

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.21724 of 2014

S.Chittibabu

... Petitioner

Vs

1.The Secretary to Government,
Adi-Dravidar and Tribal Welfare Department,
Fort St.George, Chennai 600 009.

2.The Commissioner of Adi-Dravidar Welfare,
Chepauk, Chennai 600 005.

3.The District Adi Dravida Welfare Officer,
Perambalur.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, to direct the respondents to regularize the service of the petitioner as Night Watchman in Adi-dravida Welfare Higher Secondary School, Alampadi, Perambalur District with time scale of pay w.e.f 18.04.1995 with all consequential services and monetary benefits.

For Petitioner : Mr.G.Padmanapan for
Mr.P.Arumugarajan

For Respondents : Mrs.P.Rose Kamalam,
Additional Government Pleader

O R D E R

Heard Mr.G.Padmanapan, learned counsel for the petitioner and Mrs.P.Rose Kamalam, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a writ of Mandamus, to direct the respondents to regularize the service of the petitioner as Night Watchman in Adi-dravida Welfare Higher

Secondary School, Alampadi, Perambalur District with time scale of pay w.e.f 18.04.1995 with all consequential services and monetary benefits."

3. The case of the petitioner is as follows:-

The petitioner belongs to Adidraavidar Community and studied upto 12th Std and appointed as daily wages Night Watchman on temporary basis in Adidraavidar Welfare Higher Secondary School, Alampadi, Perambalur District on 18.04.1995. Initially, he was appointed by the Head Master of the School and subsequently, his appointment was confirmed by Adidraavidar Welfare Officer by proceedings dated 04.07.1995.

4. According to the petitioner, though he has been continuously employed as Night Watchman uninterruptedly from 1995, his services has not been regularised. In this connection, the petitioner has approached the authority concerned for regularisation of his service. But, no order has been passed in response to the request made by the petitioner.

5. The learned counsel for the petitioner would submit that the services of similarly placed persons were regularised by G.O.Ms.No.153, Adidraavidar Welfare Department, dated 03.09.1997 from the date of their appointment. Subsequently, by another G.O.Ms.No.130, Adidraavidar and Tribal Welfare Department, dated 12.08.2005, the services of several others like the petitioner, came to be regularized and those persons were placed in the regular time scale of pay. Unfortunately, the service of the petitioner alone had not been regularised, despite the fact that similarly placed like others who were granted regularisation.

6. The learned counsel for the petitioner would submit that one Dhanalakshmi was similarly placed like the petitioner, filed W.P.No.26721 of 2009 and this Court by order dated 01.10.2012, directed the respondents to consider the representation of the petitioner in the light of the G.O.Ms.No.130, Adidraavidar and Tribal Welfare Department, dated 12.08.2005. In pursuance of the direction, the respondents passed the order on 17.01.2013, regularising the service of said Dhanalakshmi in the post of Cook with effect from the date of her original appointment and granted all consequential service and monetary benefits.

7. The Government has also issued yet another G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department dated 28.02.2006, providing for regularisation of all casual employees working in Government services who has completed ten years of service as on 01.01.2006. On the basis of the said Government Order, hundreds of daily wages employees' services came to be regularised. The petitioner who is covered by the earlier G.O.Ms.No.130, Adidraavidar and Tribal Welfare Department, dated

12.08.2005 as well as G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department dated 28.02.2006, but, in spite of which, no steps have been initiated for regularising his service.

8. In fact, according to the petitioner, one more person viz., Ammasi, who was also similarly placed like him, had approached this court in W.P.No.15941 of 2013 and this Court vide order dated 14.06.2013 was pleased to allow the writ petition and directed the respondents to regularise the service of the petitioner therein. Thereafter, an order was passed on 01.08.2013, regularising the service of the said Ammasi in the post of Cook with effect from the date of his original appointment. In spite of these facts which are in favour of the petitioner, the relief of regularisation has not been granted to the petitioner and therefore, he is before this Court seeking issue of Writ of Mandamus in his favour.

9. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit. In the counter affidavit, two points were raised for resisting the claim of the petitioner viz., the petitioner was initially appointed by the Headmaster of the School and the Government Orders relied on by the petitioner, cannot be applied to him, since he was not sponsored by the employment exchange.

10. This Court is unable to appreciate the stand of the respondents, since admittedly the appointment of the petitioner has been accepted and ratified by the District Adidravidar Welfare Officer vide his proceedings dated 04.07.1995, is evidenced by the documents filed in support of the writ petition. Moreover, the very fact that the petitioner has been continued from 1995 till date, would show that the employment was continuous in nature and therefore, the plea on the part of the Government that the petitioner was not sponsored by employment exchange, cannot be accepted to be a valid piece of argument. In any event, the petitioner having worked for more than 23 years, he is entitled to have his services regularised. Under no circumstances, such continuous service can be ignored.

11. In the said circumstances, non-regularisation of the petitioner's service would only result in miscarriage of justice in the face of the fact that the respondents have extracted work from the petitioner for more than 23 years. As contended by the learned counsel for the petitioner that the Government Orders

relied on by him are squarely applicable to the claim of the petitioner. In any event, the identically placed two persons as aforesaid, have approached this Court and obtained order and on the basis of which, the Government has passed orders, regularising their services.

12. In view of the above, this Court is unable to see how the petitioner can be treated differently in the matter of regularisation. Therefore, this Court has no hesitation in allowing the writ petition. The respondents are directed to regularise the service of the petitioner from the date of his initial appointment with all consequential and attendant benefits. The respondents are directed to pass order by complying with this direction, within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsk
To

1.The Secretary to Government,
Adi-Dravidar and Tribal Welfare Department,
Fort St.George, Chennai 600 009.

2.The Commissioner of Adi-Dravidar Welfare,
Chepauk, Chennai 600 005.

3.The District Adi Dravida Welfare Officer,
Perambalur.

+1cc to Mr.G.Padmanapan, Advocate Sr.44358
+1cc to the Government Pleader Sr.45351

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srg 9/8/2018