



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P[MD]No.5723 of 2015

and

M.P. [MD]Nos.1 & 2 of 2015

S.Sangili

... Petitioner

Vs.

1. The Principal Secretary to Government,
Revenue Department,
Fort St. George,
Chennai - 600 009.

2. The Additional Chief Secretary / Commissioner
of Revenue Administration,
Ezhilagam,
Chepauk, Chennai - 600 005.

3. The District Collector,
Madurai.

4. The Personal Assistant (General) to
the Collector, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent in G.O.(Rt)No.444 Revenue (services - 8(2)) Department dated 15.09.2010 and the consequential order passed by the fourth respondent herein in Roc.No.A6/35045/2012 dated 10.01.2013 on the representation of the petitioner herein dated 'nil', quash the same as illegal and direct the respondents 2 and 3 to order retrospective regularization of the services of the petitioner from the date of joining of the petitioner herein as Cycle Stand Watchman in the second respondent office with effect from 12.04.1989 with concomitant monitory benefit within a specific time frame as fixed by this Court.

For Petitioner : Mr.W.Pamelin

For Respondents : Mr.M.Jeyakumar

Additional Government Pleader

O R D E R

The Government Order issued in G.O.(Rt)No.444 Revenue (Services-8(2)) Department dated 15.09.2010 and the consequential order passed by the fourth respondent in proceeding dated 10.01.2013 are sought to be quashed in the present writ petition and the writ petitioner seeks retrospective regularisation of his service from the date of his initial appointment as daily wage employee.

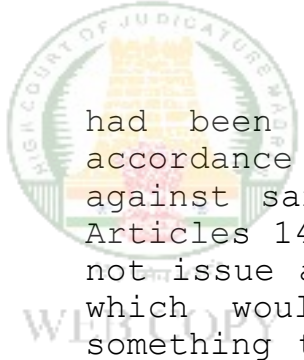


2.The learned Counsel for the writ petitioner states that the writ petitioner was initially engaged as daily wage employee in the post of Watchman during the year 1989 and he was continuously working as daily wage employee for a considerable length of time. Based on the Government orders, granting the benefit of regularisation to the daily wages employees, the case of the writ petitioner was also considered for grant of regularisation. Accordingly, the competent authority submitted the proposals and the Government issued G.O.(Rt)No.444 Revenue (Services-8(2)) Department dated 15.09.2010, granting the benefit of regularisation to the petitioner by relaxing the relevant service Rules. The Rules regarding the age as well as the reservations were relaxed in favour of the writ petitioner and accordingly, he was brought under the regular establishment in the sanctioned post. The regularisation was granted from the date of passing of the Government Order.

3.Learned Counsel for the writ petitioner states that though the writ petitioner was initially employed as Watchman in the year 1989, the benefit of regularisation was considered in the year 2010 and therefore, the services of the writ petitioner has to be regularised from the original date of his appointment ie., 12.04.1989.

4.This Court is of the considered opinion that regularisation or permanent absorption cannot be claimed as a matter of right as far as the daily wage employees are concerned. Regularisation or permanent absorption cannot be granted in violation of the recruitment rules in force. Daily wage employees are appointed without following the recruitment rules in force. Thus, the initial appointment of the writ petition was irregular and therefore, regularisation cannot be granted with retrospective effect. The benefit of regularisation had already been granted to the writ petitioner by relaxing the Rule in relation to the age limit as well as the reservation. Thus, relaxation granted to the writ petitioner itself was a concession, though the writ petitioner was not eligible for relaxation as per the Rules in force. By relaxing the relevant Rules, the benefit of permanent absorption was granted to the writ petitioner. This being the factum, the writ petitioner cannot seek retrospective regularisation from the date of his initial appointment.

5.Learned Counsel for the writ petitioner states that similar cases were considered by competent authorities, even based on the orders of this Court. Undoubtedly, High Courts as well as Supreme Court passed orders granting regularisation in many number of cases. However, the Supreme Court in the case of **Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others reported in (2014) 4 Supreme Court Cases 769**, held that '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.'

6.Now, the Apex Court directed the High Courts not to issue any such directions to regularise the services unless the appointments are made in accordance with the recruitment rules in force. Admittedly, the writ petitioner was engaged as daily wage employee and his initial appointment was irregular. Thus, the benefit of relaxation granted by the Government in G.O.(Rt)No.444 Revenue (services - 8(2)) Department dated 15.09.2010, itself is a concession and the Rule relating to the recruitment Rules were relaxed in favour of the writ petitioner and consequentially he was brought under the regular establishment. This being the factum of the case, further relaxation or any further concession for retrospective regularisation cannot be granted at all.

7.However, the Government of Tamil Nadu, amended Rule 11 of the Tamil Nadu Pension Rules, 1978, enabling these temporary employees to get the benefit of 50% of the temporary services for the purpose of pension alone, if the writ petitioner is otherwise eligible, his case also may be considered strictly in accordance with Rule 11(4) of the Tamil Nadu Pension Rules, at the time of pension proposal of the writ petitioner. Under these circumstances, the relief in relation to the retrospective regularisation from the date of engagement as daily wage employee cannot be granted in view of the legal principles already settled by this Court. Accordingly, this Writ Petition is devoid of merits.

8.Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

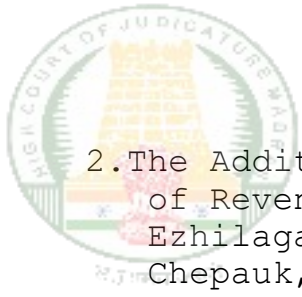
Assistant Registrar

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Sub Assistant Registrar(CS)

To

1.The Principal Secretary to Government,
Revenue Department,
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of Revenue Administration,
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+1 CC to SPL GP (SR-72171[F] dated 28/06/2019)

W.P[MD]No.5723 of 2015
27.06.2019

mr

MK (08.08.2019) 4P 6C