

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.4116 of 2017

K.Manickam

...Petitioner

vs.

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

2. The Director of Agriculture,
Cheapuk,
Chennai - 600 005.

3. The District Collector,
Salem,
Salem District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in order G.O.(2D)No.36, dated 13.06.2014 to quash the same insofar 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 Petitioner : Ms.C.A.Sharmila for
Mr.D.Velu

For Respondents: Mr.I.Sathish
Additional Government Pleader

O R D E R

The petitioner is aggrieved against the order of the first respondent made in G.O.(2D)No.36 dated 13.06.2014, insofar as the same, granting regularization of his service with the effect from the date of the said order and not from the date of his appointment.

2.The petitioner was appointed as Watchman on daily basis in Agricultural Office at Edapadi from 26.06.1989. He is continuously serving in such capacity all along. As he had put in 10 years of uninterrupted service, he made a representation to the second respondent to regularize his service. As his request was not considered, he filed O.A.No.1696 of 2003 on the file of the Tamil Nadu Administrative , which was transferred and renumbered as W.P.No.4277 of 2006 before this Court. In the meantime, the Government passed G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006, granting benefit of regularization to the employees, who were working on daily wage basis and putting 10 years of service as on 01.01.2006. This Court disposed the said writ petition on 21.03.2011, by directing the Government to pass final orders on the proposal sent for regularization within a period of four months. Thereafter, the present impugned order was passed after a period of more than three years, granting the benefit of regularization only from the date of the said order and not from the date of completion of 10 years service. The respondents are not entitled to rely upon G.O.Ms.No.74, Personnel and Administrative Reforms Department dated 27.06.2013 in support of their claim that regularization can be made only from the date of the order. Hence, the present writ petition is filed before this Court.

3. A counter affidavit is filed by the second respondent, wherein it is contended that necessary orders were passed as directed by this Court without any deviation or violation and the petitioner herein is allowed to continue in the respective service on daily wages without any violation. The petitioner service has been regularized, even though his appointment is contrary to rules. The request of the petitioner to regularize his service from the date of his completion of 10 years service in daily wages is not acceptable.

4. Heard both sides.

5. It is not in dispute that the petitioner was initially appointed on 26.06.1989 as Watchman on daily wages basis. It is also not in dispute that the petitioner has completed his 10 years of service on 26.06.1999. When his service was not regularized even after completion of 10 years, the petitioner sought for legal remedy and consequently, the application filed by him before the Tamil Nadu State Administrative Tribunal was transferred to this Court in W.P.No.4277 of 2006, wherein, he sought for a direction to the respondents to regularize his service from 25.06.1999.

6. It is seen that the said writ petition was disposed of by

this Court on 21.03.2011 by passing the following order:

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 regularization of the services of the employees, employed on daily wage basis. He also submitted a list of persons, who had completed 10 years of service as on 01.01.2006, in which, the name of the petitioner has been included at SI.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 26.06.1989 and completed 10 years of his service on 25.06.1999 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."

7. Perusal of the above said order would show that the first respondent should pass the final orders within a period of four months from the date of receipt of a copy of that order. It is seen that already proposals are pending before the first respondent from 10.12.2010 for regularizing the service of the petitioner. Under such circumstances, the first respondent is not justified in passing the present impugned order, after a period of nearly 3 years that too, by relying a Government Order in G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013, passed subsequent to the order passed by this Court in the above writ petition. In other words, as on the date of the order passed by this Court, there was no impediment for the first respondent to grant the relief/benefit of regularization of service to the petitioner, with effect from the date on which he completed his 10 years of service. Had the first respondent passed the order of regularization as directed by this Court within the time stipulated therein, the petitioner would have received the benefit of regularization only based on G.O.Ms.No.22 and not as

per the G.O.Ms.No.74, as relied on by the first respondent. It is only the first respondent, who delayed the matter in implementing the order passed by this Court. Consequently, the first respondent cannot prevent the petitioner from enjoying the benefit of regularization with effect from the date of completion of his 10 years of service, which he is otherwise entitled to.

8. Under the above stated facts and circumstances, I find that the petitioner is entitled to succeed in this writ petition. Consequently, the writ petition is allowed and the impugned order is set aside, insofar as the same granting the regularization of service of the petitioner only from the date of the said order. Consequently, the first respondent is directed to issue fresh order granting regularization of the service to the petitioner with effect from the date of completion of 10 years of his service with other monetary benefits. Such order shall be passed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

sni/vri

To

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

2. The Director of Agriculture,
Cheapuk, Chennai - 600 005.

3. The District Collector,
Salem, Salem District.

+2cc to Mr.D.Velu Advocate, S.R.No. 3375
+1cc to the Government Pleader, S.R.No. 3464

W.P.No.4116 of 2017

SSV(CO)
GN(12/02/2019)