

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2020

C O R A M

THE HON'BLE MR. A.P.SAHI, THE CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

WRIT APPEAL NO.774 OF 2020 &
C.M.P.NO.10262 OF 2020

1. The State of Tamil Nadu represented by
its Secretary to Government
School Education Department,
Secretariat, Chennai-600 009.
 2. The Director of Government Examinations,
Directorate of Government Examinations,
College Road, Chennai-600 006.
 3. The Secretary to the Director of Government Examinations,
Directorate of Government Examinations,
College Road,
Chennai-600 006.
- ...Appellants/Respondents

Vs

A.Krishnamoorthy, Mazdoor,
Directorate of Government Examinations,
College Road, Chennai-600 006.
Retired now at
A.Krishnamoorthy,
No.95, R.K.Puram, Bricklian Road,
Purasaiwakkam,
Chennai-600 007.

...
Respondent/Petitioner

PRAYER : Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 05.05.2017 made in W.P. No.34453 of 2013 and allow this writ appeal.

W.P. No.34453 of 2013 PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the records connected in G.O.Ms.No.212, School Education (VI) Department dated 25.10.2006, passed by the first respondent and Na.Ka.No.010945/E3-1/2006 dated 11.03.2010

issued by the 3rd respondent and quash the same in so far as petitioner is concerned as it restricts to regularise the service of the petitioner from the date of issuing the Government Order and consequently direct the respondents to regularize the petitioner's service on completion of ten years of service with all service and monetary benefits as given to other similarly placed persons case issued in G.O.(2D) No.19, School Education (VI) Department, dated 18.4.2013.

For Appellants : Mr.C.Munusamy,
Spl. Govt. Pleader (Education)

For Respondent : M/s.G.Elanchezhiyan

JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

This intra-court appeal is filed by the Respondents/State challenging the order dated 05.05.2017 whereby the Appellants were directed to consider the representation of the Respondent/Petitioner in light of the orders passed in G.O. (1D) No.286 School Education dated 19.07.2016, G.O.(Ms) No.1, School Education Department dated 02.01.2017 and G.O.(1D) No.238 School Education Department dated 07.04.2017.

2. The Respondent/Petitioner was appointed as a daily wage labourer by order dated 10.01.1990 of the third Appellant herein. Subsequently, 23 labourers, including the Respondent/Petitioner, approached the Tamil Nadu Administrative Tribunal by filing O.A.Nos.1702 of 1992 and O.A. No. 5918 of 1994 to appoint them on a time scale of pay. By order dated 09.12.1994, the Respondents therein were directed to create 75 posts and appoint the daily wage labourers, including the Respondent herein, to such posts. The special leave petition filed against the order of the Tribunal was dismissed.

3. Thereafter, G.O.Ms.No.22 dated 28.02.2006 was issued directing various departments of the Government to initiate action to regularize the services of the daily wage employees who had completed 10 years of service as on 01.01.2006. On the basis of the aforesaid G.O., a proposal was submitted and 71 posts were created for the purpose of daily wage employees who had completed 10 years of service as on 01.01.2006. The Government issued G.O.Ms.No.212, School Education Department dated 25.10.2006, and pursuant thereto, the Respondent/Petitioner was appointed as a Mazdoor on a time scale of pay by appointment order dated 27.10.2006, and the period of probation was declared on 11.11.2007. Subsequently, the

Respondent/Petitioner submitted a representation to the Appellants herein to regularize his services from 1996 onwards but there was no response thereto.

4. In these facts and circumstances, W.P. No.34453 of 2013 was filed by the Respondent/Petitioner herein to quash the order dated 11.03.2010, whereby the services of the Respondent/Petitioner were regularized with effect from 25.10.2006, and to regularize the services of the Petitioner from the date of completion of 10 years of service with all service and monetary benefits as given to other similarly placed persons.

5. Meanwhile, Government Orders were issued in G.O. (1D) No.286, School Education Department dated 19.07.2016 whereby the service of K.Santhanakrishnan and 25 others were regularized with retrospective effect from 1998. This was done on the basis of the orders passed by this Court in writ petitions filed by the said Santhanakrishnan and 25 others. Likewise, G.O.(Ms). No.1, School Education Department, dated 02.01.2017, was issued in respect of G.Yayathi Venkatesan and 3 others whereby their services were regularized with retrospective effect from 1998. Once again, this was done on the basis of the orders passed in writ petitions and writ appeals by this Court. By another G.O. (1D) No.238, School Education Department, dated 07.04.2017, the services of E.Pazhani and S.Abdul Rahman were regularized with retrospective effect from 1998 based on the judgments of this Court in writ petitions filed by the said persons.

