



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.[MD]Nos.466 and 467 of 2018

1.S.Kalavathi
2.R.Rajasekar
3.G.Ezhilarasi
4.G.Srinivasan
5.M.Lakshmi
6.T.Rani
7.M.Razia Sulthana Begam
8.K.Packia Rani
9.A.Sophy Thanka Rani
10.A.John Philips
11.B.Kalaiselvi
12.P.Sumathi
13.T.Sarojini : Appellants/Petitioners in W.A.(MD)No.466/2018

1.R.Sundaram
2.S.Rajendra Stephen
3.L.Palanisamy
4.N.Selvarangan : Appellants/Petitioners in W.A.(MD)No.467/2018

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Secretariat, Chennai-9.
2.The Director of Government Examination,
College Road,
Chennai-6.
3.The Joint Director (Employees),
Directorate of Government Examination,
Chennai-6.
4.The Regional Deputy Director,
Government Examination,
Tiruchirapalli. : Respondents in both W.As.

COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent against the order of Writ Court dated 07.02.2018 made in W.P. (MD)Nos. 7929 and 7930 of 2014 respectively.

Prayer in WP(MD)No. 7929/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 to 4 to regularise the petitioners services together with the benefit of the regular time scale of pay w.e.f. the date they have completed 10 years of service since the date of their initial appointment as worker on temporary basis and to grant all other consequential monetary and service benefits including pay fixation based on the same together with arrears on such pay fixation as was given to the petitioner s counter parts working in Cuddalore vide Judgement dated 05.07.2012 in WP NO. 11097 of 2012 within a time frame fixed by this Honourable Court.

Prayer in WP(MD)No. 7930/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 to 4 to regularise the petitioners services together with the benefit of the regular time scale of pay w.e.f. the date they have completed 10 years of service since the date of their initial appointment as worker on temporary basis and to grant all other consequential monetary and service benefits including pay fixation based on the same together with arrears on such pay fixation as was given to the petitioner s counter parts working in Cuddalore vide Judgement dated 05.07.2012 in WP NO. 11097 of 2012 within a time frame fixed by this Honourable Court.

For Appellants	:	Mr.M.Ajmalkhan,
in both W.As.		Senior Counsel
		For M/s.Ajmal Associates
For Respondents	:	Mrs.S.Srimathy,
in both W.As.		Special Government Pleader

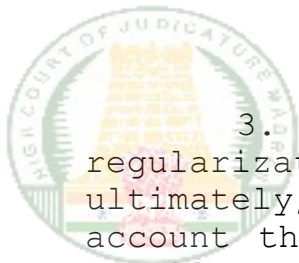
COMMON JUDGMENT

[Judgment of the Court was delivered by K.K.SASIDHARAN, J.]

The Writ Petitions filed by the appellants for issuance of a Writ of Mandamus, to regularize their services retrospectively and grant them the benefit of the regular time scale were dismissed by the learned Single Judge on the ground that the claim was belated. Feeling aggrieved, the unsuccessful writ petitioners have come up with the intra-Court Appeals.

BRIEF FACTS:

2. The appellants were appointed to the post of Section Writers/Mazdoors through Employment Exchange. They were appointed initially on daily wage basis. Subsequently, their services were regularized in terms of the Government Order in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28 February, 2006. The regularization was made with effect from 20 October, 2006 and 27 October, 2006 respectively thereby denying them the benefit of earlier service.



3. The Writ Petitions filed by the employees, who were given regularization prospectively, were allowed by the Writ Court and ultimately, the respondents regularized their services, taking into account the date of completion of ten years of service. Since the appellants were similarly situated, they have filed the Writ Petitions for a direction to the respondents to give them retrospective regularization, taking into account the completion of ten years of continuous service.

4. The learned Single Judge was of the view that the appellants were not correct in coming to the Court after several years. The earlier orders passed by the learned Single Judges of this Court and the Division Bench were distinguished on the ground that they were all individual decisions and the appellants have to trace their right independently. The learned Single Judge placed reliance on the decision of the Supreme Court in *State of Tamil Nadu vs. A.Singamuthu* reported in 2017(4) SCC 113, which was in relation to the regularization of part time employees. Feeling aggrieved by the common order dismissing the Writ Petitions, the unsuccessful writ petitioners have come up with the intra-Court appeals.

SUMMARY OF SUBMISSIONS:

5. The learned Senior Counsel for the appellants, by placing reliance on the string of orders passed by the Writ Court as well as the Division Bench and the order implementing the direction for retrospective regularization, contended that the appellants were similarly situated and as such, the learned Single Judge was not correct in rejecting their request for retrospective regularization. The learned Senior Counsel contended that the appellants would be satisfied, in case a direction is given to consider their case for retrospective regularization only for counting the earlier service for payment of pension without any liability to pay monetary benefits.

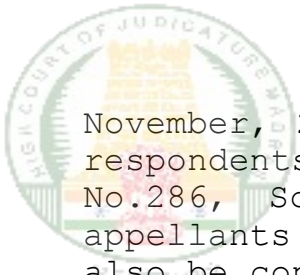
6. The learned Special Government Pleader supported the order passed by the learned Single judge. According to the learned Special Government Pleader, in case a direction is given to count the earlier service, it would be a burden on the exchequer.

THE ISSUE:

7. The core question is as to whether the appellants are entitled for a Mandamus to direct the respondents to consider their plea for retrospective regularization for the purpose of pension.

DISCUSSION:

8. The issue raised by the appellants is squarely covered by a decision of the Division Bench dated 05 November, 2014, in W.A.No.2678 of 2010. The Division Bench presided over by His Lordship Mr.Sanjay Kishan Kaul (As His Lordship then was), while confirming the order passed by the learned Single Judge, directed the State to consider the issue of including temporary services rendered by the Section Writers for counting the qualifying service for pension. The Government, pursuant to the judgment dated 05



November, 2014, in W.A.No.2678 of 2010, considered the case of the respondents in the said appeal and issued an order in G.O.(1D) No.286, School Education Department, dated 19 July, 2016. The appellants are similarly situated and as such, their case should also be considered by the respondents.

DISPOSITION:

9. The common order dated 07 February, 2018, is set aside. We issue a Mandamus, directing the first respondent to consider the claim of the appellants for inclusion of their temporary services along with the service rendered by them after the issuance of the orders of regularization, for counting the qualifying services for pension, in the light of the judgment of the Division Bench dated 05 November, 2014, in W.A.No.2678 of 2010. Such exercise shall be completed, within a period of four months from the date of receipt of a copy of this judgment. We make it clear that the direction is only for the limited purpose of counting the qualifying services for pension and it would not give them any right to claim backwages for the earlier period.

10. The intra-Court Appeals are allowed to the limited extent indicated above. No costs.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Secretariat, Chennai-9.

2.The Director of Government Examination,
College Road, Chennai-6.

3.The Joint Director (Employees),
Directorate of Government Examination, Chennai-6.

4.The Regional Deputy Director,
Government Examination, Tiruchirapalli.

+2CC to M/s.Ajmal Associates, Advocate, SR.No.95012, 95011

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SML