

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.28265 of 2017

S.Chinnasamy

... Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Rural Development Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Director of Rural Development,
Kuralagam,
Chennai-600 108.

3.The District Collector,
Krishnagiri District,
Krishnagiri.

4.The Commissioner,
Burgur Panchayat Union,
Burgur,
Krishnagiri District.

.... Respondents

PRAYER : 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 proceedings of 3rd respondent in Na.Ka.No.29369/2016/M3 dated 13/01/2017 and to quash the same and consequently direct the respondents to pass orders for regularization of service of the petitioner in the post of Night Watchman from the date of initial appointment with all consequential and other attendant benefits including arrears of salary along with interest.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.J.Pothiraj
Spl. Govt. Pleader

O R D E R

Heard Mr.G.Sankaran, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents.

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

"To issue a writ of Certiorari and Mandamus calling for the records relating to the proceedings of 3rd respondent in Na.Ka.No.29369/2016/M3, /dated 13/01/2017 and to quash the same and consequently direct the respondents to pass orders for regularization of service of the petitioner in the post of Night Watchman from the date of initial appointment with all consequential and other attendant benefits including arrears of salary along with interest."

3. The case of the petitioner is that the petitioner was originally appointed as Masalchi through Employment Exchange in the 4th respondent / Panchayat Union, on 01.04.1984. Thereafter, he was promoted to the post of Night Watchman on 21.07.1994 on temporary basis in the regular time scale of pay applicable to the said post. Subsequently, he was posted as Cleaner in the same time scale of pay on 05.09.1994. Thereafter, he was once again posted as Night Watchman with effect from 12.09.1996 and has been continuously employed in the said post on regular basis.

4. The grievance of the petitioner is that in spite of being employed from 1984 onwards and being employed on regular time scale of pay from 21.07.1994, his services were not regularized. His original appointment was through employment exchange, the petitioner's service is ought to have been regularized when he was brought on regular time scale of pay at least from the year 1994 or 1996.

5. In this connection, it appears that the petitioner has made a representation to the authorities seeking regularization of service in the post of Night Watchman in terms of Government Orders which provided for regularization of temporary employees, who had rendered 10 years of continuous service. Since his representation did not evoke any response, the petitioner was constrained to approach this Court in W.P.No.38896 of 2016, seeking for regularization of his service in the post of Night

Watchman from 21.07.1994. However, the said writ petition was disposed of on 15.11.2016, directing the respondents to pass orders within a stipulated time.

6. In pursuance of the above direction by this Court, the third respondent issued the proceedings dated 13.01.2017, rejecting the claim of the petitioner on the basis that as per G.O.Ms.No.74, dated 27.06.2013, he did not fulfill the condition that he was working continuously for 10 years as on 01.01.2006, since he was appointed as regular Night Watchman only with effect from 12.09.1996 and completed 10 years on 11.09.2006 and therefore, he was not entitled to seek regularization. The said order rejecting the claim of the petitioner is put to challenge in the present writ petition.

7. Upon notice, Mr.J.Pothiraj, the Special Government Pleader entered appearance and filed a counter affidavit and in the counter reiterated the reasons set forth in the impugned proceedings, dated 13.01.2018, contending that as per G.O.Ms.No.74 dated 27.06.2013, the petitioner was not entitled to the benefit of regularization as he had completed 10 years of regular service only after 01.01.2006 and the earlier Government Orders providing for such regularization was confined only to employees who have completed continuous service only as on 01.01.2006 and not after the said date.

8. The learned counsel appearing for the petitioner would submit that the reasons as set forth in the impugned proceedings as well as in the counter affidavit, cannot be sustained both in law and on facts for two grounds, one is the petitioner was admittedly appointed as Night Watchman on 21.07.1994 and brought on regular time scale of pay on a temporary basis and in between 21.07.1994 and 12.09.1996, he was shifted to another post in the same time scale of pay and therefore, the petitioner was entitled to count his service temporarily rendered by him on 21.07.1994 and in which event, the petitioner had completed 10 years of continuous service much before 01.01.2006. Even assuming that the services have to be reckoned only from 12.09.1996, the Government Order which is quoted against the petitioner viz., G.O.Ms.No.74, dated 27.06.2013, had been set aside by this Court in different writ proceedings and in fact, the Division Bench of this Court has held that the said Government Order having been issued only in 2013, cannot have retrospective effect from 01.01.2006.

