

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.19575 of 2019

G.Babu

.... Petitioner

Versus

1.The Government of Tamil Nadu,
rep. by Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai-600 009

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

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Mandamus to direct the respondents to regularise the service of the petitioner as Driver from the date of initial appointment i.e., 01.10.2004 with all consequential service and monetary benefits.

For Petitioner : M/s.T.Dharani

For R1 &2 : Mr.S.V.Vijay Prashanth, AGP

ORDER

This Writ Petition has been filed seeking for issuance of a Mandamus to direct the respondents to regularise the service of the petitioner as Driver from the date of initial appointment i.e., 01.10.2004 with all consequential service and monetary benefits.

2. The case of the petitioner is that the petitioner was appointment as Driver in respondent Department on 01.10.2004. The second respondent forwarded the service details of the petitioner to the first respondent on 02.02.2015 for the purpose of regularising the service of the petitioner. Subsequently, an another proposal was also sent on 27.01.2016 by

the second respondent to the first respondent. Since no action was taken on the proposals, the petitioner is before this Court seeking for issuance of a Mandamus to direct the respondents to regularise the service of the petitioner as Driver with effect from the date of his initial appointment i.e., 01.10.2004 with all consequential service and monetary benefits.

3. Heard, Ms.T.Dharani, learned counsel appearing for the petitioner and Mr.S.V.Vijay Prashanth, learned Additional Government Pleader appearing for the respondents.

4. The learned counsel for the petitioner would submit that the issue involved in the present case is squarely covered by the several decisions of this Court both by the learned Single Judges as well as the Division Bench wherein, this Court has consistently directed for the regularisation of the petitioners therein who are identical to that of the petitioners herein for regularisation in the respondent department. One such a detailed order passed by the learned Single Judge of this Court was referred to and relied on by the learned counsel for the petitioner herein in a batch of writ petitions in W.P.Nos.2650, 2654 of 2019 etc batch dated 12.06.2019 in the case of (B.Prakash and 9 others Vs. The Secretary to Government, Environment and Forest Department, Chennai 9 and others). The above said order of by this Court is squarely covered by the claim of the petitioner herein. This Court considered the submissions made on behalf of the respondent Department and yet allowed the claim of the petitioners therein. It is relevant and useful to extract the entire order passed by this Court as the reasonings and observations setforth in the said order are also covered by the present claim as well. Paragraph nos.2 to 12 of the order dated 12.06.2019 is extracted hereunder:

'2. All the writ petitioners herein were appointed as Drivers in the Respondent Department on various dates in 2000, 2001, 2003 and 2004. Ever since their appointment, all of them have been continued in service without any break. In regard to regularization of their services, a proposal has been mooted and forwarded to the Competent Authority namely the first respondent. The service details and other connected particulars were also forwarded to enable the Competent Authority to regularize the services of the petitioners, since they have been employed for a quite long number of years continuously without any break.

3.While the issue of regularization of these writ petitioners is pending under

consideration at the hands of the Competent Authority, one of the Drivers, Viz., S.Murugan, who was identically placed like these petitioners, approached the Madurai Bench of this Court in W.P.(MD) No.11106 of 2013, seeking regularization of service. A learned Judge of this Court vide his order dated 01.12.2016, allowed the writ petition and observation of the learned Judge and ultimate direction as found in Paragraph Nos. 7 to 9, which are extracted hereunder:

''7.The primary and core issue is that whether the petitioner is entitled to regularization or not? The petitioner is been inducted into service on 15.10.1997 and still discharging his duty which is not denied by the respondents which will prove that the petitioner is in continuous employment and his service is essential and indispensable one. The second respondent while sending the proposal has categorically held that the petitioner has put in 13 years and 8 months of service and also sought for relaxation of rules in order to regularise his service. But, the first respondent has rejected the proposal on the sole ground that they not completed 10 years of service as on 01.01.2006 vide G.O.Ms.No.22, P & A.R. Department dated 28.02.2006 but there is no reply or refusal in regard to the extension of the benefit given to others by the Government Advocate.

8.After utilising the petitioners service for more than 13 years and still utilising as on date is shocking the conscious of this Court. Further, the respondents are liable as they have extracted the service of the petitioner and based on principles of promissory estoppel and legitimate expectation, the impugned order is liable to be quashed in so far as the petitioner is concerned. Further the petitioner

is not entitle to the regularization from the date of initial appointment but only from the date of completion of 10 years of service.

9. In the result:

(a) the writ petition is allowed by setting aside the impugned order passed by the 1st respondent in his proceedings in Letter No.15393/tdk;&:-2/2012-9 dated 09.05.2013, so far as the petitioner is concerned;

(b) the respondents are hereby directed to regularize the service of the petitioner from the date of completion of 10 years service and pay back all the service and monetary benefits to the petitioner;

(c) the respondents are directed to complete the said exercise within a period of three months from the date of receipt of a copy of this order. No costs.'

