

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.10965 of 2009

1.A.K.Karuppannan
2.K.Ganesan

.. Petitioners

Vs

1. The District Collector,
Erode District, Erode.
2. The Block Development Officer,
Sathyamangalam Panchayat Union,
Sathyamangalam, Erode District.
3. The President,
Sadhumugai Village Panchayat (Grade-I),
Sathumugai, Sathyamangalam Taluk,
Erode District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the orders of the first respondent in Na.Ka.No.10908/09/P E2, dated 15.04.2009 and quash the same and further direct the respondents to regularise the service of the petitioners and pay the time scale of pay.

For petitioner : Mr.Ma.P.Thangavel

For R1 & R2 : Mr.M.Elumalai, GA

For R3 : No Appearance

ORDER

The petitioners have filed this writ petition seeking to quash the impugned proceedings dated 15.04.2009 of the first respondent / the District Collector, Erode District, refusing to regularise their services in terms of G.O.Ms.No.22, Personnel and Administrative Reforms(F) Department, dated 28.02.2006.

2. Learned counsel for the petitioners submitted that the first petitioner / Mr.A.K.Karuppannan, was appointed as Watchman-cum-Motor Pump Operator from 28.10.1987 in the Tamil Nadu Water Supply Board on daily wage basis and likewise, the

second petitioner / Mr.K.Ganesan was appointed in the same category from 22.03.1996 in the office of the third respondent Panchayat. In the year 1987, the Tamil Nadu Water Supply Board established a Combined Drinking Water Supply Scheme for Alathukombai and the same was funded by the World Bank. After completion of the project, the over-head tank and the maintenance of water supply were entrusted to the Block Development Officer, Sathyamangalam Panchyat Union, Erode / second respondent herein by the Water Supply Board.

3. Relying on a proceeding dated 28.10.1987 of the Senior Engineer, TWAD Board (EEC), Sathyamangalam, addressed to the Assistant Executive Engineer, TWAD Board, EEC, Gobichettipayalam, which states about the handing-over of the charge related to C.W.S.S. to Alathukombai and three other habitation in Sathy Union, learned counsel submitted that the electricity supply was given for 14 hours (6 hrs during day time and 8 hrs during night time) to all those 9 tanks situated in that Union for filling up of 1,78,000 litres of water. Therefore, when the work from the petitioners was extracted for all those 14 hours, accepting the continuous employment of the petitioners, a resolution dated 28.12.1998 was passed by the President of Sathumugai Panchayat recommending the regularization of the petitioners' services.

4. Again, learned counsel for the petitioners, by referring to a proceeding dated 30.12.1998 of the President, Sathumugai Panchayat, Erode District, addressed to the District Collector, Erode District, stated that the President of Sathumugai Panchayat has recommended the case of the petitioners for regularization of their services. It is further submitted that since the petitioners were paid with only a meagre amount of Rs.69/- per day, after waiting for a long time, they have filed Writ Petition Nos.11683 and 11750 of 2000, seeking for issuance of a writ of mandamus to direct the respondents to appoint them as permanent Watchman-cum-Electric Motor Operators by regularizing their services from the date of their initial appointment viz., 19.05.1986 and 22.03.1996 respectively and this Court, vide order dated 13.07.2000, directed the respondents to consider the grievance of the petitioners in the light of the relevant Rules and Government Orders.

5. Drawing the notice of this Court to an another order passed in W.P.No.19396 of 2000, dated 13.01.2003, filed by the first petitioner herein / Mr.A.K.Karuppannan, it is stated that this Court had already given a direction to the President of the Sathumugai Panchayat to pay the salary due to the first petitioner at the rate of Rs.76/- per day from July, 2000, and also directed to pay the arrears, if any.

6. Again, one more Writ Petition No.1085 of 2009 filed by the petitioners was brought to the notice of this Court. In the said writ petition, the petitioners sought for a direction to the District Collector, Erode, to pass orders on their pending representation dated 10.12.2008 requesting for regularization of services of the petitioners as Watchman-cum-Motor Pump Operator in terms of G.O.Ms.No.22, P&AR Department, dated 28.02.2006. This Court, vide order dated 22.01.2009, directed the District Collector, Erode, to pass orders on the pending representation dated 10.12.2008 in term of the said Government Order within a period of eight weeks.

7. By referring all the above said orders passed by this Court, learned counsel for the petitioners further submitted that when the petitioners were continuously made to come to this Court one after another for regularization of their services and also for payment of salary, at no point of time, the official respondents filed their counter affidavit stating that their claim for regularization was untenable and unjustifiable and in none of the counter affidavit, they have stated that the petitioners have failed to prove their continuity of services. However, the second respondent has filed an additional counter affidavit dated 22.02.2019 taking a stand that the second petitioner has not fulfilled 10 years of service for getting the benefit of G.O.Ms.No.22, dated 28.02.2006, as he had completed only 9 years of service as on 01.01.2006. Therefore, when the respondents have not disputed their continuous services, now, they cannot deny and make any new case that they were not in continuous service nor they have failed to possess required number of services as per G.O.Ms.No.22, dated 28.02.2006, hence, on this count also, he prayed for allowing the writ petition.

8. Per contra, learned Government Advocate appearing for the respondents 1 and 2 submitted that the question of application of G.O.Ms.No.22, dated 28.02.2006, to regularize the services of daily wages employees, who have completed 10 years of service as on 01.01.2006, in favour of the petitioners, is wholly unacceptable, because, although the first petitioner has completed 10 years of service, the Panchayat in which the petitioners were working is not a Government Department, therefore, the said G.O., cannot be applicable to the case of the petitioners.

