

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/9/2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

Writ Appeal No.3264 of 2019

1. The Secretary to Government
State of Tamil Nadu
Agriculture Department
Chennai 600 009.

2. The Director of Agriculture
Chepauk
Chennai 600 005.

3. The District Collector
Salem
Salem District.

... Appellants

Vs

K. Manickam

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 11/1/2019 made in W.P.No.4116 of 2017.

Prayer in WP.No.4116 of 2017 :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to calling for records of the first respondent in order G.O.(2D) No.36 dated 13.06.2014 to quash the service in so far as it restrict the regularization of the petitioner to commence from the date of completion of 10 years and direct the respondents with consequential benefits arrears of salary payable to the petitioner pursuant to his regularization service.

For appellants ... Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

For respondent ... Mr.M.Vaidyanathan

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J)

Being aggrieved by the order, made in W.P.No.4116 of 2017, dated 11/1/2019, directing regularisation of services of the respondent, from the date of completion of ten years of service, with other monetary benefits, instant appeal is filed, on the following grounds:-

(i). Writ Court has failed to note that G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 26/2/2006 states to bring the daily wage employees who have completed ten years and above of service as on 1/1/2006 into regular establishment.

(ii). Writ Court has failed to note that in supersession to the aforesaid Government Order, G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27/6/2013 has been issued stipulating conditions that for bringing a daily wages employee into regular establishment, which inter alia states that he has to be engaged through Employment Exchange by following the method of recruitment in force and has to complete 10 years of service as on 1/1/2006. Person who has not satisfied the above conditions cannot be brought into regular establishment. This Government Order was given effect from 1/1/2006.

(iii). Writ Court has failed to note that the respondent was engaged as a NMR on daily wage basis and the government, first appellant herein have regularised the services of the respondent, w.e.f., 13/6/2014 vide G.O.Ms.No.(2D) No.36, Agriculture (AA.4-1) Department, i.e., by relaxing the rules namely Rule 4 (a) and 5 (1) of the Tamil Nadu Basic Service Rules regarding the mode of selection and age of the respondent.

(iv). Writ Court has failed to consider the observations of the Hon'ble Supreme Court of India in a catena of cases that a daily wage employee cannot insist for regularisation from the date of engagement. In other words, he has no vested right for regularisation retrospectively as he has not engaged as per rules.

2. Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader made submissions on the above grounds.

3. Heard Mr.M.Vaidyanathan, learned counsel for caveator.

4. By referring to the date of appointment of the respondent (26/6/1989), as watchman, on daily wages and on completion of ten years of service, on 26/6/1999, in W.P.No.4277 of 2006, direction was granted by a learned Single Judge of this Court to consider the proposals already sent for regularisation

of the employees, who were working on daily wage basis and put in ten years of service, as on 1/1/2006 and directed the Principal Secretary to the Government, Agriculture Department, to pass orders, as expeditiously as possible, but not later than four months, from the date of receipt of a copy of the said order. Mr.M.Vaidyanathan, learned counsel for the respondent further submitted that appellants have delayed regularisation and G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27/6/2013, has been issued subsequent to the order of the learned Single Judge, made in writ petition.

5. Placing reliance on G.O.Ms.390, Agriculture (V.N.4) Department, dated 22/12/2006, Mr.M.Vaidyanathan, learned counsel for the respondent submitted that Government having issued the above said G.O., relaxing the rules, pertaining to age and method of recruitment (Employment Exchange), cannot turn around and contend that regularisation can be given effect only from the date of passing of the order as done in G.O.Ms.No.2 (D) No.36, Agriculture {AA4 (1)} Department, dated 13/6/2014.

