

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2018

CORAM

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

W.P.No.18306 of 2013

and

M.P.No.1 of 2013

P.Lakshmi

.. Petitioner

vs

1.The State of Tamil Nadu,
rep. by the Principal Secretary
to Government,
School Education (R1) Department,
Secretariat, Chennai - 9.

2.The Director of School Education,
College Road, Chennai - 6.

3.The District Educational Officer,
Vellore District.

4.The Head Master,
Government High School,
Medur - 601 204,
Ponneri Taluk,
Thiruvallur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, to call for the records of the first respondent in Letter No.41934/R1/2012, dated 16.04.2013 and quash the same and direct the respondents to regularise the service of the petitioner in the light of G.O.Ms.No.22 (P&AR) Department, dated 28.02.2006 and G.O.Ms.No.111, School Education (R1) Department, dated 09.05.2012 and G.O.Ms.No.247, School Education Department, dated 03.10.2012 forthwith and pay all the service and monetary benefits.

For Petitioner : Mr.R.Singaravelan
Senior Counsel
for M/s.M.Srividhya

For Respondents : Mr.K.Venkatramani
Addl. Advocate General
assisted by
Mrs.M.E.Raniselvam
Addl.Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking to quash the Letter No.41934/R1/2012, dated 16.04.2013 of the first respondent and to direct the respondents to regularise the services of the petitioner in the light of G.O.Ms.No.22 P & AR Department, dated 28.02.2006; G.O.Ms.No.111, School Education (R1) Department, dated 09.05.2012 and G.O.Ms.No.247, School Education Department, dated 03.10.2012 forthwith and to pay all the service and monetary benefits.

2. The case of the petitioner is that she was selected and appointed as part-time water woman by direct recruitment and had joined service on 01.06.1990 in the fourth respondent school. From the date of appointment till date the petitioner was serving as part-time water woman in the fourth respondent school without any blemish and as on the date of filing of the writ petition, she had completed 22 years of service. According to the petitioner, she is entitled to be regularised even on completion of 10 years. It is the say of the petitioner that as per G.O.Ms.No.22, P & AR, dated 28.02.2006, her services have to be regularised on completion of 10 years of service. The petitioner has also made several representations to the respondent authorities seeking to regularise the services.

3. Since the respondent authorities have not considered the representation of the petitioner, she filed W.P.No.33223 of 2012 seeking a writ of mandamus directing respondents 1 and 2 to regularise the services in the light of in the light of G.O.Ms.No.111, School Education (R1) Department, dated 09.05.2012 and G.O.Ms.No.247, School Education Department, dated 03.10.2012 forthwith and pay all the service and monetary benefits.

4. By an order dated 12.12.2012, the writ petition was disposed of by directing the first respondent to consider the representation of the petitioner and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of the order.

5. Pursuant to the direction issued by this Court in W.P.No. 33223 of 2012, the first respondent issued the impugned letter rejecting the claim of the petitioner. Challenging the same, the petitioner has filed the present writ petition.

6. Denying the averments in the affidavit filed in support of the writ petition, the third respondent filed the counter stating that the petitioner was not appointed by any Government agency. It is stated that G.O.Ms.No.22, dated 28.02.2006 will apply to the persons appointed on contingency services and received the salary through Government pay bill. The petitioner was appointed by the Head Master of the school and he is not the competent authority to appoint any person in the Government schools. According to the third respondent, the petitioner was a part time employee having worked only one or two hours in the fourth respondent school. It is also stated that pursuant to the order passed in W.P.No.33223 of 2012, the first respondent considered the representation of the petitioner and passed the order strictly in accordance with law. The earlier orders of this Court were not applicable to the petitioner since she was working as part-time employee and the petitioner cannot compare on par with the contingent employee who received the salary through Government allotment. Hence, prayed for dismissal of the writ petition.

7. I heard Mr.R.Singaravelan, learned Senior Counsel for M/s.M.Srividhya, learned counsel appearing for the petitioner and Mr.K.Venkatramani, learned Additional Advocate General assisted by Mrs.M.E.Raniselvam, learned Additional Government Pleader, appearing for the respondents 1 to 3. Perused the materials available on record.

