IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.1650 of 2016

P.Subramani .. Petitioner

-vs-

1. The State of Tamil Nadu
rep.by its Secretary
Commercial Taxes and Registration Department
St.George Fort, Chennai 600 009

2. The Principal Secretary/Commissioner
of Commercial Taxes
O/o the Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai

3. The Joint Commissioner (CT)
Commercial Taxes Department
Court Complex, Trichy

4. The Deputy Commissioner (CT)
O/o the Deputy Commissioner of Commercial Taxes
Commercial Taxes Building
North Pradatchanam Road
Karur 639 001 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to regularize the petitioner in the regular time scale of pay with effect from the date when he was initially appointed with all consequential attendant benefits and monetary benefits on par with P.Saminathan.

For Petitioner:: Mr.V.Prakash
Senior Counsel for
Mr.K.Krishnamoorthy

For Respondents:: Mr.Master Ganesh
Government Advocate

ORDER

Mr.P.Subramani, whose name was sponsored by the District Employment Exchange (Technical), Trichy for the post of Driver in the office of the respondents, on joining the post on 28.02.2005 as a daiy wager, has come to this Court seeking issuance of a writ of mandamus directing the respondents to regularise his services from the date of his initial appointment, namely, 28.02.2005 on par with his junior Mr.P.Saminathan.

2. Learned Senior Counsel for the petitioner pleaded that the petitioner belongs to Scheduled Caste community. Having completed his Ninth standard and having acquired the driving licence on 24.7.90 for Light and Heavy Motor Vehicles from the Regional Transport Officer, Karur, the petitioner also registered his name in the District Employment office, Trichy during 1993 and he was also assigned Registration No.T-24/5/93. Later on, he received a call letter from the office of the Deputy Commissioner of Commercial Taxes, Karur to attend the interview with all original certificates for the post of Driver at 11.00 AM on 14.2.2005. Accordingly, the petitioner appeared and after interview by the fourth respondent, his eligibility was also duly screened. Finding his suitability, he was also selected to the vacant post of Driver in the office of the fourth respondent and he was also issued with the order of appointment dated 28.2.2005. Since then, the petitioner has been continuously working without any break till date. Subsequently, the Joint Commissioner of Commercial Taxes, Trichy, the third respondent vide communication dated 18.12.2009 instructed the fourth respondent to send the particulars relating to the petitioner treating the matter as urgent for bringing him under the regular time scale of pay. In the meanwhile, the fourth respondent also appointed one Mr.P.Saminathan vide order dated 9.6.2010 bearing Na.Ka.No.5942/2009 and another person viz., Mr.Divankanth by another order dated 22.10.2010 bearing Na.Ka.No.5942/2009 in the regular time scale of pay, leaving the petitioner alone to continue as a daily wager. Aggrieved by the same, the petitioner along with three other persons made a representation to the respondents 2 & 3. On receipt of the representation, the Principal Secretary/Commissioner of Commercial Taxes, the second respondent herein, in his letter No.H3/7684/2010 dated 10.2.2011, recommended to the Government for regularising the services of the petitioner in the regular time scale of pay. When the petitioner has been working from 28.2.2005 after he was found eligible by the interview committee, that too, after being sponsored by the District Employment Exchange (Technical), Trichy, his appointment was made following the rule of reservation. When the petitioner was appointed through the

