

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.12.2019
CORAM:
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
W.P.No.5529 of 2015

Saraswathy

..Petitioner

Vs

- 1.State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
St. George Fort, Chennai-600 005.
- 2.The Director of School Education,
DPI Compound, College Road,
Chennai-600 006.
- 3.The Chief Educational Officer,
Tiruppur District, Tiruppur.
- 4.The District Education Officer,
Tiruppur District, Tiruppur.
- 5.The Secretary,
P.V.K.N. Higher Secondary School,
Pongalur-638 667, Palladam TK.,
Tiruppur District.

..Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 2nd respondent order dated 15.03.2013 in Na.Ka.No.3051/D1/E2/2013 and quash the same thereby directing the respondents to regularize the petitioner's service from the date of completion of 10 years of the petitioner's service, as per G.O.Ms.No.22 dated 28.02.2006, Personnel and Administrative Reforms Department, with all service and attendant benefits including arrears of pay.

For Petitioner : Mr.X. Selvam Sounder

For Respondents 1 to 4 : Mr.P. Kavitha
Government Advocate

For Respondent-5 : No Appearance

ORDER

This writ petition has been filed by the writ petitioner challenging the impugned order passed by the 2nd respondent/Director of School Education, dated 15.03.2013 in Na.Ka.No.3051/D1/E2/2013 and quash the same, thereby and direct the respondents to regularize the petitioner's service from the date of completion of 10 years of her service, as per G.O.Ms.No.22, dated 28.02.2006, Personnel and Administrative Reforms Department, with all service and attendant benefits, including arrears of pay.

2. The grievance of the writ petitioner is that the writ petitioner was appointed as Part-Time Sweeper in the 5th respondent's school and she had unblemished service in the 5th respondent school as "Part-Time Sweeper" without any interruption or break in service. In spite of completion of 25 years of service in the 5th respondent school, the writ petitioner's service has not been regularized so far. In view of G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, the daily wage employees working in various Government Departments, who have completed 10 years of service, were regularized in their services with all service and attendant benefits. Thereafter, the writ petitioner on 11.05.2012, had submitted a representation to the 2nd respondent, but the 2nd respondent/Director of School Education has rejected her request by order dated 15.03.2013, hence, the writ petitioner has come forward with the present writ petition before this Court.

3. In the counter affidavit filed on behalf of the respondents it is contended that the petitioner viz., Mrs.Saraswathi, was appointed as "Part-Time Sweeper" in the 5th respondent school by the Management. It is submitted that G.O.Ms.No.22, Personal and Administrative Reforms Department dated 28.02.2006 is applicable to regularize the services of the daily wages employees working in all Government Department and who have rendered 10 years of service as on 01.01.2006. It is further submitted that the Government had directed the Heads of Department to regularize the service of the daily wages employees in all Government Department, who have rendered 10 years of services as on 01.01.2006 as ordered in para 2 in G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006. It is also further submitted that the G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006 is applicable only for the Government Officers, not extended to the aided educational institutions. It is further submitted that the writ petitioner is working in P.V.K.N Higher Secondary School, Pongalur, Tiruppur District and it is not a Government Institution. If any vacancy arises in the said

school, the school committee has power to appoint the petitioner if the petitioner has requisite qualification for that vacant post. It is further submitted that whenever any vacancy arose in that school, the Management of the School Committee has right to consider the petitioner's prayer. It is further submitted that the G.O,Ms.No.111, Education Department, dated 09.05.2012 is only applicable to the Part-Time employees working in Government Schools and Government Officers and it is not applicable to the Part-Time employees working in the management schools. It is further submitted that the order passed by the 2nd respondent in RC.No.3051/D1/E2/2013 dated 15.03.2013 is just, fair, legal, proper, not discriminatory and not violative of Article 14 and 16 of the Constitution of India. Hence, the writ petitioner has no legal right for regularization of service in the 5th respondent school. Therefore, the above writ petition is liable to be dismissed.

4. Heard Mr.X. Selvam Sounder, learned counsel appearing for the petitioner and Mrs.P. Kavitha, learned Government Advocate appearing for the respondents 1 to 4 and perused the materials available on record.

5. In the case of Secretary to Government, School Education Department, Chennai, v. R. Govindaswamy and Others, reported in (2014) 4 SCC 769, the Hon'ble Apex Court has allowed the appeal filed by the Government.

6. In yet another decision rendered by the Hon'ble Apex Court in Secretary to Government, Commercial Taxes and Registration Department, Secretariat and Another v. A. Singamuthu, reported in CDJ 2017 SCC 239, it has been held in paragraph Nos.16, 17 and 18 are extracted hereunder:

"16. The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said G.O.Ms.No.22 dated 28.02.2006 and directed the appellants to grant regularization of respondent's service from the date of completion of ten years of service with salary and other benefits. The learned Judge failed to take note of the fact that as per G.O.Ms.No.22, dated 28.02.2006, the services of employees working in various government departments on full-time daily wage basis, who have completed more than ten years of continuous service as on 01.01.2006 will be regularized and not part-time Masalchis like the respondent herein. In G.O.Ms.No.84, dated 18.06.2012, the Government made it clear that G.O.Ms.No.22, dated 28.02.2006 is applicable only to full-time daily wagers and not to part-time daily wagers. Respondent was temporarily appointed part-time worker as per

Tamil Nadu Finance Code Volume (2) Appendix (5) and his appointment was completely temporary. The respondent being appointed as part-time Masalchi, cannot compare himself to full-time daily wagers and seek benefit of G.O.Ms.No.22 dated 28.02.2006. The Single Judge also failed to consider that the Government did not grant regularization of services of any part-time employee on completion of ten years of his service as envisaged under the G.O.Ms.No.22, dated 28.02.2006.

17. The learned Single Judge erred in extending the benefit of G.O.Ms.No.22, dated 28.02.2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned Senior Counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is from 01.04.1999 till the date of his regularization that is 18.06.2012, the financial commitment to the State would be around Rs.10,85,113/- (approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned Senior Counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularized under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularization of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

18. It is pertinent to note that even the regularization of services of part-time employees vide G.O.(Rt.) No.505 Finance (AA-2) Department dated 14.10.2009 and G.O.(2D) No.32 Finance (T.A. 2) Department dated 26.03.2010 was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of Government Orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that G.O.Ms.No.22 P & AR Department, dated 28.02.2006 is applicable only to full-time daily wage employees and

who had completed ten years of continuous service as on 01.01.2006 and not to part-time employees. As per G.O.(Rt.) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside."

7. In the light of the decision cited supra, there is no merit in the writ petition. Hence, the writ petition is liable to be dismissed and accordingly it is dismissed. No order as to costs in this writ petition.

Sd/-
Assistant Registrar(C.O)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
State Government of Tamil Nadu,
School Education Department,
St. George Fort, Chennai-600 005.
- 2.The Director of School Education,
DPI Compound, College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Tiruppur District, Tiruppur.
- 4.The District Educational Officer,
Tiruppur District, Tiruppur.

+1cc to Government Pleader srl06262

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