



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2018

CORAM:

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**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIYAM**

W.P. (MD) No.1995 of 2013  
and  
M.P. (MD) No.1 of 2013

R.Selvaraj

... Petitioner

**Vs.**

1. The State of Tamil Nadu  
Represented by its Secretary,  
Department of School Education,  
Fort St.George, Chennai- 600 009.
2. The Director of School Education,  
College Road, Chennai - 600 006.
3. The Chief Educational Officer,  
Nagercoil, Kanyakumari District.
4. The District Educational Officer,  
Kuzhithurai Kanyakumari District - 629 163.
5. The Headmaster,  
Government Higher Secondary School,  
Velamcode, Chithral post,  
Kanyakumari District - 629 151.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 4 herein to regularise forthwith the service of the petitioner as Marker atleast with effect from 30.12.1997 on par with the similarly placed persons for whom such benefits have been sanctioned under G.O.Ms.No.527 (School Education (E1) Department) dated 30.12.1997.

For petitioner : Mr.M.J.Shabu Jose  
For Respondents : Mr.M.Muthu  
Additional Government Pleader

**O R D E R**

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The relief sought for in this writ petition is to direct the respondents 1 to 4 herein to regularise forthwith the service of the



petitioner as Marker atleast with effect from 30.12.1997 on par with the similarly placed persons for whom such benefits have been sanctioned under G.O.Ms.No.527 (School Education (E1) Department) dated 30.12.1997.

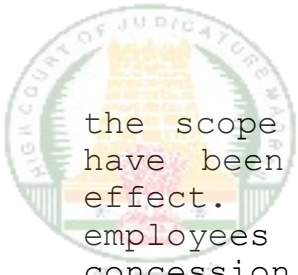
2. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner is now working as an Office Assistant on regular basis in the time scale of pay in Government Higher Secondary School, Velamcode, Kanyakumari District.

3. The petitioner submits that he joined as Marker (Sports) in a Government Higher Secondary School, Arumanai on 18.08.1986 and the Government issued G.O.Ms.No.527, School Education (E1) Department, dated 30.12.1997, regularizing the services of all the Markers, who are similarly placed like the petitioner. The grievances of the writ petitioner is that when the services of all the similarly placed persons working in the cadre of Marker was regularised, the name of the writ petitioner alone was omitted on account of error by the authorities. Thus the benefit of regularization as Marker with retrospective effect to be extended to the writ petitioner.

4. The learned Additional Government Pleader appearing for the respondent opposes the contention by stating that the initial appointment of the petitioner as Marker was irregular and not in accordance with the recruitment Rules in force. This apart, the Government, due to non-availability of the post of Marker, accommodated the petitioner to the post of Office Assistant and the services of the petitioner was regularised as Office Assistant and now he is working as regular employee in the time scale of pay. This being the factum, no further consideration is required in respect of the writ petitioner.

5. This Court is of an opinion that the learned counsel for the writ petitioner has cited a Government letter issued vide proceeding dated 23.11.2006, the Government letter states that the Markers who are not granted with the benefit of regularisation shall be accommodated in the vacant post of Office Assistant. Based on the said Government letter, the writ petitioner was accommodated in the post of Office Assistant and his services were regularised.

6. The regularisation itself was granted to the writ petitioner by way of concession. The initial appointment of the writ petitioner as Marker was irregular. The writ petitioner is unable to produce even the appointment order issued by the competent authority. Contrarily, the service certificate issued by the Headmaster alone is enclosed in the typed set of papers. In the absence of appointment order, this Court has to construe that the initial appointment of the writ petitioner was not in accordance with the recruitment Rules in force. This being the factum, the benefit of regularisation granted by the Government itself is a concession and therefore the writ petitioner now cannot go beyond



the scope of the concession and claim that his services ought to have been regularised in the post of Marker with retrospective effect. Once a concession is extended by the Government, the employees after availing the concession cannot claim further concession of retrospective regularisation in a particular post.

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7. In the present writ petition, the fact remains that the writ petitioner was appointed as Marker. Post or cadre can never be claimed as a matter of right. On account of non availability of the post of Marker, the Government has directed that the left out persons working in the carder of Marker shall be accommodated in the post of Office Assistants. Pursuant to the directions issued by the Government authorities competent, absorbed the writ petitioner as Office Assistant and regularised his services in the post of Office Assistant in the time scale of pay. This being the factum, there is no reason for the writ petitioner to claim further consideration in the cadre of Marker and time scale of pay.

8. However, the learned counsel for the petitioner states that the temporary services has to be taken into account for the purpose of reckoning the qualifying service. The petitioner is at liberty to submit a representation to the competent authority for counting of his past temporary services in accordance with the Pension Rules applicable. If any such representation is received by the authorities, then the authorities competent is at liberty to take decision based on Rule 11 of the Tamil Nadu Pension Rules, 1978. However, the benefit of retrospective regularisation in the post of Marker cannot be considered in view of the fact that the regularisation granted to the writ petitioner in the cadre of Office Assistant, in the regular time scale of pay itself is a concession done by the Government. This being the factum, no further consideration is required in this regard.

9. With these observations, this writ petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

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



2. The Director of School Education,  
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3. The Chief Educational Officer,  
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4. The District Educational Officer,  
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5. The Headmaster,  
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Velamcode, Chithral post,  
Kanyakumari District - 629 151.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 49835

+ 1 CC TO Mr.XAVIER RAJINI, ADVOCATE IN SR No. 49422

PNN

TE/JC/SAR-2 : 28/02/2018 : 4P/8C

ORDER MADE IN  
W.P. (MD) No.1995 of 2013 and  
M.P. (MD) No.1 of 2013  
16.02.2018