

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. Nos. 1920 & 1921 of 2018

&

C.M.P. Nos. 15466 to 15468 of 2018

1. The State of Tamil Nadu,
rep. by the Secretary to Government,
Tourism and Culture Department,
Secretariat, Chennai - 9.
 2. The Commissioner of Art and Culture,
Chennai - 28.
 3. The Principal,
Government College of Art and Sculpture,
Mahabalipuram,
Kancheepuram District.
- Vs.
- V. Thulasinathan ..Appellants in
both appeals
- E. Duraisamy ..Respondent in
W.A. No.1920/2018
- ..Respondent in
W.A. No. 1921/2018

Prayer: Writ Appeals as against the order dated 21.03.2017 in
W.P. No. 29266 of 2008 & 29267/2008:

Prayer in W.P.No.29266 of 2008: Writ Petition filed under
Article 226 of the Constitution of India praying for issuance a
Writ of Certiorarified Mandamus to call for the records of the
1st respondent in connection with G.O.(Ms).No.39, Tourism and
Culture Panl(1) Department, dated 26.03.2007 and also the
consequential order passed by the 2nd respondent in
Pro.No.4675/B2/2000-2, dated 26.04.2007, and quash the same as
far as the regularization of petitioner's service from the date
of issuing the order is concerned and directing the 1st and 2nd
respondent to consider the case of the petitioner for
regularisation of service in the post of unskilled assistant
from the date of initial appointment and grant all consequential
benefits.

Prayer in W.P.No.29267 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in connection with G.O.(Ms).No.39, Tourism and Culture Panl(1) Department, dated 26.03.2007 and also the consequential order passed by the 2nd respondent in Pro.No.4675/B2/2000-2, dated 26.04.2007 and quash the same as far as the regularisation of petitioner's service from the date of issuing the order is concerned and directing the 1st and 2nd respondents to consier the case of the petitioner for regularisation of service in the post of unskilled assistant from the date of initial appointment and grant all consequential benefits.

For Appellants
in both appeals:: Mrs.A. Srijayanthi
Special Government Pleader

For Respondent ::
in both appeals Mr.G. Elanchezhiyan

J U D G M E N T

(Judgment of the Court was delivered by K.K. SASIDHARAN,J.)

The learned Single Judge taking into account the Government Orders in G.O. Ms. No. 39 Tourism and Culture (C1-1) Department dated 26 March, 2007 with regard to regularisation of service of Unskilled Assistants and the related orders passed by this Court in respect of others, quashed the order passed by the Commissioner of Art and Culture rejecting the request of the respondents for regularisation and issued a mandamus to regularise their service with all consequential benefits. The common order dated 21 March, 2017 is under challenge at the instance of the State.

2. The respondent in the respective appeals (hereinafter referred to as respondents) were temporarily appointed in the post of Unskilled Assistant. The appointments were made through the Employment Exchange. It was against duly sanctioned posts that such appointments were made. The initial appointments were made by order dated 5 March, 1997. The services of the workers including the respondents were regularised by the Government as per the order in G.O.Ms. No. 39 Tourism and Culture (C1-1) Department dated 26 March, 2007. However, they were not given the benefit of past service. The respondents filed writ petitions for retrospective regularisation and for payment of all consequential benefits. The learned Single Judge having found that under similar circumstances, writ petitions were allowed and the benefits were also given by the Government, allowed the writ petitions.

3. We have heard the learned Special Government Pleader for the appellants. We have also heard the learned counsel for the respondents.

4. There is no dispute that the respondents were appointed as Unskilled Assistants through the Employment Exchange. The required posts were sanctioned by the Government. Therefore, it is clear that the appointments were made against sanctioned posts and it was also through a transparent process. The appointment orders would also indicate that the name of the respondents were sponsored through the Employment Exchange. It is therefore clear that it was not a backdoor entry. It is also not in dispute that the respondents have been working from 1997 onwards. Their services were also rightly regularised by the appellants.

5. The learned Single Judge found that under similar circumstances, the High Court directed regularisation with retrospective effect. Following such orders, the writ petitions filed by the respondents were also allowed. Since initial appointments were made by following a transparent procedure and also against sanctioned posts, we are of the view that the learned Single Judge was correct in directing retrospective regularisation.

6. The other question is as to whether the learned Single Judge was correct in granting all the consequential benefits.

7. The respondents are entitled to count the past service from 7 March, 1997 for all practical purposes including the total service for pension. However, they would not be entitled to the monetary benefits for the said period. In short, the order of regularisation would be notional. It would not give them any monetary benefits. The entire period should be recognised for counting the total period of service.

8. The common order passed by the learned Single Judge is modified to the above effect. The intra-court appeals are allowed in part as indicated above. No costs. Connected C.M.Ps are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Tourism and Culture Department,
Secretariat, Chennai - 9.

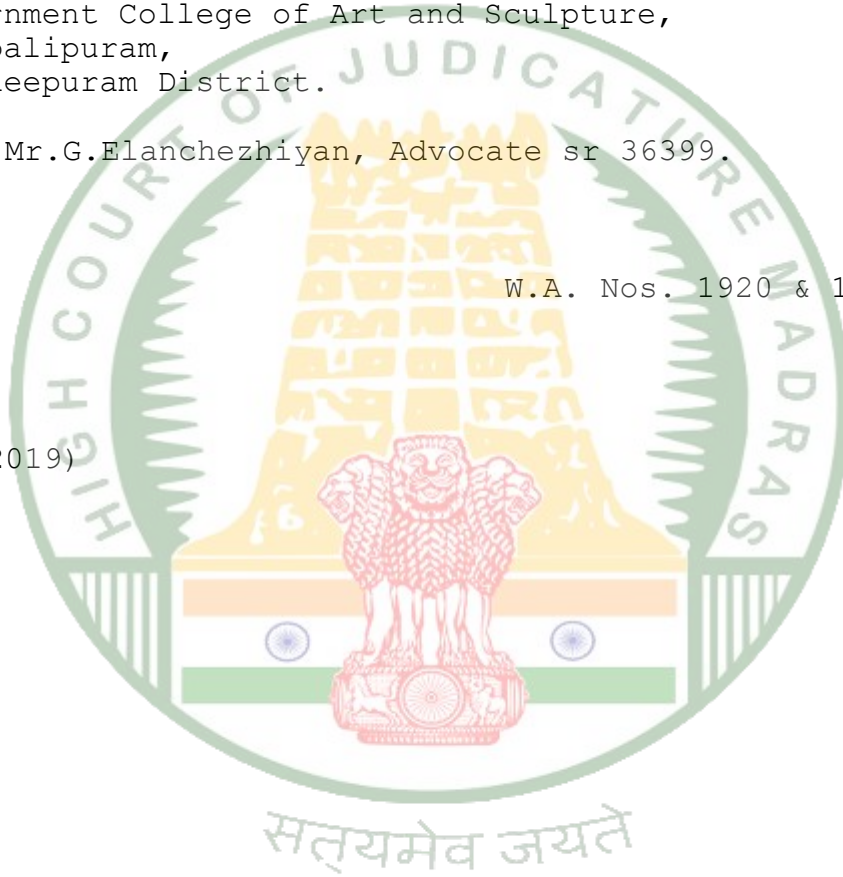
2. The Commissioner of Art and Culture,
Chennai - 28.

3. The Principal,
Government College of Art and Sculpture,
Mahabalipuram,
Kancheepuram District.

+2 CCS to Mr.G.Elanchezhiyan, Advocate sr 36399.

W.A. Nos. 1920 & 1921 of 2018

RSV(CO)
SP(31/05/2019)



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