



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2018

CORAM:

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs. JUSTICE R.THARANI

W.A. (MD) .Nos.433 of 2018
and
C.M.P. (MD) No.2596 of 2018

R.Chandran

... Appellant/Writ Petitioner

Vs.

1. The State of Tamilnadu
represented by its Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 600 009.
2. The Director of Rural Development,
Panchayat Raj Development,
Panagal Buildings, Saidapet,
Chennai - 15.
3. The District Collector,
Kanyakumari District,
Nagercoil.

... Respondents

PRAYER: This appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 08.01.2018 made in W.P.(MD) No.12951 of 2010 on the file of this Court.

Prayer in WP(MD). 12951/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to regularize the services of the petitioner from 15.04.1999 onwards in the post of Driver and further direct the respondents to give all service and other monetary benefits.

For Appellant

: Mr.Veera Kathiravan, senior counsel
for M/s.Veera Associates

For Respondents

: Mr.S.Dayalan, G.A.

**JUDGMENT**

(Judgment of this Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.Veera Kathiravan, learned senior counsel for M/s.Veera Associates, appearing for the appellant and Mr.S.Dayalan, learned Government Advocate appearing for the respondents.

2.This appeal by the writ petitioner is directed against the order dated 08.01.2018 made in W.P.(MD) No.12951 of 2010.

3.The appellant filed the writ petition to direct the respondents to regularize his service from 15.04.1999 onwards in the post of Driver and to give all service and monetary benefits. The writ petition was dismissed by the Writ Court by the impugned order placing reliance on the decisions of the Hon'ble Supreme Court in the case of **The Secretary, State of Karnataka and others Vs. Umadevi (3) and others - (2006) 4 Supreme Court Cases 1**. The Writ Court also relied on the decision of the Hon'ble Supreme Court in the case of **Secretary to Government, School Education Department, Chennai Vs. R.Govindasamy and others - (2014) 4 Supreme Court Cases 769** and held that in view of the settled legal principles laid down by the said decisions, regularisation cannot be granted in cases, where the appointment has not been made in accordance with the recruitment rules in force.

4.The appellant cannot dispute the legal position, which has been laid down by the Constitution Bench in **Umadevi (3)** case and reiterated in **R.Govindaswamy**. However, we are required to look into the facts of the present case, to examine as to whether the action of the respondents in not considering the appellant's case for regularisation would amount to discrimination and whether the stand taken by the respondents in the counter affidavit filed in the writ petition was justified to deny the relief.

5.The undisputed facts are that the appellant was appointed as temporary Driver as consolidated pay in the year 1999 and he was posted in the District Building Centre, which is a Society registered under the Tamil Nadu Societies Registration Act. Subsequently, governing body of the Society in its meeting held on 12.07.2001 decided to utilise the services of the appellant for driving their Swaraj Mazda vehicle and having paying consolidated wages of Rs.3,700/- per month till date. Before filing the writ petition, the appellant approached the respondents 2 and 3 requesting that his services may be regularised taking into consideration that he has been working continuously on consolidated pay for a period of 10 years. The District Collector vide proceedings Na.Ka.No.E436073/2010 dated 14.10.2010 forwarded the service particulars of the petitioner to the second respondent with appropriate recommendations and also enclosed the period of

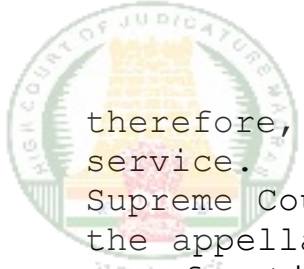


service and the Centres/Departments/Offices, where the petitioner had been serving in a tabulated form, which was annexed to the proceedings dated 14.10.2010. Since no orders were passed on the said proposal submitted by the third respondent, the appellant approached this Court and filed writ petition praying for a direction to the respondents to regularise his services with effect from 15.04.1999. In the writ petition, the appellant prayed for an interim order in M.P.(MD) No.2 of 2010. However, the same was dismissed. As against which, the appellant preferred writ appeal in W.A.(MD) No.733 of 2010 and the Division Bench, by judgment dated 09.11.2010, allowed the writ appeal and granted an order of injunction restraining the respondents from relieving the appellant from the post of driver till the disposal of the writ petition.

6. In the said judgment, the Hon'ble Division Bench pointed out that one other similarly placed person by name S. Muruganantham was given the benefit of G.O. Ms. No. 22 dated 28.02.2006 and regularised vide G.O. (MD) No. 722 dated 24.10.2008. By the impugned order, the writ petition has been dismissed.

7. The third respondent in the counter affidavit has raised another contention stating that the employment of the appellant is a litigious employment and therefore, by applying the judgment in **Umadevi (3)** case, the same cannot be considered for regularisation. We find that the appellant has been working since 1999 on consolidated pay. His services were not disturbed, but, it was fully utilised and the District Collector has recommended his case for regularisation vide proceedings dated 14.10.2010. Only in the year 2010, the appellant approached this Court and sought for a direction to regularise his service, since nothing happened for more than 10 years in spite of the recommendations of the District Collector. Though there was no order passed by the respondents ousting the appellant from service, fearing that he may be ousted, he sought for an interim order, which was declined to the Writ Court, but however, granted by the Division Bench. That apart the District Collector had addressed a communication to the second respondent on 14.10.2016 reiterating his earlier stand and on a reading of the said communication shows that there is a recommendation for regularisation of the appellant, but however the pendency of the writ petition was cited as a reason for not passing orders. Therefore, we are not able to agree with the submission of the learned Special government Pleader that the employment of the appellant was litigious employment.

