

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 2/1/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.2796 of 2018

1. The Government of Tamil Nadu
rep. By its 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.
 3. The Divisional Forest Officer
Interface Forestry Division
Salem District.
- Vs
- ... Appellants
- R. Azhaharasan ... Respondent

Prayer Appeal filed under Clause 15 of the Letters Patent against the order dated 15/12/2017, passed in W.P.No.22740 of 2010.

Petition praying to issue a Writ of Certiorarified Mandamus to call for the records of the Second respondent, relating to the order in Pro.C.No.52469/ 2008 S2 dt...3.2009 (signed on 16.4.2009) quash the same and issue consequential direction to the respondents to regularise the services of the petitioner as Driver from the dated of his initial appointment in 1.7.1997 with consequential benefits and to absorb him in regular establishment.

For appellants ... Mr.K.Rajendra Prasad
Addl. Govt. Pleader (Forest)

For respondent ... Mr.R.Jayaprakash

J U D G M E N T

(Judgment of the Court was delivered by Subramonium Prasad,J)

Instant writ appeal has been filed by the Government of Tamil Nadu, against the order, dated 15/12/2017, passed by the writ Court, in W.P.No.22740 of 2017.

2. Writ petitioner was appointed, as a Driver, in the Forest Department, on 1/7/1997 and he was posted to various places. He was working continuously, but even after thirteen years, he was not absorbed.

3. In G.O.Ms.No.22 (P & AR), dated 28/2/2006, Government has issued orders that the services of the daily wages employees, working in all Government Departments, who have rendered ten years of service, as on 1/1/2006, will be regularised, in consultation with the respective Heads of Departments.

4. The writ petitioner gave a representation dated 27/08/2008, for absorbing him, as a Driver. Since the representation was not considered, he filed W.P.No.22209 of 2018. The writ petition was disposed of, by an order, dated 9/9/2008, directing the State, to consider the representation of the writ petitioner and pass orders, on merits in accordance with law, within a period of eight weeks, from the date of receipt of the order.

5. In compliance of the said order, the State Government, by an order, dated 16/4/2009, rejected the representation of the petitioner, stating the same. Writ petitioner had rendered only 9 years and 5 months of service, as on 1/1/2006, he is not entitled to the benefit of G.O.Ms.No.22 (P & AR), dated 28/2/2006. It was also stated order that under Rule 10 A of the Tamil Nadu State and Subordinate Service Rules, recruitment to posts, which are outside the purview of the Tamil Nadu Public Service Commission, shall be made only by calling for names of eligible candidates from the employment exchange. In respect of specialised posts, for which candidates are not available with the employment exchange, the appointing authority shall get a certificate of a non-availability from the employment exchange and call for applications from the eligible candidates by advertising the posts in prominent daily newspapers giving the number of vacancies and indicating the qualifications, etc. Since the writ petitioner had been engaged temporarily, on daily basis and had not been sponsored by the employment exchange, he was not eligible to be absorbed.

6. Being aggrieved, order, dated 16/4/2009, is under

challenge, in W.P.No.22740 of 2010.

7. Placing reliance on the order, dated 4/9/2017, made in W.P.Nos.19465 to 19458 of 2013, which pertained to some other similar case, a learned Single Judge, allowed the writ petition. Paragraph Nos.3 to 9 are being reproduced hereunder:-

".....

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 overruled 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. 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 overruled 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 our 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 service 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.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

mvs/gsp

TO

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+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.197
+1cc to the Government Pleader, S.R.No. 2260

Writ Appeal No.2796 of 2018

SSI (CO)
GN (21/02/2019)