

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.9073 of 2015
and
M.P.Nos.2 & 3 of 2015

1. J.Manikandan

2. T.Saravanan

3. M.Parameswaran

4. S.KarthikeyanPetitioners

Vs.

1. The State of Tamil Nadu,
Represented by the Secretary to Government,
Rural Welfare (E5) Department,
Fort St.George, Chennai - 9.

2. The Director/Commissioner,
Rural Development and Panchayat Raj
Chennai - 15.

3. The District Collector,
Panchayat Development Wing,
Thanjavur.

4. The Block Development Officer,
Thanjavur Panchayat Union,
Thanjavur.

5. The Block Development Officer,
Orathanadu Panchayat Union,
Thanjavur.

6. The Block Development Officer,
Ammapettai Panchayat Union,
Thanjavur.

7. The Block Development Officer,
Thiruvauyaru Panchayat Union,
Thanjavur.

...Respondents

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 file of the 1st respondent issued in letter No.26220/E5/2014 dated 18.11.2014 and quash the same and consequently, direct the respondents to regularize the petitioner's services.

For Petitioner : Mrs.Selvi George

For Respondents: Mr.R.Govindasamy
Special Government Pleader

O R D E R

The petitioners are aggrieved against the order of the first respondent dated 18.11.2014, rejecting their request for regularization of their service as Road Roller Drivers.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

3. These petitioners were appointed as Road Roller Drivers in 2003, 2006 and 2008 at various Panchayat Union. After continuously working for several years, they sought for regularization of their service based on Government Order passed by the first respondent-Government in G.O.No.126 Rural Welfare (E5) Department dated 16.04.1997. As their request was not considered, they approached this Court and filed W.P.No.20230 of 2012 and sought for Mandamus, directing the respondents therein to regularize their service with effect from the date of their initial appointment. This Court after hearing both sides, dispose the said writ petition on 13.12.2013 by passing the following order:

The prayer in this writ petition is seeking for a Mandamus directing the first and second respondents to regularize the services of the petitioners as Road Rollers Drivers with effect from the date of their initial appointment with all monetary and service benefits.

2. The case of the petitioners is that they are all fully qualified drivers of road rollers and they were working as Road Roller Drivers for several years. They are possessing valid certificates for driving in road roller after underwenting and completing the course on Road Roller operation and Maintenance. Thus, they are fully eligible to be appointed as permanent Road Roller Drivers. However, they are working as Road Roller Drivers on daily

wages. Since they are working for a many number of years only on daily wages, they made a representation to the authorities seeking for regularization of their services. The Government also passed G.O.Ms.No.126, Rural Welfare (E5) Department, dated 16.04.1997 according permission to appoint the persons like petitioners permanently. Thus, the petitioners are also entitled to the same benefit given under the said Government Order. They made a representation last of which on 26.12.2011. Since the said representation was not considered, the present writ petition is filed before this Court.

3. On instructions, the learned Government Advocate appearing for the respondents submits that the relief sought for in this writ petition viz., regularization of the services of the petitioners is under the consideration of the first respondent in pursuant to the Government Order passed already. Therefore, the learned Government Advocate submits that only after a decision is taken by the first respondent, the petitioners will be given the benefit of regularization.

4. Heard the learned counsels appearing on either side.

5. The petitioners herein seek for a mandamus directing the respondents 1 and 2 to regularize their services as Road Roller Drivers. It is the case of the petitioners that their request for regularization is supported by Government Order passed in G.O.Ms.No.126, Rural Welfare (E5) Department, dated 16.04.1997. The learned Government Advocate is also not disputing their eligibility and on the other hand, he submits that the said request is pending before the first respondent. Therefore, I consider that instead of passing order in this writ petition, the first respondent may be directed to consider the case of the petitioners and pass appropriate orders without any further delay.

6. Accordingly, the writ petition is disposed of with a direction to the first respondent to consider the case of the petitioners as Road Roller Drivers and pass appropriate orders in accordance with G.O.Ms.No.126, Rural Welfare (E5) Department, dated 16.04.1997, within a period of eight

weeks from the date of receipt of a copy of this order. No costs.

4. The said order was put to challenge by the respondents in Writ Appeal No.1451 of 2014 before the Division Bench on 07.11.2014, the Division Bench disposed the writ appeal as follows:

Mrs. Selvi George, learned counsel, takes notice for respondents 1 to 4. With the consent of the learned counsel on either side, the writ appeal is taken up for final disposal.

