

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:20.08.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.19667 of 2019

H.Amajathkhan

...Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. By its Secretary,
Environmental and Forest Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Principal Chief Conservator of Forests,
Head of the Forest Department,
Panagal Building,
Saidapet, Chennai - 600 015.

3.The District Forest Officer,
Villupuram Forest Division,
Villupuram.

...Respondents

Prayer: Petition filed under Article 226 of Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 3rd respondent in Na.Ka.No.8061/ 2018/Pa1 dated 14.06.2019 and quash the same as illegal, incompetent and ultravires and consequently direct the respondents to regularize the service of the petitioner as driver from the date of his initial appointment i.e. 01.12.1997.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.G.B.Rajesh

Government Advocate (Forest)

ORDER

The petitioner was appointed as Jeep Driver in the Forest Department on 01.12.1997. According to him, he was continued in service without any break. Since he has been continued in service and serving the department on regular basis, the petitioner was hoping that his service will be regularised at some time. While so, the State Government has issued G.O.No.22,

P & AR Department, dated 28.02.2006 providing for absorption of employees who were working in various departments on temporary basis and who have completed 10 years of service as on 02.01.2006. In pursuance of the same, the Forest Department has issued G.O.(Ms).No.95, Environment and Forest (FR-II) Department dated 07.08.2009 regularising the service of plot watchers/social forestry worker on completion of 10 years of their service on daily wages in the supernumerary post. As per the said G.O., the Conservators of the Forests and the District Forest Officer in the respective region were requested to verify the watchers and drivers from the records available with them for the purpose of regularising their services in the regular time scale of pay.

2.In view of the development as above, the petitioner appears to have sent a detailed representation on 22.09.2017 to the respondents seeking regularisation of his service based on the above mentioned Government Orders. Since his representation was not disposed of, the petitioner was constrained to approach this Court in W.P.No.17784 of 2018 and the writ petition was disposed of on 31.01.2019 directing the respondents to consider his representation in the light of the order passed by this Court in W.P.(MD).No.11106 of 2013 dated 01.12.2016 and W.P.Nos.19456 to 19458 of 2013 dated 04.09.2017 within a period of eight weeks.

3.In pursuance of the above direction, the 3rd respondent had passed an order on 14.06.2019 rejecting the claim of the petitioner herein on the ground that he has not completed 10 years of service on 01.01.2006 in terms of G.O.22 dated 28.02.2006.

4.Mr.R.Jayaprakash, learned counsel for the petitioner would submit that the issue of regularisation of daily wage employees in the Forest Department has been settled in favour of the employees repeatedly by this Court. He would straightaway draw the attention of this Court a detailed order passed by this Court on 15.12.2017 in W.P.No.22740 of 2010. This Court, considering similar claim, has passed a detailed order by referring to the earlier decisions and allowed the claim of the petitioner therein. The objection has raised before this Court in the present writ petition have also been considered and the same was discountenanced. The consideration of the order passed by this Court in the said writ petition, as found in paragraphs 6 to 12, are extracted hereunder:

"6. In the counter, it is stated that in para-4, it is admitted that the petitioner had been employed as driver and has been continued till date. First of all, in the counter affidavit, it is stated that he

was engaged on daily wages and therefore, not covered under any service rules. The petitioner having already approached this Court seeking regularization and the writ petition having been disposed of by directing the authorities concerned to consider the representation and the same having been considered as rejected, he cannot seek the same prayer in this writ petition.

7. Per contra, learned counsel for the petitioner would submit that admittedly, the petitioner continued as driver in service from 1997 as on date, many of the drivers who were appointed like the petitioner had been regularised on obligation of G.O.Ms.No.22, P & A R Department, dated 28.02.2006, on the basis of the direction issued by this Court. Learned counsel for the petitioner relied upon the decision by this Court in W.P.No.19465 to 19458 of 2013 dated 04.09.2017 wherein this Court has considered the similar claim of the drivers employed in the Forest Department and allowed the writ petition on the basis of earlier orders passed by this Court by the learned Single Judge as well as the Division Bench. The order passed by this Court in the above said writ petition, in regard to the facts and conclusion were in found in para 3 to 10 are extracted below:

"3.The case of the petitioners is as follows:

The petitioners were appointed as Driver on 27.07.1998 and 04.11.1998, in Dharmapuri Forest Division. According to the petitioners, they were appointed through Employment Exchange and they have been working continuously as Driver from the date of initial appointment till the date of filing the writ petitions and also till today.

4.It appears that the petitioners have approached this Court earlier and obtained certain directions to dispose of the representations for regularising their services but unfortunately, the claim of the petitioners was rejected by the second respondent on 07.10.2008. In the writ petition Numbers 19456 and 19457 of 2013, the first respondent passed an order on 09.05.2013, rejected the claim for regularisation on the ground that they have not completed 10 years of service as per the G.O.Ms.No.22 of P & A R Department dated 01.01.2006. The other writ petitioner case (W.P.No.22 of 2013) has not been rejected this Court seeking issue of Writ of Mandamus for regularisation of his service.