employment exchange following the rule of reservation, his appointment is regular and in the manner known to law. Therefore, the respondents cannot deny the benefit of regularisation from the date of his appointment. Moreover, when two other Drivers viz., Mr.P.Saminathan and Mr.Divankanth, who had registered their names in the very same employment exchange on 5.10.2006 and 27.3.2008 respectively, on their appointment on 9.6.2010 and 22.10.2010, considering their regular and continuous employment, were given the benefit of regularisation, rejected the case of the petitioner alone. Therefore, the petitioner has given a representation to regularise his services from the date of his initial appointment i.e., with effect from 28.2.2005 on par with his juniors. Even after repeated representations, finding no response, he has been advised to come to this Court. Concluding his arguments, learned Senior Counsel for the petitioner submitted that it is not disputed by the respondents that the petitioner was appointed through the District Employment Exchange following the rule of reservation on 28.2.2005 as a Driver on temporary basis. Having appointed Mr.P.Saminathan on 9.6.2010 and Mr.Divankanth on 22.10.2010 as Drivers, the respondents cannot deny the benefit of regularisation to the petitioner, while they regularised the services of Mr.P.Saminathan and Mr.Divankanth, merely on the ground that the petitioner was appointed on 28.2.2005, which is according to them is the ban period, whereas the other two persons were appointed subsequent to the petitioner after the expiry of the ban period.

3. A detailed counter affidavit has been filed by the respondents. The learned Government Advocate for the respondents, distinguishing the case of the petitioner, attempted to deny the benefit of regularisation, without taking note of the vital fact that the petitioner was also appointed in the same post of Driver much prior to the dates of appointment of Mr.P.Saminathan and Mr.Divankanth.

4. Heard learned counsel for the parties.

5. When Mr.P.Saminathan and Mr.Divankanth were appointed on 9.6.2010 and 22.10.2010 through the sponsorship from the same employment exchange after interview and also following the rule of reservation, having given the benefit of regularisation to these Drivers, for the reason that the petitioner was appointed during the ban period i.e., from 2001 to 2006, he was not regularised and only after lifting of the ban in 2006, it goes without saying that they cannot deny the regularisation while enjoying the benefit of continuance in service. The petitioner being senior to Mr.P.Saminathan and Mr.Divankanth, as they have registered their names in the employment exchange on 5.10.2006 and 27.3.2008 respectively, and secondly, they were also

appointed through the sponsorship from the employment exchange in the same post following the rule of reservation on 9.6.2010 and 22.10.2010 and thirdly, the Government Order imposing ban on recruitment was also subsequently lifted in 2006, the respondents cannot refuse to consider the proposal/recommendation dated 10.2.2011 made by the Commissioner of Commercial Taxes to the Government to regularise the services of the petitioner, who is one among the three persons. The relevant paragraph of the said recommendation reads as follows:-

> "I submit herewith the service particulars of the above three temporary daily wages drivers in the prescribed format for taking decisions by considering their unblemished service rendered by the individual from the date of appointment to till date as per the G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006 and as per the G.O.(2D) No.165, Commercial Taxes and Registration (A) Department dated 11.11.2008 provision exists to regularize their services.
>
> In view of the above, as the Government only are the deciding authority for regularising their unblemished service rendered by the above three individuals on a special grounds, I request orders of the Government to regularize their services from the date of appointment to till the date."

6. In the light of the above, after regularising the services of Mr.P.Saminathan and Mr.Divankanth as Drivers, the respondents cannot refuse to extend the same benefit to the petitioner. Therefore, this Court finds no hesitation to allow the writ petition. Accordingly, the writ petition is allowed as prayed for with a direction to the first respondent to pass orders on the proposal/recommendation made by the Commissioner of Commercial Taxes, the second respondent herein dated 10.2.2011 and grant the benefit of regularisation to the petitioner in the post of Driver from the date of his appointment, within a period of eight weeks from the date of receipt of a copy of this order. Consequently, W.M.P.Nos.1425 & 1426 of 2016 are closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
   Commercial Taxes and Registration Department
   Fort St.George, Chennai 600 009

2. The Principal Secretary/Commissioner
   of Commercial Taxes
   O/o the Commissioner of Commercial Taxes
   Ezhilagam, Chepauk, Chennai

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   O/o the Deputy Commissioner of Commercial Taxes
   Commercial Taxes Building
   North Pradatchanam Road
   Karur 639 001

+1cc to Mr.K.Krishnamoorthy, Advocate, S.R.No. 3332
+1cc to the Special Government Pleader(Taxes), S.R.No. 4282

W.P.No.1650 of 2016

GN(31/01/2019)