

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2019

CORAM:

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

W.A. No. 1472 of 2019
and
C.M.P. No. 10049 of 2019

1. The Secretary to Government,
Revenue Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
 2. The Commissioner of Revenue Administration,
Chepauk,
Chennai - 600 006.
 3. The District Collector,
Collectorate,
Salem District.
 4. The Tahsildar,
Taluk Office,
Attur Taluk,
Salem District.
- ... Appellants/Respondents

A. Poomalai ... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 29.11.2017 made in W.P. No.
31332 of 2012.

Petition u/Art 226 of the Constitution of India praying to
issue a Writ of Certiorari Mandamus to call for the records
relating to G.O. (stand) No.170 Revenue (Service 8 (2))
Department dated 22.5.2012 passed by the 1st respondent and the
consequential order in Na.Ka.13482/ 2008/ A8 dated 21.9.2012
passed by the 3rd respondent and quash the same consequently
direct the respondents to regularize the petitioners service
with effect from 14.12.1994 in the cadre of night watchman and

also direct the respondents to pay the arrears of pay payable to the petitioner in pursuant to the regularization.

For Appellants : Mrs. A. Sri Jayanthi,
Special Government Pleader

For Respondent : Mr. M. Elangovan

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 29.11.2017 in W.P. No. 31332 of 2012 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The Petitioner, who was sponsored through the District Employment Exchange, was temporarily appointed as Night Watchmen on daily wages in the office of the Tahsildar, Attur Taluk, Salem District and he has been working in that post from 14.12.1984 onwards continuously. The Government of Tamil Nadu in G.O. Ms. No. 22, Personnel and Administrative Reforms (F) Department dated 28.02.2006 directed that the service of daily wage employees working in the Government Departments, who have rendered ten years of service as on 01.01.2006, be regularized by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the concerned post subject to their being otherwise qualified for the post. The benefit of regularization in terms of that Governmental Order was granted to the Petitioner by G.O. (Ms.) No. 170, Revenue (Service-8(2)) Department dated 22.05.2012. However, it had been mentioned in that order that his services were regularized with effect from the date of issuance of that order. The Petitioner, who was aggrieved by not granting him the benefit of regularization with effect from 14.12.1994 when he completed ten years of service on daily wage basis, challenged the aforesaid order to that extent in W.P. No. 31332 of 2012 and sought for consequential directions.

3. The Learned Judge, who heard the Writ Petition by order dated 29.11.2017, came to the conclusion that the case of the Petitioner was identically placed to that of another employee, viz., V. Madhuraaj who had been granted that benefit in the order dated 21.03.2013 in W.A. No. 1117 of 2012 and held as follows:-

"11. the case of the petitioner is squarely covered by the earlier decision passed by this Court and also covered by the benefit as provided for under G.O.Ms.No.22 P & A R Department dated 28.02.2006. In

the light of the above, this Court is inclined in allowing the writ petition and the Government Order Na.Ka.13482/2008/A8 dated 21.09.2012 passed by the first respondent is quashed, insofar as it denied the benefit of regularization from the date when the petitioner completed ten years of service from the initial appointment. There shall be consequential direction to the respondents to grant regularization in terms of G.O.Ms.No.22 P & A R Department dated 28.02.2006 and grant him all attendant benefits to the petitioner as given to the other similarly placed employees and this direction shall be complied with, by the respondents within a period of 3 months from the date of receipt of a copy of this order. Accordingly, the Writ Petition is allowed. No costs."

Aggrieved thereby, the Respondents have preferred this appeal.

4. We have heard Mrs. A. Sri Jayanthi, Learned Special Government Pleader appearing for the Respondent, Mr. M. Elangovan, Learned Counsel appearing for the Petitioner and perused the materials placed on record, part from the pleadings of the parties.

5. It is strenuously urged by the Learned Special Government Pleader that the Petitioner was a part-time employee who was not entitled to the benefit of regularization as held by the Hon'ble Supreme Court of India in State of Tamil Nadu -vs- A. Singamuthu [(2017) 4 SCC 113]. We are unable to find any merit in the aforesaid contention raised now for the simple reason that the Government has already regularized the services of the Petitioner and the only dispute raised in the Writ Petition was regarding the date from which the Petitioner was entitled to the benefits of regularization. That apart, as rightly pointed out by the Writ Court, the decision of the Hon'ble Supreme Court of India in State of Tamil Nadu -vs- A. Singamuthu [(2017) 4 SCC 113] related to part-time employees and it was not the case of the Respondents before the Writ Court that the Petitioner was a part-time employee not entitled to the benefit of regularization in terms of G.O. Ms. No. 22, Personnel and Administrative Reforms (F) Department dated 28.02.2006. Apart from the fact that the nature of duties performed by a Night Watchmen has to be full-time, there is nothing shown that the Petitioner was appointed on part-time basis.