8. The learned Senior Counsel for the petitioner submitted that the matter is squarely covered by the decision of this Court in W.P.No.9022 of 2012, dated 12.04.2013 and another decision in W.P.No.13162 of 2013, dated 03.06.2013, where the learned Single Judge of this Court while setting aside the order impugned in the writ petition, directed the first respondent therein to regularise the services of the petitioner therein on completion of 10 years of service from the date of entry into service. The petitioner is a similarly situated person and same order may be passed in this writ petition.

9. Per contra, the learned Additional Advocate General submitted that since the appointment of the petitioner itself is not legally valid, she is not entitled to rely on the earlier decisions of this Court, where this Court directed to regularise the services of the part- time employees on completion of 10 years of service.

10. In the affidavit filed in support of the writ petition, the petitioner stated that she was appointed as part-time water woman by direct recruitment and joined the service on 01.06.1990. According to the petitioner, at the time of filing of the writ petition, she had completed 22 years of service. The third respondent has not filed any document to disprove the fact that the petitioner was not working for the past 22 years in the fourth respondent school. Similarly, the respondent authorities have failed to prove that the appointment of the petitioner is illegal.

11. On a perusal of the typed set of documents, it is seen that the Head Master of the fourth respondent school issued a Service Certificate certifying that the petitioner was appointed on 01.06.1990 as part-time water woman in the fourth respondent school as per the Proceedings of the District Educational Officer, Saidapet in Na.Ka.23526/A1/83, dated 10.01.1984 and she was working for the past 22 years in that capacity and her conduct and character were good.

12. The aforesaid Service Certificate issued by the fourth respondent school would clearly establish that the appointment of the petitioner as part-time water woman was as per the Proceedings of the District Educational Officer, Saidapet and that there is no illegality in the appointment. Therefore, the respondent authorities were not right in saying that the appointment of the petitioner was illegal.

13. Qua application of G.O.Ms.No.22, dated 28.02.2006 to the case of the petitioner, the learned Additional Advocate General submitted that the said G.O. applies only to the persons appointed on contingency basis and continued their work throughout the day. But the petitioner is a part-time employee having worked only one or two hours in the fourth respondent school. Therefore, the said G.O. will not apply to the case of the petitioner. The respondents have not produced any record to show that the petitioner was working only one or two hours a day.

14. At this juncture, it is pertinent to note that G.O.Ms.No.22, P & AR Department, dated 28.02.2006 stipulates as under:

"2. Based on the announcement made by the Hon'ble Chief Minister on 8.2.206, the Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 1.1.2006 be regularised by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned,

subject to their being otherwise qualified for the post.

3. The Departments of Secretariat may, therefore, be directed to pursue action to regularise the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 1.1.2006 as ordered in Para-2 above, in consultation with the respective Heads of Departments wherever necessary in special cases wherein relaxation of rules is required. Proposal shall be sent to Government."

15. It appears that similar issues were considered by this Court in W.P.No.19126 of 2008, dated 29.07.2008, confirmed in W.A.No.230 of 2009, dated 3.8.2009, taking note of G.O.Ms.No.22 dated 28.02.2006 and held that on completion of 10 years of service, services of part-time employee shall be regularised by the department from the date of completion of 10 years. In paragraphs 7 and 8, the Division Bench held as under:

"7. The main submission of the learned Government Pleader is that the proposals for regularisation of the part time employees are pending before the Government. When the proposals are pending under consideration before the Government there is no need to give any direction to the Government to regularise the services of the respondent.

8. We do not find any force in the said submission made by the learned Government Advocate. On a perusal of the entire materials, it could be seen that the respondent was working for the past 13 years as a part time employee in a Higher Secondary School. Para 3 of the G.O.Ms.No.22 P & AR Department, dated 28.2.2006, reads as follows:

"3.The Departments of Secretariat may therefore be directed to pursue action to regularise the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 1.4.2006 ..."

16. From the above, it is clear that the Government had decided to regularise the part-time employees, who had completed 10 years of service. In fact, the service of some of the part-time employees were regularised pursuant to the orders passed by this Court. The details are as under:

