



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2019

CORAM:

THE HONOURABLE Mr. JUSTICE D. KRISHNAKUMAR

W.P. (MD) Nos. 1546 & 1547 of 2016

WEB COPY

W.P (MD) No. 1546 of 2016

I. Govindan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai.
2. The Director of Fisheries,
Fisheries Department,
Chennai-6.
3. The Executive Engineer,
Fishing Harbor Project Division,
Nagercoil,
Kanniyakumari District.
4. The Assistant Executive Engineer,
Fisheries Department,
Ramanathapuram District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the third respondent in his proceedings Ka.Mu.No.2161/T1/2001-2 dated 04.09.2014 and quash the same and direct the respondents to regularize the service of the petitioner with all consequential benefits.

For Petitioner : Mr. V. Panneer Selvam

For Respondents : Mr. A. Muthukaruppan

Additional Government Pleader

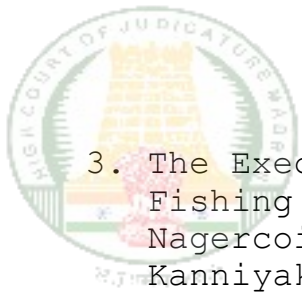
W.P (MD) No. 1547 of 2016

S. Karuppasamy

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai.
2. The Director of Fisheries,
Fisheries Department,
Chennai-6.



3. The Executive Engineer,
Fishing Harbor Project Division,
Nagercoil,
Kanniyakumari District.

4. The Assistant Executive Engineer,
Fisheries Department,
Ramanathapuram District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the third respondent in his proceedings Ka.Mu.No.2161/T1/2001-2 dated 04.09.2014 and quash the same and direct the respondents to regularize the service of the petitioner with all consequential benefits.

For Petitioner : Mr.V.Panneer Selvam
For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader

C O M M O N O R D E R

The issue involved in both the writ petitions are one and the same and hence, both the writ petitions are disposed of by common order.

2. According to the petitioners, they were appointed as Mazdoors in the respondent department on 01.04.1986 and 01.03.1995 respectively on daily rated basis. According to the petitioner, the Government has issued an order in G.O.Ms.No.22, Personal and Administrative Reforms (F) Department, dated 28.02.2006 directing to regularize the services of the persons, who have completed more than 10 years of service. The petitioners have made a representation to the respondents to regularize their services as per G.O.Ms.No.22. The petitioners names were also forwarded for regularization on 22.04.2006 and 07.05.2007 and the petitioners sent reminders to the respondents on 10.05.2010 and 07.08.2012. Since there is no response from the respondents, the petitioners filed writ petitions before this Court in W.P.Nos.16526 & 16527 of 2012 and this Court by an order dated 05.12.2013 directed the first respondent to dispose of the proposal submitted by the Department for regularization within a period of twelve weeks. But the third respondent passed orders rejecting the claim of the petitioners by relying upon the judgment of the Supreme Court reported in AIR 2006 SC 1806.

3. The learned counsel appearing for the petitioners would submit that the Department had already regularized the services of the similarly placed persons namely A.Delphin Mary Servas and V.Pappa and rejected the claim of the petitioners without considering the aforesaid regularisation given to the similarly placed persons. Further, he submitted that the third respondent



has no jurisdiction to pass such orders and the same are contrary to the direction issued by this Court in W.P.Nos.16526 & 16527 of 2012 directing the Government to consider the petitioners' representation. He further submitted that based on this simple ground, the present impugned orders are liable to be quashed.

WEB COPY

4. The learned Additional Government Pleader appearing for the respondents would submit that the third respondent has rightly rejected the claim of the petitioners. The petitioners have no right to claim regularisation of service in the light of G.O.Ms.No.22, Personal and Administrative Reforms (F) Department, dated 28.02.2006. The learned Additional Government Pleader also relied upon the judgment reported **in (2014) 4 Supreme Court Cases 769 R.Govindaswamy and others vs. Secretary to Government, School Education Department, Chennai** wherein the Hon'ble Supreme Court has held that the respondent employees therein were not entitled to regularisation even when they had put in long service because they were not working against sanctioned posts and it is further held that sympathy and sentiment cannot be valid grounds for regularisation of services in the absence of legal right. Therefore, the orders passed by the third respondent are valid and the same are not liable to be quashed.

5. A perusal of the order passed by this Court, dated 05.12.2013 in W.P.Nos.16526 and 16527 of 2012 would show that this Court has directed the first respondent to dispose of the recommendations sent to the Government by the first respondent vide R.C.No.45540/S1/2002, dated 11.12.2007 within a period of twelve weeks even though the Government is not a party in the writ petitions. But, so far, the Government has not passed any order complying with the directions issued by this Court.

6. A perusal of the orders passed by the third respondent shows that without strictly complying with the order passed by this Court, the third respondent has passed an order and the same is erroneous and liable to be quashed.

7. Therefore, this Court has no hesitation to quash the impugned proceedings accordingly the same are quashed. This Court directs the first respondent to consider the proposal sent by the Superintending Engineer, Fisheries Department, Chennai in Na.Ka.No.2165/,1/02, dated 07.05.2007, which was recommended and submitted to the Government by the first respondent vide R.C.No.45540/S1/2002, dated 11.12.2007 by taking note of the decision rendered by the Hon'ble Supreme Court **in R.Govindaswamy and others vs. Secretary to Government, School Education Department, Chennai** reported in **(2014) 4 Supreme Court Cases 769** and G.O.Ms.No.22, Personal and Administrative Reforms (F) Department, dated 28.02.2006 and pass appropriate orders on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order.



8. With the above directions, both the writ petitions are disposed of. No costs.

sd/
Assistant Registrar (AD-I)

WEB COPY /True Copy/

Sub Assistant Registrar (CS)

To

1. Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai.
2. The Director of Fisheries,
Fisheries Department,
Chennai-6.
3. The Executive Engineer,
Fishing Harbor Project Division,
Nagercoil,
Kanniyakumari District.
4. The Assistant Executive Engineer,
Fisheries Department,
Ramanathapuram District.

+2 CC to Mr. V. PANNEER SELVAM, Advocate (SR-68175[F] dated 12/06/2019)

+1. CC. To SPECIAL GOVERNMENT PLEADER, in SR No. 68322

W.P. (MD) Nos. 1546 & 1547 of 2016
11.06.2019

am

MK (24.06.2019) 4P 8C