6. During the course of hearing, when this Court posed a question as to whether the respondent would be satisfied, if regularisation is ordered, from the date of issuance of G.O.Ms.No.22/2006, as done in the case of Mr.R.Subramani and Mr.R.Thangavel, who were directed to be regularised, with effect from 22/12/2006, with all monetary benefits, Mr.M.Vaidyanathan, learned counsel for the respondent accepted the said suggestion. Submission of the learned counsel for the respondent is placed on record.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. Indisputably, respondent was initially appointed, on 26/6/1989, as watchman, on daily wages and completed ten years of service, on 25/6/1999. When his services were not regularised, he filed O.A.No.1696 of 2003, which has been subsequently transferred to this Court and renumbered as W.P.No.4277 of 2006. On 21/3/2011, W.P.No.4277 of 2006 has been disposed of as hereunder:-

"2. On this day, when the matter came up for hearing, learned Government Advocate has brought to the notice of this Court that the Director of Agriculture, Chennai, second respondent herein, in his letter, dated 10/12/2010, has sent proposals to the Principal Secretary, Agricultural Department, Secretariat, Chennai, first respondent herein, for

regularisation of the service of the employees, employed on daily wage basis. He also submitted a list of persons, who had completed 10 years of service as on 1/1/2006, in which, the name of the petitioner has been included at Sl.No.18. The proposal dated 10/12/2010 shall form part of the record.

3. From the above list, it is found that the petitioner has joined the Agricultural Department as Watchman on daily wage basis on 26/6/1989 and completed 10 years of his service on 25/6/1999 and worked uninterruptedly. As the proposals are said to be pending before the Principal Secretary to the Government, Agricultural Department, Chennai, first respondent, since 10/12/2010, this Court is inclined to direct the first respondent to pass final orders as expeditiously as possible, not later than four months from the date of receipt of a copy of this order."

9. Since the respondent had completed 10 years of service, as on 1/1/2006, in the proposal sent for regularisation, his name was included. Therefore, in W.P.No.4277 of 2006, dated 21/3/2011, writ Court, directed the Principal Secretary to the Government, Agriculture Department, first respondent, therein, to pass orders, on the proposals, which resulted in passing of G.O.(2D) No.36, Agriculture {AA4 (1) Department}, dated 13/6/2014.

10. W.P.No.4116 of 2017 has been filed for issuance of a writ of certiorarified mandamus, to call for the records of the Secretary to the Government, State of Tamil Nadu, Agricultural Department, Chennai, first respondent therein, in G.O (2D) No.36, Agriculture {AA4 (1) Department}, dated 13/6/2014, to quash the same, insofar as it restricts regularisation of the writ petitioner to commence from the date of completion of 10 years and to direct the respondents therein, with consequential benefits, arrears of salary, payable to the petitioner pursuant to his regularisation of service.

11. G.O.2D No.36, Agriculture (AA4 (1) Department, dated 13/6/2014, issued regularising the services of the respondent is reproduced:-

O R D E R

Thiru.K.Manikkam, who is working on a daily wages basis under the control of the office of the Joint Director of Agriculture, Salem, who has filed W.P.No.4277 of 2006 (O.A.No.1696 of 2003) in the Madras High Court to regularise his service from the date of

joining in the post of watchman. In the reference second cited, the Madras High Court in its judgment dated 21/3/2011 as follows:-

"The petitioner has joined the Agricultural Department as watchman on daily wages basis on 26/6/1989 and completed 10 years of service on 25/6/1999 and worked on uninterruptedly. As the proposal are said to be pending before the Principal Secretary to the Government, Agricultural Department, Chennai, first respondent, since 10/12/2010, this Court is inclined to direct the first respondent to pass final orders as expeditiously as possible, not later than four months from the date of receipt of a copy of this orders."

2. Thiru.K.Manickam, daily wages watchman, has filed a case in the Madras High Court, asking the Commissioner of Agriculture to send the relevant recommendation to the Government to regularise his service in the post of watchman and consequently, as per the reference third cited, the Commissioner of Agriculture has forwarded his recommendation to the Government in respect of Thiru.K.Manikam, daily wages Watchman services to be regularised as per G.O's and relaxing the age of the individual according to the Tamil Nadu Basic Servant Rule 5 (1).