6. After the issuance of the order regularizing the service of the Petitioner with effect from 22.05.2012, the Government of Tamil Nadu had itself issued another Governmental Order in G.O. Ms. No. 74, Personnel and Administrative Reforms Department

dated 27.06.2013 in which it had been stated in para No. 6 as follows:-

"6. In supersession of the orders issued in the government order read above, the Government now issue revised orders on regularisation of services of full-time daily-wage employees working in all government departments as detailed below:

- (i) This order shall be deemed to have been come into force with retrospective effect from 1-1-2006.
- (ii) The services of the full-time daily-wage employees who were initially appointed on full-time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and complete 10 (ten) years of service as on 1-1-2006 shall be regularised against regular vacancies in the sanctioned cadre strength.
- (iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed.
- (iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23(a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services;
- (v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularisation;
- (vi) The part-time and casual employees are not entitled to the concession referred to at Para (ii) above;
- (vii) The services of the full-time daily-wage employees who have completed 10 years of service after 1-1-2006 shall not be regularised;
- (viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules against the person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the abovesaid instructions are followed without fail and lapses if any found, responsibility will be fixed against them;
- (ix) All the proposals for regularisation of the services of full-time daily-wage employees should be sent to the Government even in cases where relaxation of rules are not involved."

It could be seen from clause (v) that in cases where relaxation of rules were not involved, monetary benefits have to be allowed with effect from the date of regularization. The relaxation of rules in the case of the Petitioner was only in respect of communal rotation and age limit on the date of issuance of G.O. (Ms.) No. 170, Revenue (Service-8(2)) Department dated 22.05.2012. It is not the case of the Respondents that the Petitioner, who was sponsored through the District Employment Exchange as mentioned in clause (ii), was not within the prescribed age at the time of his initial appointment. Further, he could not be found fault for the non-observance of the communal rotation at that time of regularization and the delay in his regularization till 22.05.2012 could not be attributed to him. In that view of the matter, as the order of the Learned Judge is in consonance with the aforesaid Governmental Orders in G.O. Ms. No. 22, Personnel and Administrative Reforms (F) Department dated 28.02.2006 and G.O. Ms. No. 74, Personnel and Administrative Reforms Department dated 27.06.2013 , we do not find any infirmity to interfere with the same.

7. In the result, the Writ Appeal is dismissed and the Respondents shall file a report of compliance of the order passed by the Writ Court before the Registrar (Judicial) of this Court by 30.06.2019. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Revenue Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Revenue Administration,
Chepauk,
Chennai - 600 006.
3. The District Collector,
Collectorate,
Salem District.

4. The Tahsildar,
Taluk Office,
Attur Taluk,
Salem District.

Copy to

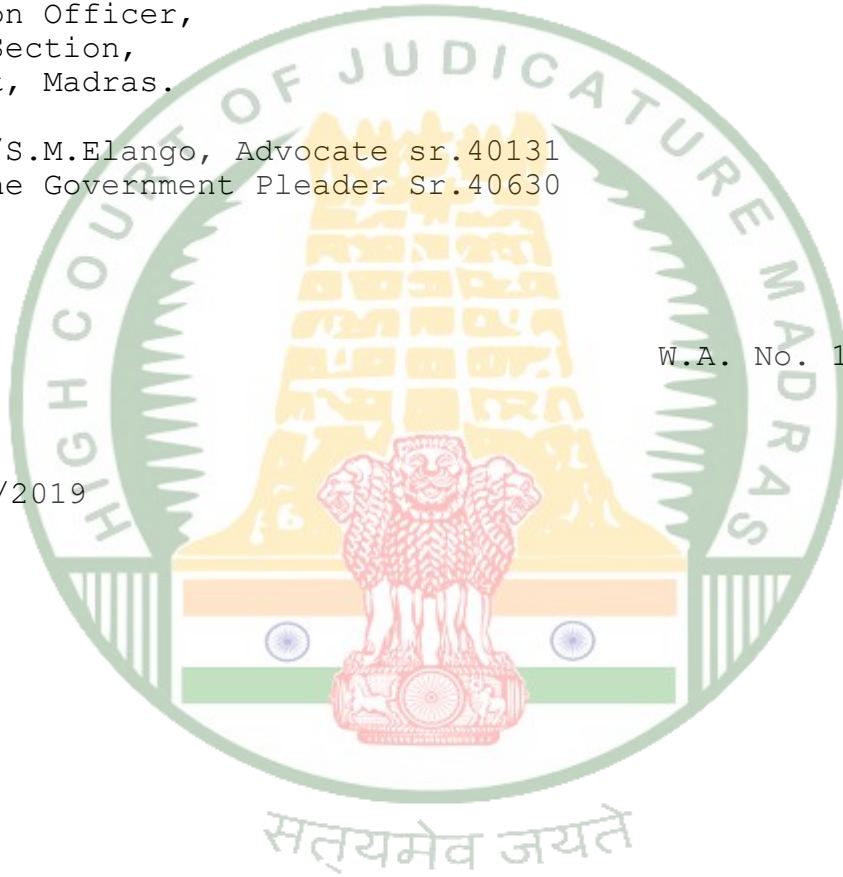
The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

The Section Officer,
Judicial Section,
High Court, Madras.

+lcc to M/S.M.Elango, Advocate sr.40131
+lcc to the Government Pleader Sr.40630

W.A. No. 1472 of 2019

gp[col]
srg 20/05/2019



WEB COPY