

IN THE JUDICATE OF MADRAS HIGH COURT

DATED : 26.08.2019

CORUM

THE HON'BLE MR.JUSTICE V. PARTHIBAN

W.P.No.29870 of 2018

A. Subramani

... Petitioner

-Vs-

1. The Government of Tamil Nadu
represented by its Principal Secretary,
Rural Development & Panchayat Raj Department,
Fort. St. George,
Chennai - 600 009
2. The Director/Commissioner,
Rural Development & Panchayat Raj Department,
having Office at Panagal Maaligai,
Saidapet, Chennai - 600 015.
3. The District Collector,
Krishnagiri District.
4. The Commissioner,
Uthangarai Panchayat Union,
Krishnagiri District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus to call for the records relating to the 4th respondent proceeding No.Na.Ka.No.2780/2013/A1 dated 13.08.2018 on the file of the respondent herein, quash the same and consequently direct the respondents to regularise the service of the petitioner as Jeep Driver from the date of initial appointment and confer all consequential service benefit.

For Petitioner : Mr.V. Vijay Shankar for
Mr.P. Ganesan

For R.1 & R.2 : Mr.J. Pothiraj
Spl. Govt. Pleader

For R.3 & R.4 : Ms.K. Bhuvaneshwari

ORDER

The Petitioner has filed the Writ Petition seeking to issue a Writ of Certiorarified Mandamus to call for the records relating to the 4th respondent's proceeding No.Na.Ka.No.2780/2013/A1 dated 13.08.2018, quash the same and consequently direct the respondents to regularise the service of the petitioner as Jeep Driver from the date of initial appointment and confer all consequential service benefit.

2. According to the petitioner, he was appointed as Jeep Driver in the fourth respondent's Panchayat Union on 01.04.2004 on daily wage basis. Ever since his initial appointment in the year 2004, he has been continuing his service as Jeep Driver without any break. According to the petitioner, his appointment was ratified by Appointment Committee, consisting of Panchayat Union Chairman, Vice-Chairman and Commissioner of Panchayat Union at Uthagarai Panchayat Union. His appointment falls within the category of Panchayat Union Employees and the appointing authority is the Commissioner of Panchayat.

3. According to the petitioner, he possesses valid driving license, issued by the Driving License Authority to ply Heavy Vehicle. Ever since his appointment, he has been discharging his duty diligently without any complaints whatsoever. The Government issued G.O.Ms.No.212 P & AR Department dated 29.11.2001 imposing ban on recruitment in Government Servants. Subsequently, it appears that the ban was lifted by another G.O.Ms.No.14 P & AR Department dated 07.02.2006, by which time, the petitioner had rendered two years of service as Jeep Driver in the office of the fourth respondent.

4. According to the petitioner, similarly placed Jeep Drivers, who were working in the same Department, were regularised vide G.O.Ms.No.433 Rural Development and Panchayat Raj Department dated 09.07.2009 and another Government Order in G.O.Ms.No.50 Rural Development and Panchayat Raj Department dated 26.08.2011 was issued regularising more than 12 persons, who were working on daily wage basis. Although the petitioner was similarly placed like the other employees, whose services were regularised by the aforesaid Government Orders, the petitioner's services was not regularised.

5. In the above said circumstances, the petitioner was constrained to approach this Court by filing a Writ Petition in W.P.No.20390 of 2013, seeking for a direction to regularise the services of the petitioner as Jeep Driver from the date of his initial appointment in April 2004 and absorb him in regular establishment.

6. The said Writ Petition was disposed of by this Court on 11.06.2018 with a direction to dispose of the petitioner's representation dated 08.04.2013 on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of the order. In pursuance of the direction passed by this Court, the fourth respondent, by his Proceedings No.Na.Ka.No.2780/2013/A1 dated 13.08.2018, rejected the claim of the petitioner, seeking regularisation.