- (i) W.P.No.13499 of 2008, dated 12.6.2008, confirmed in M.P.No.1 of 2008 in W.A.SR No.75291 of 2009, dated 7.10.2009. The said order was implemented by the Department.
- (ii) W.P.(MD) Nos.9726 & 9727 of 2006, dated 24.6.2008, confirmed in W.A.(MD) Nos.151 & 225 of 2009, dated 23.6.2009. The said order was implemented.
- (iii) W.P.No.23080 of 2008, dated 23.12.2008, confirmed in W.a.No.2414 of 2010, dated 26.11.2010. The said order was also implemented.
- (iv) W.P.Nos.27488 to 27490 of 2010 etc. batch, dated 02.10.2010, implemented through G.O.Ms.No.99, School Education Department, dated 08.6.2011 and G.O.Ms.No.121, School Education Department, dated 08.8.2011. The said order was implemented by the Government.
- (v) W.P.(MD) Nos.1773 & 1774 of 2008, dated 04.12.2008, confirmed in W.A.(MD) Nos.69 & 70 of 2010, dated 20.1.2011. The said order was also implemented by the Government.

17. As stated supra, the Service Certificate issued by the fourth respondent school clearly indicates that the petitioner was appointed as part time water woman in the existing vacancy that too as per the Proceedings of the District Educational Officer, Saidapet, and the decisions of this Court in the earlier writ petitions are squarely applicable to the case of the petitioner. In view of the categoric finding as aforesaid based on the documents on record, I do not propose to delve into the various decisions relied by the learned Senior Counsel for the petitioner.

18. It is to be noted that earlier the petitioner has filed W.P.No.33223 of 2012 seeking direction on the respondents 1 and 2 therein to regularise the service in the light of G.O.Ms.No.111, dated 09.05.2012 and G.O.Ms.No.247, dated 03.10.2012. When the writ petition was taken up for hearing, the learned counsel appearing for the petitioner submitted that suffice it to direct the first respondent to consider the representation of the petitioner and pass orders. Accordingly, the writ petition was disposed of by observing as under:

"4. Seeking such relief, it is represented that the petitioner has sent a representation dated 6.12.2012 to the first respondent. Hence, it is suffice to direct the first respondent to consider the said representation of the petitioner and pass orders on merits and in accordance with law within

a period of eight weeks from the date of receipt of a copy of this order.

5.The writ petition is disposed of accordingly. However, there is no order as to costs."

19. Pursuant to the order passed in W.P.No.33223 of 2012, dated 06.12.2012, the first respondent issued the impugned letter dated 16.04.2013, rejecting the request made by the petitioner. On perusal of the impugned letter, it is seen that no reasoning has been given by the first respondent in rejecting the claim/request made by the petitioner. In the impugned letter, the first respondent has simply stated that G.O.Ms.No.22, dated 28.02.2006 will not apply the case of the petitioner. This would clearly show non-application of mind while issuing the impugned letter. On that ground also the impugned letter is liable to be set aside.

20. It is evident that persons similarly placed i.e., part-time employees/part-time sweepers, part-time water woman, as case may be, employed in the Government schools were granted regularisation of their service on completion of 10 years of service by relaxing the rule whenever required in terms of G.O.Ms.No.22 P & AR Department, dated 28.02.2006 and they were paid arrears of full time salary. Having passed such an order in the cases of similarly placed persons, the first respondent has to apply the same principle in the case of the petitioner herein. Considering the long service rendered by the petitioner in the fourth respondent school, it would be appropriate to extend the relief granted by this Court in the earlier writ petitions, referred supra, to the case of the petitioner also i.e., regularisation is to be made on completion of 10 years of service and pay all the service and monetary benefits to the petitioner.

21. In the result:

(a) the writ petition is allowed and the impugned Letter No.41934/R1/2012, dated 16.04.2013 issued by the first respondent is set aside;

(b) the respondents are directed to regularise the petitioner's service in the light of G.O.Ms.No.22, P & AR Department, dated 28.2.2006, G.O.Ms.No.111, School Education (R1) Department, dated 09.5.2012 and G.O.Ms.No.247, School Education Department, dated 03.10.2012 passed by the first respondent and pay back all the service and monetary benefits to the petitioner;

(c) the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P.No.1 of 2013 is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Principal Secretary to Government,
School Education (R1) Department,
Secretariat, Chennai - 9.
- 2.The Director of School Education,
College Road, Chennai - 6.
- 3.The District Educational Officer,
Vellore District.
- 4.The Head Master,
Government High School,
Medur - 601 204, Ponneri Taluk,
Thiruvallur District.

+ 1 cc to Mr.Srividhya, Advocate Sr.4022

W.P.No.18306 of 2013
and
M.P.No.1 of 2013

(CS-DR)
EU(08/05/2018)

WEB COPY