

IN THE HIGH COURT OF JUDICATURE OF MADRAS
DATED: 19.02.2019

CORAM:
THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.6771 of 2018
and
WMP.No.8392 of 2018

R.Periasamy

...Petitioner

Vs

1. The Principal Secretary to Govt.,
School Education Department,
Fort St.George,
Chennai - 600009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600006.
3. The District Elementary
Education Officer,
Nagapattinam.
4. The Assistant Elementary
Educational Officer,
Mayiladuthurai,
Nagapattinam District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of a Writ to call for the records in pursuant to the impugned order passed by the 3rd respondent in proceedings Na.Ka.No. 2442/A1/2016 dated 08.01.2018 and the subsequent impugned order passed by the 3rd respondent in proceeding Na.Ka.No.2442/A1/2016 dated 11.01.2018 and quash these orders and consequently direct the respondents to pay to the petitioner the arrears of salary in the post of Night Watchman with effect from the date of his regularization on 04.03.1994.

For Petitioner : Ms.Swadhi Subramaniam
for Mr.P.Prem Narayan

For Respondents: Mr.P.Raja, GA

O R D E R

Heard Ms.Swadhi Subramaniam, learned counsel appearing for the petitioner and Mr.P.Raja, learned Government Advocate appearing for the respondents.

2. The petitioner had earlier filed a Writ Petition in WP.No.3401 of 2017 seeking for payment of arrears of salary from the date of his regularization. The petitioner's service as a Night Watchman was regularized with effect from 04.03.1994, after completion of 10 years of service. When the aforesaid Writ Petition came up to be disposed on 10.12.2017, this Court had directed the respondents to consider the petitioner's representation dated 19.03.2016, seeking for payment of arrears of salary from the date of regularization. The said representation came to be rejected by the impugned orders in the present Writ Petition dated 08.01.2018 and 11.01.2018, stating that the request of the petitioner was not feasible. In the said impugned orders, a reference has been made to a similarly placed employee, whose services were regularized after completion of 10 years and was also extended the benefit of arrears of pay from the date of regularization. While differentiating and substantiating that the petitioner herein is not entitled for arrears, the 2nd respondent herein had attempted to justify that the decision to pay the arrears of salary to the employee from the date of his regularization in the G.O.(3D) No.105 dated 18.07.2012 was to avoid contempt proceedings and therefore that Government Order cannot be cited as a precedent for the present case. The impugned order also makes reference to the letter of the Director of Elementary Education dated 19.03.2016 and rejected the petitioner's claim.

3. I am unable to accept the reasoning given in the impugned order as well as the submissions of the learned Government Advocate, who had reiterated the averments made in the counter affidavit. Firstly, a letter of the Director of Elementary Education cannot nullify a Government Order, which had extended the benefits of payment of arrears of salary from the date of regularization. Secondly, the reasoning given by the 3rd respondent that the Government Order is not binding on this petitioner, since it was given only to avoid contempt proceedings and therefore cannot be cited a reason, is unacceptable and baseless.

4. I do not find any reasoning or justifiability in such a statement. When the 3rd respondent had chosen to extend similar benefits to another employee, denial of the same to the petitioner herein would amount to discrimination. As such, the order itself is liable to be struck down.

5. In the light of the observations made above, the orders dated 08.01.2018 and 11.01.2018 passed by the 3rd respondent in proceedings Na.Ka.No. 2442/A1/2016, are quashed. Consequently, the 3rd respondent is directed to pay the entire arrears of salary to the petitioner herein from the date of his regularization (i.e., from 04.03.1994) till date along with all attendant benefits, within 12 weeks from the date of receipt of copy of this order.

6. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Principal Secretary to Govt.,
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4. The Assistant Elementary
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Nagapattinam District.

+1cc to Mr.R.Prem Narayan, Advocate, S.R.No.15053
+1cc to the Government Pleader, S.R.No.15575

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VP(CO)
rrs 27/03/2019