Office Assistant with effect from the date of their initial appointment viz., 12.01.1990, 10.08.1989, 03.02.1989, 19.04.1989, 03.03.1990, 02.09.1989, 01.04.1989, 23.04.1990, 31.03.1989 respectively with monetary benefits and grant all consequential benefits.

For Appellants : Mr.V.Anandhamoorthy,
Additional Government Pleader
in all the Writ Appeals

For Respondent : Mr.P.Rajendran,
in all the Writ Appeals

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in all these intra-Court Appeals is to the common order of the learned Single Judge made in W.P.Nos.10034 to 10038 of 2012 and 10662 to 10665 of 2012 dated 14.06.2012, in and by which, the learned Single Judge quashed the impugned Government Order in G.O.(2D)No.173, Commercial Taxes and Registration (A1) Department, dated 15.11.2011, insofar as it restricts the regularization of the services of the petitioners in the Writ Petitions from the date of the order and directing the respondents in the Writ Petition to regularize the services of the petitioners from the date of their initial appointment with the time scale of pay applicable at the relevant period and pay arrears of salary to the petitioners. The learned Single Judge also directed the 1st respondent to pass necessary orders in compliance within four months from the date of receipt of a copy of the order in the Writ Petitions.

2. The respondents herein were appointed on a daily wage basis through employment exchange. In order to regularize their services, the Government passed a Government Order in G.O.Ms.No.1544 dated 23.12.1988, wherein, the concerned Department was directed to send proposal for relaxation of the Rules particularly Rule 5(1) relating to age of the appointees. Though the said G.O. was passed in the year 1988 itself no further action was taken for nearly 23 years till the Government issued a Government Order in G.O.(2D)No.173 dated 15.11.2011. While issuing the said Government Order dated 15.11.2011, the Government directed 10 out of 12 employees would be regularized from the date of issuance of the G.O.No.173 dated 15.11.2011 and

in respect of the remaining two employees who had died by then, their services were directed to be regularized from the date of their initial appointment viz., 09.12.1985 and 05.04.1990. The 10 employees whose services were regularized with effect from the date of the Government Order i.e., 15.11.2011 filed the above said Writ Petitions seeking to quash the Government Order, insofar as it directed regularization with effect from the date of the Government Order and sought for a mandamus directing the Government to regularize their services from the date of their initial appointments.

3. When the said Writ Petitions came up for hearing, it was represented by the learned counsel for the petitioners that the issue in question is covered by the decision of this Court in P.Subramani Vs. Director of School Education reported in 2010 (1) CWC 721 and the said judgment has been confirmed by the Division Bench in W.A.No.1520 of 2010 on 25.10.2010 and the SLP filed by the Government against the decision in W.A.No.1520 of 2010 in SLP.No.8231 of 2011 was also dismissed by the Hon'ble Supreme Court on 12.05.2011.

4. In view of the said submissions, the learned Single Judge had directed the Government Pleader to verify as to whether the issue is covered by the decision as claimed by the learned counsel for the petitioner. On 14.06.2012, when the Writ Petition was again posted for hearing, the learned Government Pleader in fact conceded that the issue in question was in fact covered by the decision of this Court in P.Subramani Vs. Director of School Education reported in 2010 (1) CWC 721. In view of the said submission, the learned Single Judge allowed all the Writ Petitions. The learned Single Judge also referred to the decision in V.Perumal Vs. Commissioner and Secretary to the Government, Health and Family Welfare Department, Chennai reported in (2006) 2 MLJ 339. It is this order of the learned Single Judge which is impugned in these Appeals.

5. Admittedly, the petitioners were appointed as Office Assistants during the years 1989-1990, pursuant to the decision taken in G.O.Ms.No.1544 dated 23.12.1988, they have been working as such ever since their appointment as Office Assistants. It will also be pertinent to point out that all these petitioners were appointed as Masalchi cum Night Watchman even during the years 1982-83. The proposals for regularization of the services of the petitioners was in fact approved by the Government as early as on 23.12.1988. The Government took nearly 23 years to issue a Government Order regularizing their services. While issuing the said Government Order on 15.11.2011, curiously the Government decided to regularize their services from the date of the Government Order instead of their initial appointment as Office Assistants. Insofar as two persons who died during the

interregnum, the Government took a decision to regularize their services from the date of their initial appointments, but, insofar as the petitioners are concerned, the Government adopted a different yardstick and chose to regularize their services from the date of issuance of the Government Order i.e., 15.11.2011.

