

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.04.2019

C O R A M

The Honourable Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.49754 of 2006

Thangaraj

... Petitioner

Vs

1.The District Collector,
Tiruvarur.

2.The Director of Revenue Administration,
Chennai-600 005.

3.The Tahsildar,
Taluk Office,
Nannilam,
Tiruvarur District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the respondents to regularize the services of the petitioner in the post of Night Watchman at the office of the 3rd respondent from the date of his initial appointment i.e. 09.01.1989 with all service and consequential benefits.

For Petitioner : Mr.V.Chandrasekaran

For Respondents : Mr.K.S.Suresh,
Government Advocate

O R D E R

This Writ Petition is filed for a Writ of Mandamus to direct the respondents to regularize the service of the petitioner in the post of Night Watchman at the office of the third Respondent from the date of his initial appointment i.e. 09.01.1989 with all service and consequential benefits.

2.At the hearing today, the learned counsel for the petitioner referred to the appointment order of the petitioner at page 1 of the typed set of papers which shows that he was appointed as Night Watchman on a temporary basis. He thereafter

referred to a letter dated 21.04.1998 from the Secretary to Government wherein it is stated that pursuant to the judgment of the Tamilnadu Administration Tribunal in O.A.No.603 of 1989, the Departments of Secretaries were requested to regularize the irregular appointments made till 05.02.1992 retrospectively from the date of initial appointment with all service and consequential benefits. He also referred to the order dated 23.11.2001 relating to regularization of the service of the petitioner. In particular, he referred to the fact that the said order records that the petitioner was appointed through the Employment Exchange and that it is a sanctioned post. He further pointed out that the petitioner was regularized only from 23.11.2001 and that the request for regularization with effect from his initial appointment dated 09.01.1989 was not accepted. In this connection, his submission was that it is unfair to regularize those who were appointed irregularly from the date of first appointment and not do so in the case of the petitioner who was appointed through the Employment Exchange to a sanctioned post.

3.The learned counsel for the respondents refuted the above submissions by referring to paragraph-4 of the counter affidavit of the respondents wherein it is stated that the petitioner joined duty on 17.01.1989 on daily wages basis and that his services were regularized pursuant to the G.O.Ms.No.523 Revenue (Services 8(2) Department Dated 23.11.2001 and that, therefore, his services cannot be regularized with effect from the initial date of appointment on a temporary daily wage basis. In order to substantiate his submissions, the learned counsel for the respondents also referred to an order passed by this Court in S.Thangavelu v. The Government of Tamilnadu in W.P.No. (D) No.9296 of 2012, wherein this Court held that when the initial appointment of the writ petitioner was not in accordance with the recruitment rules in force, the writ petitioner cannot seek regularization of his appointment with all other benefits. In the said order, the learned Judge permitted the petitioner to submit a representation under Rule 11 of the Tamil Nadu Pension Rules for taking into consideration 50% of the temporary service for the purpose of calculating qualifying service at the time of settling the pensionary benefits.

4.By way of oral submission in rejoinder, the learned counsel for the petitioner emphasized that the petitioner was appointed through the Employment Exchange and that the post was admittedly a sanctioned post.

5.After taking into consideration the affidavit, counter affidavit, documents on record and oral submissions of both parties, this Court is of the view that the interest of justice would be satisfied if the petitioner is permitted to submit a

representation to the respondents for consideration of his request for regularization from the date of his initial appointment, i.e. 09.01.1989, especially with regard to pensionary benefits. This representation shall be submitted to the respondents within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of such representation, the respondents are directed to pass a reasoned speaking order duly taking into consideration the letter dated 21.04.1998 from the Secretary to Government and the G.O.Ms.No.23.11.2001. The representation shall be considered and disposed of within a period of six weeks of receipt thereof.

6.In the result, this Writ Petition is disposed of with the above directions. No costs.

Sd/-
Deputy Registrar(CJ.conf)

//True copy//

Sub Assistant Registrar

kal

To

- 1.The District Collector,
Tiruvarur.
- 2.The Director of Revenue Administration,
Chennai-600 005.
- 3.The Tahsildar,
Taluk Office,
Nannilam,
Tiruvarur District.

+1cc to Mr.V.Chandrasekaran, Advocate SR.No.42989

+1cc to Government Pleader SR.No.43239

Writ Petition No.49754 of 2006

GMV (18/06/2019)