4. Against the order of the Single Judge, the Department has filed W.A.(MD) No.686 of 2017, but a Division Bench of this Court vide its order dated 12.07.2017, dismissed the appeal after observing as under:

3. Even though the appellant is right in contending that as on 01 January 2006, the writ petitioner had not completed 10 years and therefore he cannot avail the benefit in terms of G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28 February 2006, we are still not inclined to interfere with the order passed by the learned Single Judge. We note that in similar cases, the Government had granted relaxation and regularized such services. For instance in G.O.Ms.No.3., Environment and Forest Department, 2013, dated 10 January 2013, the services of as many as 14 persons who were working in the appellant department were regularized. In fact the said 14 persons had completed 10 years only as on 01 January 2011. It is not the case of the appellant that the

writ petitioner had gained back door entry.

4. Admittedly, he had been in service right from 15 October 1997. There is no break in service. To deny the benefit of the regularization to an employee, who had completed 19 years as on date would not be just or equitable. Taking into account the special circumstances obtaining in this case, we do not wish to interfere with the order of regularization made in favour of the respondent herein.

5. Thus, the appeal is therefore dismissed. No costs. Consequently, the connected miscellaneous petition is closed.?

5. Following the above orders passed by the Single Judge and also by the Division Bench, this Court in W.P.Nos.19456 to 19458 of 2013, passed similar orders on 14.09.2017. The relevant portion of the observation of this Court and the eventual direction as found in Paragraph Nos.5 to 10, which are extracted hereunder:

'5. The sum and substance of the writ petitions is that the rejection of the request for regularization 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 regularization 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 over ruled and therefore, the similar objection which is raised by the learned counsel for the respondents cannot not 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, connected miscellaneous petitions are closed.''

6. The order passed by this Court in the above writ petitions was taken on appeal in W.A.Nos.1842 to 1844 of 2018, the appeals were disposed of confirming the order.

7. Thus, in all fours, the claim of the writ petitioners herein are squarely covered by the above decisions and issue of the regularization is no more res~integra as far these petitioners are concerned and it is not open for any adjudication further.

8. The learned counsel appearing for the petitioner would submit that these writ petitioners are identically placed and hence entitled to succeed in view of the above decisions of this Court both by Single Judge as well as by the Division Benches.

9. The learned counsel appearing for the Respondent Department would submit that the issue of regularization of Drivers has to be addressed on a case to case basis and therefore, he would submit that no blanket relief to be granted to these writ petitioners. However, the learned counsel is not in a position to dispute the applicability of the above decisions to the factual matrix of the present cases as well. The fact of continuous employment of writ petitioners as Drivers, since their initial appointment is not in dispute and the identical placement of these writ petitioners with that of other writ petitioners who were covered by the above mentioned decisions is also not in dispute. Therefore, this Court cannot take a different view in this matter as any other view than the view taken by this Court in the aforementioned matters would be per se discriminatory and cannot meet the Constitutional standard of equality before law.

10. In the above said circumstances, all the writ petitions are allowed.

11. The respondents are directed to regularize the services of these writ petitioners as Drivers from the date of initial appointment of the respective writ petitioners with all consequential and attendant benefits. The direction shall be complied with by the first respondent or any other Competent Authority within a period of eight weeks from the date of receipt of a copy of this order.

12. Accordingly, all the writ petitions stands allowed. However, there shall be no order as to costs.'

5. Therefore, the learned counsel would submit that the issue of grant of regularisation is no more res integra as far as the respondent department is concerned.

6. The learned Additional Government Pleader appearing the respondent Department has not disputed on the views taken by this Court consistently in respect of regularisation of the employees in the respondent Department. According to him, the orders passed by this Court have been implemented in so far as those petitioners covered under various decisions of this Court and the petitioner was not a party in any of the earlier proceedings before this Court.

7. In view of the above situation, the present Writ Petitioner cannot be treated differently or he is identically placed in all fours and the same relief is to be granted to the petitioner herein as to that of the petitioners therein in the above said Writ Petitions.

8. In the said circumstances, the Writ Petition is allowed. The respondents are directed to grant the benefit of regularisation to the petitioner with effect from the date of his initial appointment i.e, 01.10.2004 with all consequential service and monetary benefits which are granted to the other petitioners who are covered under the above cited decision of this Court, which is extracted above. 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/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government of Tamilnadu,
Environment and Forest Department,
Secretariat, Chennai-600 009

2.The Principal Chief Conservator of Forest,
Head of the Forest Department,
Panagal Maligai, Saidapet, Chennai 15.

+lcc to Mr.T.Dharani, Advocate, S.R.No.71861

+lcc to the Special Government Pleader(Forest), S.R.No. 71844

W.P.No.19575 of 2019

KK(CO)
GN(18/10/2019)



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