2. This writ appeal is directed against the order dated 13.12.2013 passed by the Writ Court in W.P.No.20230 of 2012.

3. The learned counsel for the respondents 1 to 4/writ petitioners submits that the order in the writ petition was passed based on the submission made by the learned Government Advocate that the concerned Department is already in the process of regularizing the candidates, including the writ petitioners. According to the learned counsel, recording the said submission made by the learned Government Advocate, the writ petition was disposed of with a direction to the first appellant/first respondent to consider the case of the writ petitioners as per G.O.Ms.No.126, Rural Welfare (E5) Department dated 16.04.1997.

4. It appears that the case of the respondents 1 to 4/writ petitioners could not be considered within the specified time, as ordered by the Writ Court.

5. Having considered all aspects of the matter, we deem it fit and proper to extend the time by a further period of three weeks from the date of receipt of a copy of this order, to comply with the order passed by the Writ Court.

6. The writ appeal stands disposed of in the above terms. No costs. Connected Miscellaneous Petition is closed.

5. Thereafter, the present impugned order is passed by stating that these petitioners are not having the requisite qualification/eligibility for regularizing their service. Therefore, the present writ petition is filed by the very same petitioners challenging the order of the first respondent.

6. A counter affidavit is filed reiterating the contentions raised in the impugned order.

7. I have given my careful consideration to the submissions made by both sides and the materials placed before this Court.

8. There is no dispute to the fact that all these petitioners were duly appointed as Road Roller Drivers at their respective Panchayat Union and all of them are continuously working in such post from the date of such appointment. It seems the appointments were made between 2003-2008 and therefore, it is evident that all these petitioners are continuously working for more than 10 years.

9. The first respondent-Government considering the facts and circumstances, warranting the continuation of the post of Road Roller Drivers, issued G.O.No.126 dated 16.04.1997 wherein, it is stated that the Panchayat Unions, which have appointed the Road Roller Drivers on daily wages basis, have to create the Road Roller Drivers post by fixing the scale of pay. While issuing such G.O the first respondent has also relaxed the application of G.O.No.404 dated 16.06.1992. Therefore, it is evident that as per G.O.No.126, the petitioners are entitled to get such regularization of their service.

10. When such being the position, it cannot be stated by the respondents that these petitioners are not having the eligibility, when admittedly these petitioners were appointed to the said post, going by their requisite qualification to the said post. Even otherwise, when these petitioners have approached this Court and filed the earlier writ petition seeking for regularization, the learned Government Advocate, who represented the respondents therein, has specifically submitted before this Court that there is no dispute with regard to the eligibility of the petitioners and that the matter was pending before the Government for its consideration. Only after taking note of such submissions made by the learned Government Advocate, this Court instead of passing the order of regularization in the writ petition, has directed the government to pass appropriate orders without any further delay, that too in accordance with G.O.Ms.No.126 dated 16.04.1997.

11. Therefore, it goes without saying that instead of issuing the positive Mandamus, this Court, directed the first respondent to issue proper order, which means, for giving an order of regularization in the light of G.O.Ms No.126 and also G.O.No.404. When such an order was challenged before the Division Bench, only the time granted by the Writ Court was extended by three weeks to comply with the order. Thus, it is evident that the Division Bench has confirmed the order of the Writ Court and only extended the time to comply with the said order.

12. When such being the order passed by this Court in the writ petition as well as the writ appeal, I find no justification on the part of the first respondent in passing the present impugned order by stating that these petitioners are not eligible to get regularization. It is very unfortunate that the first respondent has totally given a go by to the orders passed by the Writ Court as well as the Division Bench and the findings rendered therein.

13. In my considered view when a direction is issued to the first respondent to pass appropriate orders in accordance with G.O.Ms.No.126, also by taking note of the submissions made by the learned Special Government Pleader that there was no dispute regarding the eligibility of the petitioners, the first respondent is left with no other option except to regularize the service of the petitioners. On the other hand, they have chosen to reject the claim of the petitioners by stating the reasons which are not the reason stated before this Writ Court earlier, especially when they admitted that these petitioners are having the eligibility.

14. Considering the above stated facts and circumstances, I find that the writ petitioners are entitled to succeed and get a positive Mandamus from this Court, since the first respondent has chosen not to comply with the orders passed by this Court earlier. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the first respondent is directed to regularize the service of these petitioners as Road Roller Drivers and issue orders to that effect also by granting monetary benefits arising out of such regularization. Such exercise shall be done by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते Assistant Registrar (AD-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State of Tamil Nadu,
Rural Welfare (E5) Department,
Fort St.George, Chennai - 9.

2. The Director/Commissioner,
Rural Development and Panchayat Raj
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Ammapettai Panchayat Union,
Thanjavur.

7. The Block Development Officer,
Thiruvaayaru Panchayat Union,
Thanjavur.

+1cc to Mrs.Selvi George, Advocate SR.No.40015

+1cc to Government Pleader SR.No.41233

W.P.No.9073 of 2015

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

सत्यमेव जयते

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