9. According to the learned counsel for the petitioner, several writ petitions were allowed and the employees who have completed 10 years of continuous service only after 01.01.2006 have been given benefit of regularization in terms of earlier Government Orders issued on the subject matter, before issuing

of G.O.Ms.No.74 dated 27.06.2013. Therefore, the learned counsel would submit that the petitioner is entitled to the relief sought for in the writ petition.

10.The learned counsel for the petitioner would draw the attention of this Court to the observations made by the Hon'ble Division Bench of this Court in W.A.(MD).No.913 of 2015 dated 21.02.2017, which is extracted below:-

"9. Yet another submission made by the learned Government Pleader is that as per G.O.(Ms.).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, the services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and those who have completed 10 (ten) years of service as on 01.01.2006 shall be regularized. However, we find that the said Government Order came into effect only on 27.06.2013 and it was issued by way of clarification of G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. G.O.Ms.No.74 was issued only on 27.06.2013, whereas, the respondents were appointed in the year 1984, 1995 and 1998 respective, that is to say, much earlier to the said Government Order. Therefore, the second submission made by the learned Special Government Pleader cannot be accepted. Therefore, we are of the opinion that absolutely, there is no infirmity in the order passed by the learned Single Judge warranting interference at the hands of this Court."

11. Besides, the learned counsel would also draw the attention of this Court to the detailed order passed by this Court wherein the said G.O.Ms.No.74, dated 27.06.2013 has been set aside insofar as it provides for retrospective implementation with effect from 01.01.2006. The learned counsel relied on paragraphs 20 to 24 of the said order which are extracted hereunder:

"20. Having heard the learned counsel appearing for the learned counsels for the petitioners and the learned Addl. Advocate General for the respondents and upon perusing the materials and pleadings placed on record, this Court is of the view that

the offending portion of the G.O.Ms.No.74, dated 27.06.2013, namely, paragraph 6 which is extracted supra, is unconstitutional and it only seeks to introduce a naked discrimination in the matter of treatment of identically placed employees. As rightly contended by the learned counsels appearing for the petitioners and in view of the various decisions rendered by this Court, the right which is accrued to the employees cannot stand negated by giving retrospective effect to the G.O.Ms.No.74, dated 27.06.2013. Moreover, in the several decisions rendered by this Court which have been confirmed in Writ Appeals and also in some other cases by the Hon'ble Supreme Court, it does not lie within the power of Government to bring the impugned G.O. with retrospective effect. Such retrospectivity is blatant attempt by the Government to violate the principles of promissory and equitable estoppel and doctrine of legitimate expectation.

21. This Court also cannot lose sight of the fact that in several cases, in fact, few of them have cite above, the employees had obtained beneficial orders and those orders also came to be implemented by the Government on various dates even in the present year. In the said circumstances, this Court is unable to understand the situation as to how the petitioners alone can be singled out for discriminatory treatment by retrospectively applying the G.O.Ms.No.74, dated 27.06.2013. Any Government action is to be tested on the touchstone of Articles 14 and 16 of the Constitution of India. A State cannot be allowed to adopt the discriminatory practice while dealing with the citizens of Government servants.

22. In the instant case, the attempt to implement the impugned G.O.Ms.No.74, dated 27.06.2013, with retrospective effect, is nothing but a clear case of colourable exercise of power. The fundamental rights guaranteed by our Constitution sought to be impinged by bringing in the impugned G.O. with retrospective effect. Exercise of such power, therefore, cannot be held to be

constitutionally valid. This Court is also conscious of the fact that in policy matters, the Court should be little slow in interfering with the same, however, under the guise of public policy, the Government cannot arbitrarily and unjustly take away the rights of the employees which is against the scheme of the Constitution. In the instant case, the Government has preciously done the same.

23. In the light of the above narrative and discussion, this Court finds that retrospective implementation of the impugned G.O.Ms.No.74, dated 27.06.2013 and the other conditions enumerated in para 6 of the G.O., are liable to be struck down as being unconstitutional and interfering with the fundamental rights of the Government servants.

