

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.29772 of 2014

V.Selvakumar

... Petitioner

Vs.

1.The Secretary,
Government of Tamil Nadu,
Agricultural Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner cum
Director of Agricultural,
Chepauk,
Chennai - 600 005.

3.The Joint Director of Agriculture,
Thiruvavur.

4.The Assistant Director of Agriculture,
Thiruthuraiipoondi,
Thiruvavur District.

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent Nos.1 and 2 to regularize the service of the petitioner from his initial date of appointment and grant all consequential monetary and service benefits.

For Petitioner : Mr..Aananthi

For R1 to R4 : Mr.B.Anand
Government Advocate

O R D E R

The petitioner has filed the Writ Petition praying to issue a WRIT OF MANDAMUS, directing the respondent Nos.1 and 2 to regularize the service of the petitioner from his initial date of appointment and grant all consequential monetary and service benefits.

2. According to the learned counsel for the petitioner, the petitioner herein engaged as Mazdoor cum Watchman by the Department on 21.04.1993 at the office of the State Seed Farm under the direct control of the fourth respondent. The petitioner has been in service for more than twenty years without any break and therefore, the petitioner is seeking for regularization and regular scale of pay. The petitioner also relied upon the Government Order in G.O.(P) No.86 Agri Department dated 03.03.1999 on relaxing the rules relating to age, appointment through Employment Exchange and educational qualification i.e., Rule 4(a), 5(1) and 23(a)(ii) of Tamil Nadu State and Subordinate Service Rules.

3. The learned counsel for the petitioner further submitted that on a similar case this Court has passed an order dated 21.11.2013 in W.P.No.31349 of 2013, wherein this Court has directed the Government to regularize the service of the petitioner. In the light of the above W.P.No.31349 of 2013, this petitioner has filed the present writ petition seeking for regularization of the service of the petitioner from the initial date of appointment and other benefits.

4. The learned Government Advocate submits that the petitioner's service cannot be considered for regularization and he relied upon Judgment of The Hon'ble two Judges of the Supreme Court of India in the case of Secretary to Government Vs. R.Govindasamy and others reported in [(2014) 4 SCC 769] reiterated that exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization have been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant post and the relevant paragraph No.8 is extracted as under:

8. This Court in State of Rajasthan v. Daya Lal [State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340 : AIR 2011 SC 1193] has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under: (SCC p. 435, para 12)

"(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent

continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are

not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

5. Therefore, in the light of the aforesaid Judgment, the relief sought for by the petitioner cannot be considered and it is open to the petitioner to make a representation to the authority concerned. If, any such representation is received by the authorities, the same shall be considered on merits and in accordance with law, as expeditiously as possible, by taking note of the decision rendered by the Hon'ble Supreme Court of India in the case of Secretary to Government Vs. R. Govindasamy and others cited supra.

6. With the above liberty, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

ah
To

- सत्यमेव जयते
1. The Secretary,
Government of Tamil Nadu,
Agricultural Department,
Fort St. George,
Chennai - 600 009.
 2. The Commissioner cum Director of Agricultural,
Chepauk, Chennai - 600 005.
 3. The Joint Director of Agriculture,
Thiruvapur.
- WEB COPY

4.The Assistant Director of Agriculture,
Thiruthuraipoondi,
Thiruvarur District.

+1 cc to M/s.T.Aananthi, Advocate Sr.No.27244
+1 cc to The Government Pleader, Sr.No.20977

W.P. No.29772 of 2014

SV(CO)
CSL/28.06.2019



WEB COPY