3. Considering the proposal of the Commissioner of Agriculture and in accordance with the verdict of the Madras High Court, relaxing Tamil Nadu Basic Servant Rules 4 (a), for not been selected through Employment exchange and age relaxation in Rule 5 (1). As per the reference fourth cited, the service of Thiru.K.Manickam, daily wages watchman has been regularised from the date of issue of this G.O.

4. According to 1987 publication of Government office procedure book in Volume I Tamil Nadu Subordinate Rule Volume - II which includes General Rules 48, as per the powers conferred therein, the Tamil Nadu Governor, Orders that the service of Thiru.K.Manikam, daily wages watchman, to be regularised from the date of issue of G.O., relaxing Tamil Nadu Basic Servant Rules 4 (a), for not been selected through Employment Exchange and relaxing the age in Rule 5 (1)."

12. As per the said G.O., regularisation would be with effect from the date of issuance of G.O.(2D) No.36, Agriculture {AA4 (1)} Department, dated 13/6/2014.

13. Material on record discloses that Agriculture Commissioner, has sent proposals for regularisation of 94 daily wage employer for relaxing the rules, relating to employment exchange and age. After considering various Government Orders, in G.O.Ms.No.52, dated 14/1/1977; G.O.Ms.No.241, dated 18/4/1989; G.O.Ms.No.526, dated 10/10/1983; Letter No.1841/V.N.4/2002-1, dated 21/1/2002, 28/8/2002 & 2/5/2003 and Letter No.AUP2/26512/2002, dated 29/7/2002, 18/9/2002, 21/5/2003, 7/1/2005 and 31/2/2005. Government have issued G.O.Ms.No.399 Agriculture Department, dated 22/6/2006, relaxing the rules relating to age and employment to exchange. Mr.K.Manickam, respondent herein who has been included in the annexure of the said G.O.

14. Material on record discloses that Mr.R.Subramanian and Mr.S.Thangavel, included at S.Nos.8 and 9 respectively, have filed O.A.No.5556 of 1996, before the Tamil Nadu Administrative Tribunal, seeking regularisation of their services, from the initial date of joining. Tribunal has issued directions, on 24/6/2002, based on which the Director of Agriculture, Chennai, has sent letters, dated 22/11/2004, 1/6/2005, 23/12/2008 and 29/12/2008, respectively.

15. Taking note of the fact that 95 daily wage employees have been regularised, from 22/12/2006, with monetary benefits, Government have issued G.O.Ms.No.233, Agriculture (VN4) Department, dated 11/6/2007, regularising the services of the above said individuals, viz., Mr.R.Subramani and Mr.Thangavel, respectively. Thus, from the reading of the government orders, it could be seen that regularisation can be given with effect from the date of issuance of G.O.Ms.No.99, dated 22/12/2006, for all the daily wage employees and not on a prior date. In the case on hand, uniformity has to be maintained.

16. In the light of the above discussion, placing on record the submission of Mr.Vaidyanathan, learned counsel for the respondent, order of the writ Court, made in W.P.No.4116 of 2017, dated 11/1/2019, directing regularisation of the services of the respondent with effect from the date of completion of ten years of service and other monetary benefits is liable to be set aside.

17. Accordingly, instant writ appeal is allowed in part and the order made in W.P.No.4116 of 2017, dated 11/1/2019, is

accordingly set aside. While doing so, it is made clear that the respondent would be entitled to the benefit of G.O.Ms.No.390, dated 22/12/2006, and that his regularisation would be only from 22/12/2006. As per the said G.O., respondent would be entitled to monetary benefits only from the date of issuance of the said G.O. Monetary benefits would be computed and be paid to the respondent, within a period of eight weeks, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition No.20667 of 2019 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
State of Tamil Nadu
Agriculture Department
Chennai 600 009.
2. The Director of Agriculture
Chepauk
Chennai 600 005.
3. The District Collector
Salem
Salem District.

+2cc to Mr.D.Velu, Advocate SR.No.82353

+1 cc to The Government Pleader Sr.No.82795

AKM/30.10.19/7P- 7C /

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