8. The contention raised by the third respondent in the counter affidavit, though not specifically noted in the impugned order, is that the appellant was appointed in the District Building Centre and not in a Government department and there was no sanctioned post of Driver in the District Building Centre and

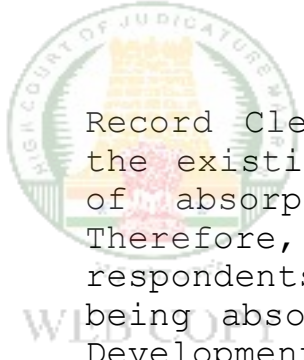


therefore, he will not be eligible for being regularised in service. Reliance was placed on the decision of the Hon'ble Supreme Court in **Umadevi (3)** case to state that the appointment of the appellant is irregular and it is a litigious employment and he was functioning under the cover of Court orders and therefore, regularisation cannot be granted. However, in the impugned order, the factual matrix have not been gone into, but the Court opined that in the light of the decision of the Hon'ble Supreme Court in **Umadevi (3)** case reiterated in **R.Govindaswamy** case, prayer sought cannot be granted.

9.As observed by us earlier, there can be no quarrel over the legal position. However, the factual matrix has to be gone into to examine as to whether the decision relied upon by the respondents could be made applicable to the facts of the case. In our considered view, we find that the facts are so unique, that the decisions of the Hon'ble Supreme Court relied upon by the respondents cannot be applied to the case of the appellant.

10.Admittedly, the District Building Centre, though is a Society, its Member Secretary is the District Collector. The control of the Society is fully vested with the District Collector and the Board of Directors, who are all Government officials and this District Building Centre was established to take care of the construction work in the District and it was called as "Kattida Maiyam". From the service particulars, which were forwarded by the District Collector to the second respondent recommending the case of the appellant for regularisation vide proceedings dated 14.10.2010, it is seen that the service of the appellant was not only utilised by the District Building Centre, but he has been utilised by other departments as well under the control of the respondent department. Therefore, it cannot be stated that the appellant was an employee on consolidated pay of the District Building Centre alone, though funds might have been drawn from the Centre for payment of his salary on consolidated basis, but his services were utilised in various departments.

11. It is not as if the respondents have not regularised other staff working in the District Building Centre. There are two such government orders, which have regularised the staff working in the "Kattida Maiyam" and absorbed them in the Panchayat Union. One such government order is in G.O.Ms.No.132, Rural Development and Panchayat Raj(E3) Department, dated 26.09.2014, where 10 Project Engineers of Building Centres were absorbed as Assistant Engineers (RD) into the Engineering Wing of Rural Development and Panchayat Raj Department by relaxing Rule 26 of General Rule for the Tamil Nadu State and Subordinate Service Rules and relaxing the rule of reservation. By another government order, G.O.Ms.No.76 dated 01.07.2016, non technical staff working in "kattidamaiyam" were absorbed in various posts such as



Record Clerks, Office Assistants, Drivers and Night Watchmen in the existing vacancies in the Panchayat Union. Thus, the orders of absorption were issued by relaxing the relevant rules. Therefore, we find there was no justifiable reason for the respondents to refuse to consider the case of the appellant for being absorbed into the Panchayat Union service or in the Rural Development Department.

12.As mentioned earlier, the District Building Centre was a society established by the government with deep pervasive governmental control and for all purposes, it is a government department as its Member Secretary is the District Collector and it executes work allotted by the Rural Development and Panchayat Raj Department thus carrying out governmental functions. Therefore, if the veil is pierced, it is clear that the activities of the District Building Centre are governmental activities. Therefore, the plea raised by the third respondent in the counter affidavit that the District Building Centre is not a government department cannot be accepted.

13.Thus for the above reasons, the writ appeal is allowed, the order passed in the writ petition is set aside and consequently, the writ petition is disposed of by directing the respondents to consider the appellant's case for regularisation of his service from the appropriate date and while doing so, shall take note of the government orders in G.O.(MD) No.722 dated 24.10.2008, G.O.Ms.No.132, Rural Development and Panchayat Raj(E3) Department, dated 26.09.2014 and G.O.Ms.No.76 dated 01.07.2016 and pass appropriate orders as in those cases, within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(w)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamilnadu
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 600 009.
2. The Director of Rural Development,
Panchayat Raj Development,
Panagal Buildings, Saidapet,
Chennai - 15.
3. The District Collector,
Kanyakumari District,
Nagercoil.



+1cc to M/s. Veera Associates, Sr.No.57495

+1cc to The Spl. Government Pleader Sr.No.57560

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