

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.3841 OF 2015

Ammakannu

...Petitioner

Versus

1. The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 9.
2. The Director,
Rural Development and Panchayatraj,
Panagal Malligai,
Saidapet, Chennai - 15.
3. The District Collector,
Tiruvannamalai District.
4. The Commissioner,
Panchayat Union,
Peranamallur, Vandavasi,
Tiruvannamalai.
5. The Assistant Director of Rural Development,
(Panchayats) Cheyyar Division,
Cheyyar Panchayat Union,
Cheyyar, Tiruvannamalai.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the fifth respondent in proceedings Roc.No.A6/3849/2014 dated 15.12.2014 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents to regularize the service rendered by the petitioner from May, 1985 till June, 2012 and further direct the respondents to provide the petitioner with retirement and pensionary benefits.

For Petitioner : Ms.R.Poornima
For Respondents : Mr.B.Anand,
Government Advocate

O R D E R

The relief sought for in the present writ petition is to call for the records on the file of the fifth respondent in proceedings Roc.No.A6/3849/2014 dated 15.12.2014 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents to regularize the service rendered by the petitioner from May, 1985 till June, 2012 and further direct the respondents to provide the petitioner with retirement and pensionary benefits.

2. It is the case that the petitioner was worked as Sweeper in the Peramanallur Panchayat Union on daily basis from May, 1985. The writ petitioner's salary was fixed at Rs.50/- and it was raised to Rs.1,500/- per month. Thereafter, it had been revised from time to time. She was retained as Sweeper in the same Panchayat for 27 years but her service was not regularized. She was also asked to do menial work in the Panchayat Office and she carried out all work given by her superiors. Though the petitioner approached her higher officials for regularization of her service, she was not given any assurance of regularization.

2.1 While so, the Government vide G.O.Ms.No.22 Personnel and Administrative Reforms Department, dated 28.02.2006 had directed to regularize the service of those person who were working on temporary basis on their completion of ten years of service in all government department/offices. The services of similarly placed sweepers/sanitary workers in the Education Department Services were also regularized. The petitioner was retired in the month of June 2012, however, she was not given any pensionary benefits.

2.2 After her superannuation, the writ petitioner had been regularly approaching the respondents and sought for regularization of her service with all benefits. On 26.03.2014, the writ petitioner made a written request to the officials, for which, she received a letter dated 28.03.2014 in proceeding Na.Ka.No.A6/1545/2014 stating that her case was recommended for consideration to the fifth respondent. However, no action was forthcoming. Hence, the petitioner filed a writ petition in W.P.No.19378 of 2014 before this Court, seeking to direct the respondents to regularize her service rendered by her from May, 1985 till June, 2012 in the fourth respondent Panchayat herein and further direct the respondents to provide the petitioner

with pensionary benefits. By order dated 03.11.2014, this Court disposed of the said writ petition with a following direction:

"3. Considering the said submission, without going into the merits of the case, the fourth respondent is directed to pass appropriate orders on the proceedings dated 28.03.2014 on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order."

2.3 Thereafter, the fifth respondent vide proceeding Roc.No.A6/3849/2014 dated 15.12.2014 rejected the petitioner's request as devoid of merits. The fifth respondent had further stated that the post of sweeper was not sanctioned and hence, her request cannot be considered. Aggrieved by the order of the fifth respondent, the petitioner has filed the present writ petition for the relief stated supra.

3. The learned counsel for the petitioner submitted that though the petitioner had worked for 27 years in the fourth respondent Panchayat, her service was not regularized and subsequently retired from service. She further submitted that the services of similarly placed persons have been regularized by the Panchayat as per the Government Order except the petitioner. She therefore prayed that the impugned order passed by the fifth respondent is liable to be quashed.

4. The learned Government Advocate appearing for the respondents by reiterating the averments made in the counter affidavit filed by the third respondent, has submitted as follows:

(i) The petitioner was engaged as Sweeper in Peranamallur Panchayat Union in Thiruvannamalai District from May 1985 to June 2012. She was paid daily rated basis at the rate of Rs.60/- per day from Monday to Friday from Panchayat Union General Fund. She was paid in the principle of "No Work No Pay". Since there was no sanctioned post in the fourth respondent Panchayat Union she was disengaged from the year 2012.

(ii) The petitioner's service could not be regularized against a non sanctioned post and pensionary benefits could not be applicable to her as she was a person with daily rated employment as per Rule 2 of the Tamil Nadu Pension Rules, 1978.

(iii) The G.O.Ms.No.22 Personnel and Administrative Reforms Department, dated 28.02.2006 is applicable only to the employees who were put in service as daily rate wages basis for a period of 10 years as on 01.01.2006 and the same is not applicable to the petitioner since she did not worked in a sanctioned post.

Therefore it is the arguments of the learned Government Advocate that the present writ petition is not sustainable in law and same is liable to be dismissed.

5. Heard both sides and perused the materials available on record.

6. As far as this case is concerned, the petitioner had worked in the fourth respondent Panchayat Union on daily wage basis for 27 years. However, till date, her service was not regularized. Even after her superannuation, she made requests for regularization of her service but the same were went in vain. She therefore filed the present writ petition before this Court.

7. While dealing with the case of similar nature in Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and Others reported in (2014) 4 SCC 769, the Honourable Supreme Court held as follows:

"5. The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularized. The issue is no more res integra.

6. In State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806, this Court held as under:

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

7. In Union of India & Ors. v. A.S. Pillai & Ors., (2010) 13 SCC 448, this Court dealt with the issue of regularisation of part-time employees and the court

refused the relief on the ground that part- timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

8. This Court in *State of Rajasthan & Ors. v. Daya Lal & Ors.*, AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is

not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute." (Emphasis added)

9. The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgment. Therefore, the appeals are allowed. However, in light of the facts and circumstances of the case as Shri P.P. Rao, learned senior counsel has submitted that the appellant has already implemented the impugned judgments and does not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected.

10. With the aforesaid observations, the appeals stand disposed of accordingly. No order as to costs."

8. In the light of the order passed by the Honourable Apex Court in Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and Others reported in (2014) 4 SCC 769, this Court is inclined to issue the following directions:

(i) The petitioner is directed to make a fresh representation to the respondents.

(ii) On receipt of such representation, the respondents are directed to consider the same and pass appropriate orders on merits and in accordance with law, as expeditiously as possible.

9. This Writ Petition is allowed with the above directions and the impugned proceeding issued by the fifth respondent is hereby quashed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 9.
2. The Director,
Rural Development and Panchayatraj,
Panagal Malligai, Saidapet, Chennai - 15.
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5. The Assistant Director of Rural Development,
(Panchayats) Cheyyar Division,
Cheyyar Panchayat Union, Cheyyar, Tiruvannamalai.

+1cc to Ms.R.Poornima, Advocate, S.R.No.97685
+1cc to the Government Pleader, S.R.No.98448

W.P.No.3841 of 2015

BP(CO)
CS/20/02/2020