IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.835 of 2016
and C.M.P.No.10747 of 2016

1.The State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 9.

2.The Director of School Education,
College Road, Chennai - 6.

3.The District Educational Officer,
Nagercoil, Kanyakumari District.

4.The Assistant Elementary Educational
Officer, Nagercoil,
Kanyakumari District.

... Appellants/Respondent

-vs-

Vasantha Kumari

.... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.07.2013 made in W.P.No.17622 of 2013.

W.P.No.17622 of 2013

Petition under Section 226 of the Constitution of India Praying for a writ of Mandamus Directing the 1st and 2nd respondents forthwith to regularize the petitioner service as sweeper in time scale of pay from the date of completion of 10 years of service i.e. on 05.12.1990 and disburse all monetary benefits to the petitioner

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For Appellants : Ms.A.Sri Jayanthi,
Spl. Govt. Pleader

For Respondent : No appearance

JUDGMENT

[Judgment of the Court was delivered by M.M.SUNDRESH,J.]

This writ appeal is directed against the order dated 01.07.2013 made in W.P.No.17622 of 2013, whereby a direction was issued by the learned single Judge to regularise the services of the respondent/writ petitioner by granting scale of pay with monetary benefits, on completion of ten years of service.

2.Heard the learned Special Government Pleader appearing for the appellants. Despite service of notice and the name of the respondent having been printed in the cause list, there is no representation on behalf of the respondent.

3.The respondent was working as part time Sweeper. With the grievance that her services have not been regularised, she has approached this Court. Learned single Judge by placing reliance upon the judgment of the Division Bench in W.A.No.230 of 2009 dated 03.08.2009, was pleased to allow the writ petition with a direction to the first appellant to regularise the services of the respondent by granting monetary benefits on the completion of ten years of service within a period of twelve weeks from the date of receipt of the order. Challenging the same, the present writ appeal has been filed.

4.Learned Special Government Pleader appearing for the appellants would submit that the order of the learned single Judge is contrary to the subsequent decision of the Government in G.O.Ms.No.74 Personnel and Administrative Reforms (F) Department dated 27.06.2013 by which the payment of backwages and regularising the services as a casual employee will have to be reckoned from the date of regularisation alone. In any case, the aforesaid Government Order does not have any application to the case on hand which involves regularisation of part time employee. Reliance has been made on the following decisions of the Apex Court:

(i)State of Tamil Nadu Vs. A.Singamuthu ((2017) 4 SCC 113)

(ii)The State of Bihar and Others Vs. Kirti Narayan Prasad (Civil Appeal No.8649 of 2018 dated 30.11.2018)

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5.We find considerable force in the submission made by the learned Special Government Pleader. Admittedly, the respondent was working as part time Sweeper. Therefore, the Government Order passed in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department dated 28.02.2006 does not have any application. The very same issue has already been dealt with by the Apex Court in State of Tamil Nadu Vs. A.Singamuthu ((2017) 4 SCC 113) and the following paragraph would be apposite:

> 19.It is pertinent to note that even the regularisation 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 Dept. 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 regularising 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.

6.In such view of the matter, the order of the learned single Judge stands set aside and the writ appeal stands allowed. However, in tune with the judgment of the Apex Court, if regluarisation has already been given effect to, then the respondent need not be disturbed. We make it clear that in such an eventuality, the respondent is entitled for the benefits from the date of regularisation alone. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To
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+1cc to the Government Pleader, S.R.No.4544

W.A.No.835 of 2016

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