6. As already pointed out, it was in fact conceded before the learned Single Judge by the learned Special Government Pleader that the issue is covered by the decision of this Court in P.Subramani Vs. Director of School Education reported in 2010 (1) CWC 721. The said judgment of the learned Single Judge reported in 2010 (1) CWC 721 was confirmed by the Division Bench in W.A.No.1520 of 2010 and the SLP against the said judgment was also rejected by the Hon'ble Supreme Court on 12.05.2011. Therefore, we see no reasons to interfere with the order of the learned Single Judge quashing the Government Order insofar as it confined the benefits of regularization from the date of the Government Order.

7. We find that, there is no rationale behind the different standards adopted by the Government in respect of regularization of the petitioners and the two deceased employees. We don't see any justifiable reason for denying the benefit of service of nearly 20 years rendered as Office Assistants to the petitioners. We are therefore of the view that the learned Single Judge was right in directing regularization of the service of the petitioners from the date of their initial appointment as Office Assistants.

8. In fine, the Writ Appeals fail and they are dismissed. The Government is directed to comply with the order of the learned Single Judge within a period of three months from the date of receipt of a copy of the order. However, in the circumstances there will be no order as to costs. Consequently, the connected Miscellaneous Petitions are also closed.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS IX)

Dated : 10/08/2018

//True Copy//

***Corrected as per letter dated 26/09/2019 in WA No.871 to 879/2014 order dated 18.07.2018**

****Corrected as per letter dated 28/01/2020 in WA No.871 to 879/2014 order dated 18.07.2018**

Sd/-

Sub Assistant Registrar

Dated : 06/02/2020

Sub Assistant Registrar

dsa

To

1. The Secretary to the Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai - 600 009.
2. The Principal Secretary/
Commissioner of Commercial Taxes Department,
Chennai - 600 005.
3. The Joint Commissioner of Commercial Taxes,
Vellore Division, Vellore,
Vellore District.

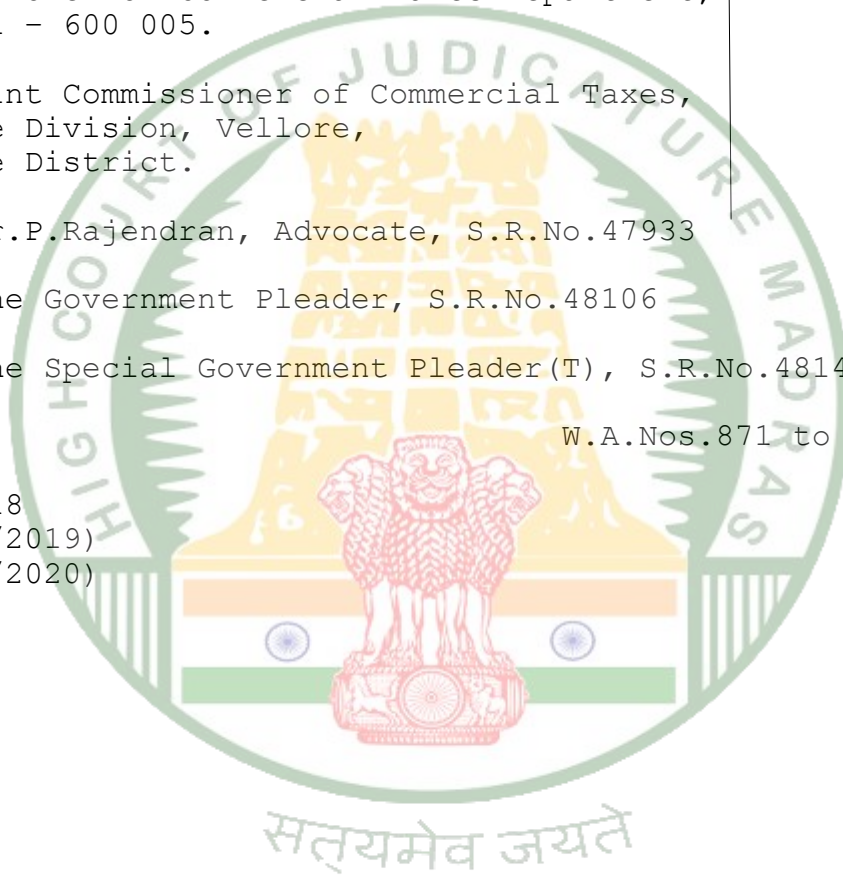
+1cc to Mr.P.Rajendran, Advocate, S.R.No.47933

+1cc to the Government Pleader, S.R.No.48106

+1cc to the Special Government Pleader(T), S.R.No.48148

W.A.Nos.871 to 879 of 2014

SSV(CO)
CS/29/08/18
GMY(05/11/2019)
GMY(06/02/2020)



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