9. But, this Court is unable to find any merit on the above said submissions. Even paragraph No.5 of the counter affidavit admits the claim of the petitioners that the first petitioner joined as Watchman-cum-Motor Pump Operator on 28.10.1987 and the second petitioner joined the service on 22.03.1996 in the third respondent Panchyat on daily wages

basis. As stated by the learned counsel for the petitioner, when W.P.Nos.11683 and 11750 of 2000 were filed by the petitioners for a direction to the respondents to regularize their services, this Court held as follows in paragraph No.4:-

"4. In my considered opinion, it may not be proper for this Court either to direct the respondents to reject the case of the petitioners outright or to regularise the services of the petitioners from the date of appointment i.e., 19.05.1986 and 22.03.1996 respectively. However, it is suffice to permit the petitioners to make appropriate representation to the second respondent, who is the Inspector of Panchayat, within two weeks from the date of receipt of a copy of this order, who shall consider the case of the petitioners with reference to the relevant rules and Government Orders and pass appropriate orders on merits, not being influenced by the disposal of the above writ petitions."

10. Pursuant to the above direction of this Court, sadly, the respondents have not passed any order. Again, the first petitioner/Mr.A.K.Karuppannan has filed a writ petition No.19396 of 2000 seeking for payment of minimum wages at the rate of Rs.76/- per day as per the direction issued by the District Collector, Erode, and also for payment of arrears, whereby, this Court, vide order dated 13.01.2003, while disposing of the said writ petition, held as follows:-

"In pursuance of the directions of the District Collector, the Additional Block Development Officer, Sathyamangalam, directed the third respondent to pay a salary of Rs.76/- per day with effect from the year 2000-2001. From the said letter I am able to see that the petitioner's salary was fixed at Rs.69/- per day. This order is not questioned by the third respondent. Hence, the third respondent is directed to pay the salary due to the petitioner at the rate of Rs.76/- per day from July, 2000, and continue to pay the salary at the same rate. The arrears if any, has to be paid within two months from the date of receipt of the order."

11. Again, the petitioners have come to this Court by filing a writ petition No.1085 of 2009 seeking a direction to the District Collector, Erode, to regularise their service in terms of G.O.Ms.No.22, dated 28.02.2006 and this Court, vide

order dated 22.01.2009, passed the following order:-

"3. The petitioners are claiming the benefit of regularization in terms of the Government Order in G.O.Ms.No.22, P&AR Department, dated 28.02.2006. There cannot be any impediment for the respondents to consider the representation on the basis of the Government."

12. In spite of various directions of this Court as stated supra, the learned Government Advocate for the respondents 1 and 2 newly argued, by filing an additional counter affidavit, that too, only on 28.02.2019 although writ petition was filed in the year 2009, that the petitioners were only a part-time employees of the third respondent Panchayat, which, in my considered view, is liable to fall, in the light of proceedings dated 28.10.1987 of the Senior Engineer, TWAD Board, EEC, Sathyamangalam, depicting the handing-over of the charge to Alathukombai Panchayat and it has further mentioned about the nature of work to be discharged by the petitioners, which are stated below:-

"E.B. Supply: 14 Hours (8+6) day-6hrs : Night-8 hours.

Total Tanks: 9 Nos.

Total Capacity: 1,78,000 litres."

When the above said proceeding clearly shows that the petitioners are required to work 6 hours during day time and 8 hours during night time, totally 14 hours, it is highly unacceptable on the part of the respondents to say that the petitioners were only working as part-time employees, more particularly, when they are working 14 hours in a day, therefore, in my considered view, the weak argument made by the respondents that the petitioners are part-time employees, on the face of their own documents mentioned supra, is per se false and therefore, the same is unacceptable to this Court. Hence, they are to be considered as full-time employees of the third respondent Panchayat. However, with regard to second petitioner, since he was appointed only on 22.03.1996 as Watchman-cum-Motor Pump Operator in the third respondent Panchayat, admittedly, he has not completed 10 years of service as on 01.01.2006 as per G.O.Ms.No.22, dated 28.02.2006. Therefore, the second petitioner is directed to approach the authority under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

13. With regard to the first petitioner, since he has put in 19 years of service as on 01.01.2006 as he was appointed on 28.10.1987 in the third respondent panchayat, the respondents cannot deny the application of G.O.Ms.No.22, dated 28.02.2006. It is also further seen from the counter affidavit dated 28.02.2019 filed by the second respondent / the Block

Development Officer, Sathyamangalam Panchayat Union, Sathyamangalam, Erode District, that the said authority has accepted the case of the first petitioner for payment of salary and finally, by proceeding dated 17.01.2018, acceding to the request of the first petitioner for payment of arrears to the tune of Rs.4,05,055/- from 01.04.2014 to 31.07.2017, a sum of Rs.3,70,535/- was already paid to the first petitioner. Thus, such proceeding of the second respondent shows that the first petitioner was in continuous service, therefore, this Court, looking at the case of the first petitioner in any angle, is unable to accept the reasons stated in the impugned order denying to apply G.O.Ms.No.22, dated 28.02.2006, for regularization of services of the first petitioner on completion of his 10 years of services.

14. Accordingly, for the reasons stated supra, the impugned order dated 15.04.2009 of the first respondent is set aside insofar as the first petitioner is concerned. The Respondents are directed to regularize the services of the first petitioner in terms of G.O.Ms.No.22, dated 28.02.2006, and pass suitable orders for payment of consequential benefits within a period of 12 weeks from the date of receipt of a copy of this order. In fine, the writ petition is disposed of to the extent mentioned above. No Costs.

rkm

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Erode District, Erode.
2. The Block Development Officer,
Sathyamangalam Panchayat Union,
Sathyamangalam, Erode District.

+1cc to Mr.Ma.P.Thangavel, Advocate, SR.No. 32561

W.P.No.10965 of 2009

Kak(30/05/2019)