

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2018

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.25925 of 2010

S.Ramalakshmi

.. Petitioner

vs

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.

2.The Director of School Education,
College Road,
Chennai - 600 006.

3.The District Educational Officer,
Aruppukottai,
Virudhunagar District.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the orders of the 1st Respondent in his proceeding in G.O.Ms.No.215, School Education (R1) Department, dated 30.07.2010 and the consequential order of the 3rd Respondent made in his Proceedings in Na.Ka.No.1602/Aa1/02 dated 27.08.2010 and quash the same in so far they relate to the non-regularisation of the petitioner's service with effect from date of her appointment and direct the Respondents to regularise the petitioner's service from the date of her appointment i.e. on 08.08.1991 with consequential and monetary benefits.

For Petitioner : Mr.A.S.Kaizer

For Respondents : Mr.A.Rajaperumal
Addl. Government Pleader

ORDER

This writ petition is filed seeking issuance of a writ of certiorarified mandamus to call for the records of the first respondent in his proceedings in G.O.Ms.No.215, School Education (R1) Department, dated 30.7.2010 and the consequential order of the third respondent made in his proceedings in Na.Ka.No.1602/Aa1/02, dated 27.8.2010 and quash the same insofar as they relate to the non-regularisation of the petitioner's service with effect from date of her appointment and direct the respondents to regularize the petitioner's service from the date of her appointment, i.e., on 8.8.1991, with consequential and monetary benefits.

2. The facts in a nutshell are as under: The petitioner was initially appointed as Part-time Water Carrier through employment exchange in the Government High School, Kovilangulam, Ramnad District on 12.9.1984. She was working in the said post till 1991. On 8.8.1991, by the proceedings of the District Educational Officer, Aruppukottai, the petitioner was appointed by transfer as Water Carrier cum Sweeper (full time) in the permanent vacancy of the regular post in Government Higher Secondary School, M.Reddiapatti, Virudhunagar District. The said order states that the petitioner is fully qualified for such appointment and his appointment was through employment exchange. It is stated that despite representations sent to the authorities, the service of the petitioner was not regularized, though he has put in 26 years of service from the date of initial appointment and 19 years of service from the date of permanent/ regular appointment.

3. It is stated that after a long legal battle, ultimately, the first respondent issued the impugned government order, being G.O.Ms.No.215, School Education (R1) Department, dated 30.7.2010, regularizing the services of the petitioner from the date of issuance of the government order, i.e., 30.7.2010. Thereafter, the third respondent passed proceedings in Na.Ka.No.1602/Aa1/02, dated 27.8.2010, to implement the said order and put the petitioner on probation for another period of one year.

4. In such backdrop, the present writ petition is filed for the relief stated supra.

5. The learned counsel appearing for the petitioner vehemently contended that:

- (a) when the first respondent in the government order under challenge has categorically held that the petitioner was appointed in a regular vacancy on time scale of pay with effect from

19.8.1991, the act of the respondents in regularizing the services of the petitioner from the date of the government order is unjust and arbitrary, more so when the delay in passing the order is on the part of the respondents; and

(b) in similar circumstances, services of certain individuals have been regularised after about 10 years, but with effect from the date of their regular appointment vide G.O. (1D) No.188, School Education (R1) Department, dated 27.9.2001 and, therefore, the impugned orders are discriminatory.

6. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents submitted that:

(a) the petitioner was not sponsored through employment exchange, but the District Educational Officer, Aruppukottai appointed the petitioner in the regular post as Water Carrier cum Sweeper on 19.8.1991 and the said appointment is an irregular one;

(b) in order to comply with the directions issued by this Court, the government relaxed certain rules and in such case of irregular appointment, regularization can be done only from the date of issue of order and, therefore, there is no arbitrariness in the order passed by the respondent authorities.

7. I heard Mr.A.S.Kaizer, learned counsel for the petitioner and Mr.A.Rajaperumal, learned Additional Government Pleader for the respondents and perused the documents available on record.

8. The fact that the petitioner was initially appointed as Part-time Water Carrier through employment exchange in the Government High School, Kovilangulam, Ramnad District on 12.9.1984 and that she was working in the said post till 1991, and that on 8.8.1991, by the proceedings of the District Educational Officer, Aruppukottai, the petitioner was appointed by transfer as Water Carrier cum Sweeper (full time) in the permanent vacancy of the regular post in Government Higher Secondary School, M.Reddiapatti, Virudhunagar District is not in dispute. However, the case of the respondent authorities is that the petitioner was appointed only on 19.8.1991 and such appointment was irregular. However, the appointment of the petitioner was made by the the District Educational Officer, Aruppukottai, in the regular post as Water Carrier cum Sweeper. It is not the case of the respondent authorities that the petitioner obtained such appointment on regular basis by playing fraud or by misrepresentation. Moreover, it is also not in

dispute that the petitioner was initially appointed only through employment exchange. Nothing has been placed on record to rebut the said plea of the petitioner.

9. Nowhere in the counter affidavit or across the bar the contention of the petitioner that similarly placed persons were granted regularization from the date of their initial appointment vide G.O. (1D) No.188, School Education (R1) Department, dated 27.9.2001, is disputed. When similarly placed persons have been given such benefit, it is not known as to how the petitioner can be subjected to a differential treatment. The proceedings are, therefore, discriminatory.

10. The fact that the petitioner is in service from 1991 till date is also not disputed. The first respondent, after a long fought legal battle, ultimately granted the benefit of regularization to the petitioner by relaxing the relevant Rules. However, such regularization was granted from the date of the said government order, and not from the date of his appointment. It is nowhere the case of the respondent authorities that the petitioner lacked qualification or bore any blemished record during his employment for over 19 years.

11. Considering the facts and circumstances of the case, more particularly the fact that the petitioner has been serving the respondent authorities from 1991, for more than 26 years, as of now, in the interest of justice, the respondent authorities are directed to regularize the services of the petitioner with effect from 08.08.1991.

12. For the foregoing reasons, the following order is passed:

- (a) The writ petition is allowed and the impugned orders passed by the first respondent in G.O.Ms.No.215, School Education (R1) Department, dated 30.7.2010 and third respondents in Na.Ka.No.1602/Aa1/02, dated 27.8.2010 are quashed *** in so for they relate to the non regularisation of the petitioner's service with effect from date of her appointment.**
- (b) The respondent authorities are directed to regularize the services of the petitioner with effect from 8.8.1991 and grant all consequential and monetary benefits.

(c)The abovesaid exercise shall be undertaken by the respondent authorities within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS IV)

*** Corrected as per order dated
19.02.2019 made in WP.25925 of 2019**

//True Copy//

Sub Assistant Registrar

vs

To

1. The Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Chennai - 600 006.
3. The District Educational Officer,
Aruppukottai,
Virudhunagar District.

+lcc to Mr.A.S.Kaizer, Advocate in sr.no.3022 (21.02.2019)

सत्यमेव जयते

W.P.No.25925 of 2010

CS/21/02/2019

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