24. For the foregoing reasons, the impugned G.O.Ms.No.74, P & AR. Department, 27.06.2013, is hereby set aside insofar as para 6 is concerned and the petitioners in all the Writ Petitions are entitled to regularization of their services on completion of 10 years of service by virtue of G.O.Ms.No.22 P. & AR. Department, dated 28.02.2006 and also in line with similar orders passed by this Court in various earlier writ petitions quoted supra. The respondents are directed to pass orders regularizing the services of the petitioners, within a period of three months from the date of receipt of a copy of this order."

12. The learned counsel would draw the attention of this Court to various orders passed by this Court following the above order by discountenancing the submission made on behalf of the Government about the effect of G.O.Ms.No.74, dated 27.06.2013.

13. This Court, after having gone through the rival submissions of the learned counsel for both parties, is of the view that the petitioner is admittedly having worked from 1994, though on temporary basis in the regular time scale of pay was entitled to be considered for regularization in terms of earlier Government Orders issued on the subject matter. Although it appears that the petitioner was originally appointed as Night Watchman with effect from 21.07.1994, it was on temporary basis and in between 21.07.1994 and 12.09.1996, the petitioner was

shifted to different post viz., Cleaner, however, the petitioner was continued to be placed in the same scale of pay. Even otherwise, it is an admitted position that the petitioner was appointed on 12.09.1996 in the regular time scale of pay and continued in the said post and he has completed 10 years of continuous service on 11.09.2006. Once the petitioner having completed 10 years of continuous service, he was entitled to be regularized from the date of his initial appointment and as rightly held by this Court that G.O.Ms.No.74, dated 27.06.2013, cannot be pressed into service. In such a situation, the retrospective implementation of the said Government Order held to be unconstitutional and invalid.

14. In fact, as rightly contended by the learned counsel for the petitioner that even the Division Bench of this Court has discountenanced such submission made on behalf of the Government having retrospective effect of G.O.Ms.No.74, dated 27.06.2013, in para-9, which is extracted supra. As held by this Court in earlier proceedings that the Government has passed several orders regularizing the temporary employees in various Departments whose services were continued for 10 years and who had completed 10 years even after 01.01.2006. Having passed various Government Orders, regularizing the services of the temporary employees, this Court cannot take a different view in the present matter alone for the reason that the petitioner had completed 10 years of service after 01.01.2006. In fact, this Court in the order, which is relied on by the learned counsel for the petitioner, has held as extracted above that the G.O.Ms.No.74, dated 27.06.2013, cannot have retrospective effect, as such, retrospective effect will result a discrimination in the matter of regularization of temporary employees. Such being the case, this Court does not see any justification for not regularizing the service of the petitioner from the date of his initial appointment as Night Watchman. In the said circumstances, the denial of regularization of the petitioner is nothing but hostile discrimination which cannot be countenanced in law. Even assuming that the period of regular employment has to be reckoned from 12.09.1996 in view of quashing of the G.O.Ms.No.74, dated 27.06.2013 and in view of the observations of the learned Division Bench and also in view of several orders passed in various writ proceedings on the subject matter, the petitioner is entitled to regularization of his service on completion of 10 years of service from the date of his initial appointment, i.e. 12.09.1996. Once G.O.Ms.No.74, dated 27.06.2013, has been set aside and the basis of the rejection order gets nullified, the petitioner is automatically entitled to regularization of his service on his completion of 10 years of service i.e. 12.09.1996.

15. For the above said reasons, the impugned order dated 13.01.2017, is set aside. The respondents are directed to regularize the service of the petitioner on his completion of 10 years of service as Night Watchman with effect from the date of his initial appointment with all attendant benefits. The direction shall be complied with by the competent authority within a period of eight weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar(IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,
Rural Development Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The Director of Rural Development,
Kuralagam,
Chennai-600 108.
- 3.The District Collector,
Krishnagiri District,
Krishnagiri.
- 4.The Commissioner,
Burgur Panchayat Union,
Burgur,
Krishnagiri District.

+1cc to Mr.G.Sankaran, Advocate sr.no.31371

+1cc to Special Government Pleader in sr.no.31763

W.P.No.28265 of 2017

svn(co)

nr 13/06/2018