7. According to the fourth respondent's communication, the petitioner's request for regularisation has not been considered for the following reasons:-

- (i) The petitioner has not passed VIII Standard;
- (ii) The petitioner has crossed the upper age limit of 30 years;
- (iii) The petitioner has to have a proper driving license from the competent authority.

The said order, rejecting the claim of the petitioner is put to challenge in the present Writ Petition.

8. The learned counsel for the petitioner would submit that as per the third reason cited in the impugned order viz., the petitioner needs to have proper driving license from the competent authority, the petitioner is in possession of valid and proper driving license issued by the competent authority and only on the basis of the said license, the petitioner was originally appointed as Jeep Driver in Public Service in the year 2004 and has been continued as Jeep Driver for the last 15 years. Therefore, the said reason cited by the fourth respondent is incorrect.

9. As regards the second reason mentioned in the impugned order viz., The petitioner has crossed the upper age limit of 30 years, the learned counsel would submit that the very fact that the petitioner has been working uninterruptedly for the last 15 years would entitle him to have both educational and age relaxation. According to the learned counsel, the vast experience gained by the petitioner, being a Jeep Driver for the last 15 years, would compensate more than VIII Standard qualification, prescribed for appointment and his service for so many years would also be reckoned for the purpose of giving him age relaxation.

10. The learned counsel, in respect of relaxation of educational qualification, relies the decision of the Hon'ble Supreme Court of India in Gujarat Agricultural University vs Rathod Labhu Bechar and Others reported in (2001) 3 SCC 574 and

would draw the attention of this Court to paragraph Nos.28 and 30 of the judgment, which are extracted hereunder:

" 28. We feel that daily-rate workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition. It would not be appropriate to disqualify them on this ground for their absorption, hence clause 1(a) needs modification to this effect.

30. Thus in view of their long experience, on the fact of this case, and for the posts concerned the prescribed qualification, if any, should not come in the way of their regularisation. Clause 1(b) provides for the regularisation of daily wagers in a phased manner to the extent of available sanctioned post."

11. The learned counsel would submit that the Hon'ble Supreme Court has held that long number of years without complaint on the post is a ground by itself for the relaxation of the educational qualification. Such view taken by the Hon'ble Supreme Court equally applies for grant of age relaxation as well.

12. The learned counsel would also rely on the decision of the Division Bench of this Court in Higher Secondary School Computer Teachers Association vs Tamil Nadu Computer Science, B.Ed Graduate Teachers Welfare Society, rep by its Treasurer reported in (2008) 7 MLJ 658. He would draw the attention of this Court to Paragraph-24 of the order, which is extracted hereunder:-

" 24. It is apt to state here that by now, it is a settled law that the want of educational qualification, if any, can be compensated by long experience in the same field and long experience of a candidate in a particular field/post is always considered as a ground for relaxing the required qualifications. For this, we draw inspiration from a catena of judgments of the Hon'ble Supreme Court, like B.N. Saxena vs New Delhi

Municipal Committee AIR 1990 SC 2021:
(1990) 4 SCC 205: 1994-III-LLJ-374 and
Gujarat Agricultural University vs
Rathlod Labmu Bechar AIR 2001 SC 706;
2001(I) LLJ 710.

13. In the above observation, the Hon'ble Division Bench has held that the educational qualification is well compensated by long experience and such long experience would be a ground for relaxing the required qualifications. The learned counsel would submit that the reasons therefore cited by the fourth respondent in the impugned order cannot be countenanced both by law and on facts.

14. According to the learned counsel, once similarly placed employees who were also originally employed on daily wage basis and whose services were regularised on the basis of the Government Orders, the same treatment is required to be meted out to the petitioner as well. Therefore, he would urge to allow the writ petition as prayed for.

15. Ms.K. Bhuvaneswari, learned Additional Government Pleader entered appearance for the respondents and a detailed counter affidavit has been filed.