5.The sum and substance of the writ petitions is that the rejection of the request for regularisation as per G.O.Ms.No.22 of P & A R Department, dated

01.01.2006, is invalid and cannot be countenanced in law. According to the learned counsel appearing for the petitioners, one of the Drivers, viz., S.Murugan, whose claim was also rejected under the same impugned order dated 09.05.2013, has approached this Court in W.P.(MD) No.11106 of 2013, wherein, this Court by order dated 01.12.2016, allowed the writ petition by quashing the same impugned order, insofar as the petitioner is concerned, held that the petitioner therein is entitled to regularisation from the date of initial appointment on completion of ten years of service on that date.

6. Upon notice, learned Additional Government Pleader entered appearance and submitted that the petitioners herein are not entitled to regularization since they had not completed ten years of service as on 01.01.2006, in terms of G.O.Ms.No.22 of P & A R Department, dated 01.01.2006.

7. At this, the learned counsel appearing for the petitioners would submit that the said objection was also raised in respect of the other driver who was approached this Court earlier in W.P.(MD) No.11106 of 2013 and this Court in the said order dated 01.12.2016, had repulsed and over ruled such argument stating that the petitioner therein was entitled to regularization on completion of ten years of service from the date of his initial appointment. The learned counsel for the petitioner would further submit the order passed by the learned Single Judge was confirmed in W.A.(MD).No.686 of 2017, vide order dated 12.07.2017.

8. Since the petitions herein are squarely covered by the order passed by this Court as aforesaid, this Court cannot take a different view in the matter. Moreover, the objection raised by the learned counsel appearing for the respondents was considered and overruled and therefore, the similar objection which is raised by the learned counsel for the respondents cannot be entertained as being valid and substantive.

9. In view of the above submissions, this Court has no hesitation in allowing these writ petitions and the impugned order passed by the first respondent dated 09.05.2013, insofar as the two petitioners are concerned, are set aside and all the petitioners are directed to be regularised from the date of completion of ten years from the date of initial appointment with all attendant and consequential benefits. The direction shall be complied with by the first respondent within a period of two months from the date of receipt of a copy of this order.

10. With the above direction, the writ petitions are allowed. No costs. Consequently, connection miscellaneous petitions are closed."

8.Learned counsel for the petitioner would submit that the above said order is a valid one.

9.At this, the learned Additional Government Pleader appearing for the respondents would submit that in the instant case, the petitioner was not recruited by the Employment Exchange. Therefore, he cannot seek a direction whatsoever in the above orders. The said submissions on behalf of the respondents is unacceptable for the reason that the petitioner having been appointed by the respondent administration and extracted the work admittedly till date for nearly 20 years, it is not open to the respondents to raise an issue of sponsorship of employment exchange. Moreover, as particularly pointed out by the learned counsel for the petitioner that the issue is directly covered by the orders passed by the learned Single Judge as well as Division Bench as found in the observations made in the aforesaid decision by this Court on 04.09.2017.

10.In view of issue being covered in the above said orders, this Court cannot take a different view in the instant case and therefore, this Court has no hesitation in allowing the writ petition and the impugned order Pro. C.No.52469 of 2008 S2 dated . 03.2009 (Singed on 16.04.2009) is set aside and with a consequential direction to the respondents to regularise the service of the petitioner as driver from the date of petitioner's initial appointment with all attendant and consequential benefits.

11.It is also made clear that on such regularization, the petitioner is not entitled to arrears of different wages however, he is entitled to other service benefits as fixed. The said direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this order.

12.In view of the above observations and directions, this Writ petition stands allowed. No costs."

5.Thereafter, the matter was taken on appeal by the Department in W.A.No.2796 of 2018 and the Division Bench of this Court dismissed the Appeal on 02.01.2019 thereby confirming the order passed by this Court. The operative portion of the observations made by the Division Bench of this Court, as found in paragraphs 8 to 11, are extracted hereunder:

"8.Perusal of paragraph No.7 of the judgment,

dated 4.9.2017, made in W.P.Nos.19465 to 19458 of 2013, would show that the learned Single Judge has relied on an earlier order of this Court, in W.P.(MD) No.11106 of 2013, wherein, similar objections by the State Government have been over ruled by the learned Single Judge and the said order has been affirmed by a Hon'ble Division Bench of this Court, in W.A.No.686 of 2017, dated 12/7/2017. It has been brought to out notice that as against the judgment of the Hon'ble Division Bench, made in W.A.No.686 of 2017 SLP filed has been dismissed by the Hon'ble Supreme Court, in SLP (Civil) Diary No.29276 of 2018, on 4/9/2018. It is also brought to our knowledge that the Principal Chief Conservator of Forests, vide Letter No.S2/20972/2014, dated 25/5/2018, has already made a recommendation to the Government to regularise the services of 34 drivers which includes the name of the petitioner herein.

