



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

W.P.(MD).No.18126 of 2014
and M.P.(MD).No.1 of 2014

K.Mathayee

.. Petitioner

Vs.

1.The Secretary,
Home (Courts IV) Department,
Government of Tamil Nadu,
Chennai.

2.The Secretary,
Department of Law,
Government of Tamil Nadu,
Chennai.

3.The Tamil Nadu State Legal Services Authority,
Rep. thro its Member Secretary,
North Fort Road,
High Court Campus,
Chennai - 600 104.

4.The District Legal Services Authority,
Rep. thro its Chairman,
"Satta Udhavi Maiyam Buildings"
District Court Campus,
Tiruchirappalli - 1.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent's order in G.O.(D).No.190 Home (Courts - IV) Department, dated 19.03.2014 and set aside the same and consequently direct the 1st respondent to regularize the petitioner's service as Office Assistant/Masalchi in a time scale of pay from the date of appointment on 27.07.2005 under the 4th respondent.

For Petitioner : Mr.A.Haja Mohideen

For Respondents : Mr.M.Jeyakumar for R1 and R2
Additional Government Pleader
No Appearance for R3 & R4



ORDER

This writ petition has been filed by the petitioner for issuance of Writ of Certiorarified Mandamus to quash the order of first respondent vide G.O.(D).No.190 Home (Courts - IV) Department, dated 19.03.2014 and to direct the first respondent to regularize the petitioner's service as Office Assistant/Masalchi in the time scale of pay from the date of her appointment.

2.The petitioner belongs to Scheduled castes community. After completion of 8th standard, she enrolled her qualification in the District Employment Office, Tiruchirappalli. The petitioner was appointed by fourth respondent in the post of Masalchi in the District Legal Services Authority, Tiruchirappalli, based on her qualification and on her name being sponsored by the District Employment Office, Tiruchirappalli. The petitioner was appointed temporarily in a consolidated pay of Rs.1,000/- per month in the fourth respondent's office. It is admitted that the petitioner joined duty on 27.07.2005. Though the petitioner states that she rendered an unblemished service, the petitioner's representation to regularize her service in time scale was not considered. Stating that the petitioner was appointed purely on temporary basis on a consolidated pay, the respondents denied regularization. Earlier, the petitioner filed a writ petition in W.P.(MD).No.15232 of 2011 for issuing a writ of mandamus directing the respondents to regularize the petitioner's service as Masalchi in a time scale of pay from the date of her appointment on 27.07.2005. The said petition was disposed of with a direction to the respondents 1 to 3 therein to consider the petitioner's representation, dated 29.04.2010.

3.It is was thereafter, the first respondent passed the impugned order vide G.O.(D).No.190 Home (Courts - IV) Department, dated 19.03.2014. The request for regularization of the petitioner's service was declined by the first respondent by referring to G.O.Ms.No.74 P & AR (F) Department, dated 27.06.2013. In the above said G.O, it is stated that the service of the full time daily wage employees who have completed ten years of service after 01.01.2006 shall not be regularized. By relying upon the said previous Government order, the petitioner's request for regularization was denied as she has not completed ten years of service as on 01.01.2006. Challenging the order of first respondent vide G.O.(D).No.190 Home (Courts - IV) Department, dated 19.03.2014, this writ petition is filed.

4.The fact that the petitioner is in service from 2005 on consolidated pay is not in dispute. The petitioner was appointed to the post of Masalchi after calling for names from the Employment Exchange by following a Recruitment Process. Though the petitioner was appointed in a consolidated pay of Rs.1,000/- per month in the fourth respondent office, it is admitted that as on date, the petitioner has received Rs.290/- per day. The post in which the petitioner was appointed is permanently required. The petitioner's



service was not regularized only relying upon the earlier Government order which was issued in the year 2006, taking into account the grievance of similarly placed persons who were in service on temporary basis receiving consolidated pay and completed 10 years of service as on 01.01.2006. The petitioner was appointed in the year 2005 and rendered her service for more than 15 years by receiving a sum of Rs.290/- per day as daily wage. In the said circumstances, the rejection of petitioner's request for regularization cannot be on the basis of a previous Government order which was intended to benefit those who were in service and completed 10 years of service as on 01.01.2006. It is true that the application of earlier Government order was restricted only to those who have completed 10 years of service as on 01.01.2006. However, the State would not have thought of several contingencies at the time when the Government order was issued in 2013. Even assuming that there was a restriction regarding the applicability of G.O.Ms.No.74, P & AR (F) Department, dated 27.06.2013, the persons who are not entitled to the benefit of G.O.Ms.No.74, can still seek regularization if they satisfy the respondent State that they are entitled to seek regularization by applying principles based on which G.O.Ms.No.74, P & AR (F) Department, dated 27.06.2013 was issued. There cannot be a discrimination and different yardsticks for two different categories. The impugned order on the other hand reads as if the first respondent cannot consider the case of petitioner who has not satisfied the criteria (completion of 10 years of service as on 01.01.2006).

5.In that view of the matter this Court is of the view that the first respondent is directed to consider the petitioner's case dehorn G.O.Ms.No.74, P & AR (F) Department, dated 27.06.2013 and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. While passing the order, the respondents 1 and 2 shall take into consideration the permanent requirement of the post of Masalchi in fourth respondent Department and the nature of service rendered by them vis-a-vis the persons who are engaged in the Government Departments and in accordance with law.

6.Accordingly, the impugned order passed by the first respondent in G.O.(D).No.190 Home (Courts - IV) Department, dated 19.03.2014 is quashed and the writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar



To

1.The Secretary, Home (Courts IV) Department,
Government of Tamil Nadu, Chennai.

2.The Secretary, Department of Law,
Government of Tamil Nadu, Chennai.

3.The Member Secretary,
Tamil Nadu State Legal Services Authority,
North Fort Road,
High Court Campus,
Chennai - 600 104.

4.The Chairman,
The District Legal Services Authority,
"Satta Udhavi Maiyam Buildings"
District Court Campus,
Tiruchirappalli - 1.

+1 CC to M/s.A.HAJAMOHIDEEN, Advocate (SR-92280[F] dated 16/10/2019)

+1 CC to M/s.SPL GP (SR-93088[F] dated 18/10/2019)

W.P. (MD) .No.18126 of 2014
16.10.2019

JM/30.10.2019/4P/7C