16. In the counter affidavit, the reasons set forth in the impugned order has been reiterated in detail. In fact, in the counter affidavit, the factum of petitioner's employment from April 2004, has not been disputed at all. On the other hand, it was admitted that he was employed as daily wages on 01.04.2004.

17. This Court, on the basis of the above submissions, has to consider whether two reasons cited by the fourth respondent are justified enough to deny the benefit of regularisation of petitioner's service, who has been employed as Jeep Driver continuously for 15 years.

18. As rightly contended by the learned counsel for the petitioner that the experience gained by the petitioner for 15 years is more than sufficient for minimum educational qualification prescribed for the post i.e., VIII Standard, particularly, in a post like Jeep Driver. Once the petitioner is admitted to have in his possession a valid driving license issued by the competent authority, the so called educational qualification prescribed is secondary, particularly, in the face of the fact that the petitioner has been found fit to be employed as Jeep Driver, as he has been employed for a period of 15 years continuously.

19. Likewise, the upper age limit of 30 years cited as a reason for not considering the claim of the petitioner for regularising his service also appears to be a specious ground, which cannot be countenanced in law. When the services of the petitioner have been utilised continuously by the fourth respondent for 15 years, it is too late in the day for the fourth respondent to cite the upper age limit as the reason for not considering the claim of the petitioner.

20. In fact, as rightly contended by the learned counsel for the petitioner, the observations of the Hon'ble Apex Court and also the Division Bench of this Court, referred above, would hold good for granting of age relaxation to the petitioner, considering his long experience as Jeep Driver. When the fourth respondent thought it fit to employ the petitioner as Jeep Driver for number of years continuously, it is unfair and improper on their part to come up with such a feeble objection and cite lack of educational and age condition for not considering the case of the petitioner for regularisation.

21. In fact, in such case, equity and fairness demand that the authority themselves ought to have taken initiative in obtaining necessary relaxation for grant of regularisation of service of the employees like the petitioner herein, instead, the fourth respondent has come up with the present objection, which, in the opinion of this Court is liable to be rejected outright.

22. Moreover, when a public authority like the fourth respondent has utilised the services of the petitioner continuously with the same qualification all these years, the rejection of the legitimate request of the petitioner for regularisation is opposed to fair play and good conscience. In fact, it is averred in the affidavit, filed in support of the writ petition, that similarly placed employees viz., daily wages have been regularised under various Government Orders and the petitioner herein was singled out in the matter of regularisation. This Court is therefore of the view that non extending the benefit of regularisation to the petitioner in circumstances of the case is discriminatory, arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India.

23. For the above said reasons, this Court has no hesitation in holding that the petitioner has made out a clear case for grant of regularisation. Accordingly, the impugned order passed by the fourth respondent in proceeding No.Na.Ka.No.2780/2013/A1 dated 13.08.2018 is hereby set aside and the respondents are directed to grant the benefit of regularisation of the services of the petitioner as Jeep Driver from the date of his initial appointment in April 2004 with all attendant and consequential benefits in terms of various

Government Orders issued by the first respondent on the subject matter.

24. 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.

25. It is also made clear that in case, the post of Jeep Driver is not sanctioned, in view of the continuous employment of the petitioner since 2004 and till date, the first respondent shall forthwith sanction the post of Jeep Driver to enable the petitioner to have his services regularised as aforementioned.

26. With the above observation, the Writ Petition is allowed. No costs.

sr

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
Government of Tamil Nadu,
Rural Development & Panchayat Raj Department,
Fort. St. George,
Chennai - 600 009
2. The Director/Commissioner,
Rural Development & Panchayat Raj Department,
having Office at Panagal Maaligai,
Saidapet, Chennai - 600 015.
3. The District Collector,
Krishnagiri District.
4. The Commissioner,
Uthangarai Panchayat Union,
Krishnagiri District

+1cc to Mr.P.Ganesan, Advocate, SR.No.72926

+1cc to M/s.K.Bhuvaneswari, Advocate, SR.No.73162

W.P.No.29870 of 2018

Kak(16/09/2019)