9.It is not appropriate on the part of the appellants, to move for regularization of the respondent herein, and at the same time, challenge the order of regularization, passed by the learned Single Judge. This conduct of the Government is not appreciated.

10.In view of the fact that recommendation has already been made to regularise 34 drivers including the petitioner, as a special case, and in view of the fact that similarly placed persons have been granted with the benefit, by the Government and the Supreme Court has also not thought it fit, to entertain the SLP against the order dated 12/7/2017, passed by the learned Division Bench, in Writ Appeal No.686 of 2017, we do not deem it necessary to set aside the judgment of the learned Single Judge.

11.In view of the above, Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed."

6.The learned counsel would also submit that as against the order passed by the Division Bench of this Court in W.A.No.2796 of 2018, Review Application No.115 of 2019 was filed and the same was dismissed, by clarifying as under:

"5.Order made in W.P.No.22740 of 2010, dated 15.12.2017, is to regularise the respondent, as driver, from the date of his initial appointment. He was found eligible for regularization on completion of 10 years of service. Therefore, directions have been issued to regularise his services on completion of 10 years, but from the date of initial appointment.

6.In the light of the above discussion and

decisions, we are not inclined to review the order made in W.A.No.2796 of 2018, dated 02.01.2019. Accordingly, the review application is dismissed."

7. Therefore, the learned counsel would submit that the issue has been settled. He would also draw the attention of this Court to the proposal of the 2nd respondent dated 08.11.2011 in which the name of the petitioner is found at Serial No.9 along with the name of the other petitioners, who were covered by the above said decision of the learned Single Judge, which was confirmed in the writ appeal. Therefore, in all fours, the claim of the petitioner is liable to be allowed.

8. Per contra, the learned Government Advocate appearing for the respondents would submit that as per G.O.22, P & A.R. Department, dated 28.02.2006, he ought to have been completed 10 years as on 02.01.2006 and this petitioner has not completed 10 years of service and therefore, his claim could not be considered for regularisation.

9. This Court is unable to appreciate the stand of the Department when the fact of the matter is that the petitioner has been appointed as early as 1997 and continued in service till date. In fact, when the 2nd respondent himself has thought fit to send a proposal for regularisation of the service of the petitioner herein along with few others, who are eligible for such conferment of benefits under the G.O.22 dated 28.02.2006, it does not lie in the mouth of the respondent department to take a different stand that the petitioner has not completed 10 years of service as on 01.01.2006. As rightly contended by the petitioner, the issue of regularisation of the employees employed in the Forest Department in the State of Tamil Nadu is no more res integra for the reason that the decision passed by this Court has been confirmed in the Appeal and against which, a review was filed and the review was also rejected and therefore, the issue of regularisation has come a full circle and in the light of the decisions as aforementioned, the respondents cannot have any objections for regularisation of the petitioner herein as well.

10. Once the Department has extracted work from the petitioner from more than 21 years, it is opposed to fair play, equity and good conscience to deny the regularisation only on the specious ground that he was appointed in 1997 and has not completed 10 years of service as on 01.01.2006, he was not employed through Employment Exchange. Such ground is no more open to the Department to urge in view of the orders passed by this Court overruling such objections. The other objections raised by the Department in regard to non-completion of 10 years is also without any substance or basis, since the 2nd respondent

himself has recommended the case for regularisation as far as the petitioner herein is concerned along with others in terms of G.O.22, P & AR Department, dated 28.02.2006. Therefore, this Court is of the view that in all fours, the petitioner has made out a case for grant of relief.

11.In the said circumstances, the Writ Petition is allowed. The impugned order passed by the 3rd respondent in Na.Ka.No.8061/2018/ Pa1 dated 14.06.2019 is hereby set aside and the respondents are directed to grant the benefit of regularisation of the petitioner from the date of his initial appointment and grant him all attendant benefits except for the differential wages for the period in question. The respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

Sgl

To

- 1.The Government of Tamil Nadu,
The Secretary,
Environmental and Forest Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Principal Chief Conservator of Forests,
Head of the Forest Department,
Panagal Building, Saidapet, Chennai - 600 015.
- 3.The District Forest Officer,
Villupuram Forest Division,
Villupuram.
- 4.The Government Advocate,
High Court, Madras.

+1 cc to the Special Government Pleader(Forest) sr71839
+1 cc to Mr.R.Jayaprakash Advocate sr71415

W.P.No.19667 of 2019

aa21/10/2019