

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.34094 of 2014 &
M.P.No.1 of 2014

M.Balaguru

... Petitioner

Vs

The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat,
Chennai-600 009.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the respondent relating to Letter No.22196/F.2/2013-3, P & AR (F) Department, dated 29.08.2013, quash the same and to issue consequential directions to the respondent to reinstate the petitioner in service and absorb him as Office Assistant in any one of the existing vacancies or next arising vacancy in the Departments of Secretariat.

For Petitioner : Mr. V.S.Sivasundaram

For Respondents : Mr.P.Rosekalam
Addl. Govt. Pleader

O R D E R

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

"To issue a writ of Certiorarified Mandamus, to call for the records of the respondent relating to Letter No.22196/F.2/2013-3, P & AR (F) Department, dated 29.08.2013, quash the same and to issue consequential directions to the respondent to reinstate the petitioner in service and absorb him as Office Assistant in any one of the existing vacancies or next arising vacancy in the Departments of Secretariat.

2. The case of the petitioner is that he was appointed as Mazdoor in Public (Election) Department on daily wage basis on 1.4.1991 in the State Secretariat. According to him, he had worked from 11.7.1991 to August 1992 and served for more than 250 days as Mazdoor. He was also issued with temporary Pass by the respondent during his period of employment. According to the petitioner, since he had served continuously for 270 days, he was entitled to be regularized by absorbing him as permanent employee. In this regard, it appears that a representation has been submitted by the petitioner on 19.7.1996 to the Government, seeking to absorb him as Office Assistant on the ground that he had served for more than 270 days as daily wage mazdoor. In support of his appointment, the petitioner has also enclosed temporary pass issued to him by the Department. According to the petitioner, the Government has issued G.O.Ms.No.524 P & AR Department dated 20.6.1984 and G.O.Ms.No.92 P & AR Department, dated 30.01.1986 providing for absorption of daily wage mazdoors in various departments by relaxing the rules relating to age, qualification and also sponsorship from the employment exchange, etc. However, since no proper response was forth coming from the authorities concerned, the petitioner was constrained to file a writ petition in W.P.No.11384 of 2013. This Court, by order dated 25.4.2013, was pleased to issue direction to the respondents to consider the petitioner's representation and pass appropriate orders. Thereafter, the respondents passed an order dated 29.8.2013, rejecting the request of the petitioner and the said rejection order is put to challenge in the present Writ Petition.

3. Learned counsel appearing for the petitioner would reiterate the averments contained in the affidavit filed in support of the writ petition. He would submit that in view of two aforesaid Government Orders, the petitioner who is similarly placed, was entitled for regularization. The only point urged in the writ petition was that the petitioner had served for about 270 days from 1.7.1991 to August 1992. No further details have been mentioned in the affidavit as to what happened between 1992 and the date of filing of the writ petition.

4. Upon notice, Mrs.P.Rosekamalam, learned Addl.Government Pleader entered appearance for the respondent and filed a detailed counter affidavit.

5. From the materials and pleadings placed on record for consideration, it appears that the petitioner sought for regularization on the basis that he had worked for about 270 days from 1.7.1991 to August 1992. Merely because the

petitioner had worked for about 270 days, it does not give him any right to claim regularization of his service. In fact, this Court has considered the grant of regularization of temporary service of the employees when they had completed ten years of continuous of service on temporary basis. Even after completion of ten years of service, some times it was not possible for ordering regularization in view of the law laid down by the Hon'ble Supreme Court of India in the matter of "State of Karnataka versus Uma Devi" reported in 2006(4) SCC p-1. Even otherwise, the right to get absorbed or regularized, will flow only when an employee has put in long years of service. In this case, it appears that the petitioner had worked only for 270 days and that by itself cannot give him any right to claim regularization. The petitioner has obtained innocuous direction from this Court on 25.4.2013 in W.P.No.11384 of 2013 and only to keep the issue alive against the rejection by the Government, which in the circumstances of the case, appears to be well founded and the same does not call for any interference. Even otherwise, the petitioner cannot be allowed to seek regularization of service after 25 years since he was originally employed and now he is aged 55 years and therefore, by no stretch of legal standards, the Writ Petition can be allowed.

6. Therefore, the Writ Petition is dismissed as devoid of merits and substance. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

suk
To

The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai-600 009.

+1cc to Mr.V.S.Sivasundaram, Advocate Sr.36019
+1cc to the Government Pleader Sr.36280

W.P.No.34094 of 2014

srg 16/07/2018