

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.32517 of 2016

I.Mani

..Petitioner

Vs

1. State, rep. By
The Secretary
Higher Education (2) Department
Secretariat
Fort St. George,
Chennai-600 009.
2. The Commissioner of Technical Education
Directorate of Technical Education
(Engineering), Guindy, Chennai-600 025.
3. The Principal
Government Engineering College
Salem-11.

..Respondents

Prayer:- This Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to regularize the petitioner's service with effect from 13.07.1987 and pay the arrears thereof in pursuant to the regularization by considering the recommendation of the 3rd respondent dated 07.12.2007.

For Petitioner : Mr.M.Elango

For Respondent : Mr.K.Karhtikyeen,
Government Advocate for R1 to R3

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O R D E R

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents to regularize the petitioner's service with effect from 13.07.1987 and pay the arrears thereof in pursuant to the regularization by considering the recommendation of the 3rd respondent dated 07.12.2007.

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

3. This writ petitioner was appointed as Marker in the third respondent College on 12.08.1977. The first respondent department has sent a proposal to the second respondent recommending for regularization of his service. Though similarly placed persons were regularized by the second respondent, the service of the writ petitioner has not been regularised. Therefore, he made a request to the third respondent to regularize his service. The petitioner made a representation dated 17.03.2010 to the Chief Minister's Special cell and the same was forwarded to the first respondent office for taking action. The first respondent has sent a letter to the second respondent along with the service particulars for regularization of his service. The third respondent, by an order No.3071/C/2009-1 dated 21.08.2009, had enhanced the monthly salary from Rs.4000/- to Rs.5000/- on consolidated basis, as per the recommendation of the panel which constituted to refix his salary. Again, the petitioner's salary was revised from Rs.6000/- to Rs.7000/- with effect from 01.07.2014. The first respondent in G.O Ms.No.314 Higher Education Department dated 02.09.2005 had regularised the service of 37 Markers who were employed in various colleges. One A.Arumugam filed an application before the Tribunal in O.A No.4169 of 2003 seeking for regularization of service of 37 Markers and in the said O.A, on 29.12.2003, the Tribunal had passed an order directing the respondents to regularize the service of Markers. Pursuant to the orders passed by the Tribunal in O.A.No.4169 of 2003, the State Government had filed a writ petition before this Court in W.P No.32811 of 2004 challenging the order and the same was dismissed by this Court on 10.11.2004 by confirming the order passed by the Tribunal. Thereafter, one Mr.S.Sathiyavelan, similarly placed person had filed a writ petition in W.P No.22562 of 2007 before this Court for the similar relief to regularize his service by considering his representation dated 11.04.2007. The first respondent in G.O Ms.No.318 Higher Education Department dated 06.10.2010 had regularized the service of the aforesaid Sathiyavelan in the cadre of Marker. Therefore, the petitioner made a presentation to the respondents on 17.03.2010 seeking to regularize his service. The Government had also passed a G.O No.22, P & AR Department dated 28.02.2006 to regularize the service of the employees working on temporary basis. Service of the similarly placed person, namely V.Madhuraj was regularized by the Government on completion of 10 years of service. The respondents ought to have regularised his service with effect from 13.08.1987. Therefore, the present writ petition is filed by the petitioner to regularize his service.

4. The learned Government Advocate appearing for the respondents contended that the writ petitioner's service has not been considered for the regularization of the service. But, in the counter affidavit, it is stated that in G.O (MS) No.314 of Higher Education (C2) Department dated 02.09.2005, the Marker postings are to be considered as 'Vanishing Post'

and in the future, no secondary Markers can be brought into the regular post. Eventhough, the Director of Technical Education has sent a proposal to Government to bring remaining Markers into the regular post, the Government in Letter No.18738/C/2008-12, dated 20.09.2011, rejected the proposal stating that as per the G.O. No.314, dated 02.09.2005 and G.O.No.319, dated 06.10.2010, the Marker post are to be considered as "Vanishing Post" and in future, no secondary Markers can be brought into the regular postings and all the Markers have been brought into regular postings as per G.O No.314, dated 02.09.2005. Further, the first respondent vide G.O(Ms) No.319, Higher Educational (C2) Department dated 06.10.2010, issued orders appointing Thiru.S.Sathyavelan as Marker in Dr.Dhamambal Government Polytechnic College for Women, Chennai, since no Marker post was sanctioned in that college, in G.O (Ms) No.314, Higher Education (C2) dated 02.09.2005 and whereas in Government College of Engineering, Salem, one post of Marker was already recruited and Thiru.A.Arumugam was appointed on regular basis in G.O (Ms) No.314, Higher Education (C2) dated 02.09.2005. Thus, based on the factors furnished above, the request of the petitioner was rejected.

5. The learned counsel appearing for the petitioner would submit that the aforesaid Arumugam had passed away on 06.03.2005 prior to the issue of G.O Ms.No.314 of Higher Education (C2) Department dated 02.09.2005. The respondents, in the counter affidavit admitted that the aforesaid Arumugam passed away on 06.03.2005 and further stated in the counter affidavit that the writ petitioner Mani is in the next position in Government College of Engineering, Salem as Marker.

6. In view of the aforesaid submission made in the counter affidavit and by considering the decision of the Hon'ble Supreme Court in Secretary to Government, School Education Department, Chennai vs. R.Govindasawamy and others reported in (2014) 4 Supreme Court Cases 769, the respondents are directed to consider the petitioner's representation dated 17.03.2010 addressed to the first respondent. Therefore, considering the aforesaid facts and submission made by the parties, this Court is inclined to pass the following order:

i) This Writ Petitioner is directed to submit a fresh representation by enclosing the additional particulars to the third respondent within a period of two weeks from the date of receipt of a copy of this order.

ii) If any such representation being made within the aforesaid period, the third respondent shall forward the same to the second respondent, namely, The Commissioner of Technical Education, Directorate of Technical Education (Engineering), Guindy, Chennai within a period of four weeks.

iii) Thereafter, the second respondent is directed to file a report along with a copy of the petitioner's representation dated 17.03.2010 to the first respondent, within a period of four weeks.

iv) Based on the report of the second respondent, the first respondent is directed to pass orders in accordance with law, within a period of twelve weeks, thereafter.

7. In fine, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary
Higher Education (2) Department
Secretariat
Fort St. George,
Chennai-600 009.
2. The Commissioner of Technical Education
Directorate of Technical Education
(Engineering), Guindy, Chennai-600 025.
3. The Principal
Government Engineering College
Salem-11.

+1cc to Mr.M.Elango, Advocate, S.R.No. 101115

+1cc to the Government Pleader, S.R.No. 101642

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VD(CO)
GN(22/01/2020)