6. By order dated 05.05.2017, the writ petition was disposed of by permitting the Respondent/Petitioner to submit a fresh representation along with relevant Government Orders and by further directing the Respondents therein to consider the representation in light of the G.O.'s. referred to in paragraph 4 supra and pass appropriate orders thereon. The said order is impugned in this writ appeal.

7. We heard the learned Special Government Pleader, Education, Mr.C.Munusamy, for the Appellants, and the learned counsel for the Respondent, Mr.G.Elanchezhian initially on 03.08.2020. At that stage, the the learned Special Government Pleader contended that this case is covered by the Full Bench judgment in W.A. 158 of 2016 batch, Judgment dated 03.12.2019, to the effect that persons who were regularised after 01.04.2003 were not entitled to count 50% of their pre-regularisation service for pension benefits. By order of even date, we recorded that such entitlement would, on the facts of this case, turn on whether the Respondent/Petitioner is entitled to regularisation with retrospective effect or not and posted the matter for further hearing on 14.09.2020.

8. Mr.C.Munusamy submitted that the Respondent/Petitioner was originally appointed on daily wage basis. Pursuant to the orders passed by the Tamilnadu Administrative Tribunal and upon consideration of the proposal for the creation of 71 posts, the Respondent/Petitioner was appointed on a time scale of pay under G.O.(Ms) No.212, School Education (V1) Department, dated 25.10.2006. After accepting such appointment, he submitted that the Respondent/Petitioner has filed the present writ petition to give retrospective effect to the regularization. He further submitted that the 3 G.Os that were referred to in the impugned order of the learned single Judge are not applicable to the case of the Respondent/Petitioner. Mr.Munusamy referred to the G.O. (1D) No.286, dated 19.07.2016 and pointed out that the said G.O. was issued only for the purposes of complying with the orders of this Court by adverting to paragraph 6 of the said order wherein it is expressly stated as under:

"6. To comply the order of the Honourable High Court of Madras and subsequently to avoid contempt proceedings of the High Court and based on the recommendation of the Director of Government Examinations, the following order is issued, as a special case."

He pointed out that G.O.(Ms) No.1, School Education Department dated 02.01.2017 also records that it has been issued as a special case on the basis of the orders of this Court. In support of his contentions, Mr. Munusamy relied upon the judgment of the Hon'ble Supreme Court in Col. B.J. Akkara v. Government of India (2006) 11 SCC 709 (Col. B.J.Akkara), wherein it was held as follows in paragraph 26:

26. The said observations apply to this case. A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realised, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach

finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a "pick-and-choose" method only to exclude petitioners on account of mala fides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The administrative law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29-10-1999 (corresponding to the Defence Ministry circular dated 11-9-2001) has been upheld and that decision has attained finality will not come in the way of the State defending or enforcing its circular dated 11-9-2001.

Therefore, Mr.C.Munusamy contends that the G.O.'s that were cited in the impugned order of the learned single Judge are not applicable and that this appeal is liable to be allowed by setting aside the impugned order.

9. On the contrary, Mr.G.Elanchezhiyan submitted that it is the admitted position that under the aforesaid G.O.'s, the services of the employees concerned were regularized with retrospective effect. Therefore, the same benefit should also be extended to the Respondent/Petitioner. Consequently, he further submitted that there is no infirmity in the order of the learned single Judge whereby the Respondents therein were merely directed to consider the representation of the Respondent/Petitioner with reference to the 3 G.O.'s cited in the impugned order.

10. We considered the submissions of the learned counsel for the respective parties and examined the materials on record.

11. The admitted position is that the Respondent/Petitioner was appointed on daily wage basis and, thereafter, a sanctioned post was created and the Respondent was appointed to the said post on a time scale of pay under G.O. (Ms) No.212, School Education (VI) Department, dated 25.10.2006. Subsequently, while the Respondent/Petitioner's writ petition was pending, it appears that the School Education Department granted regularization with retrospective effect to various individuals under the 3 G.O.'s that are referred to supra. On perusal of the said G.O.'s, it is evident that they were issued in response to the orders passed by this Court in writ petitions or writ appeals filed by the parties concerned. Both in G.O. (1D) No.286 dated 19.07.2016 and G.O.(Ms) No.1 dated 02.01.2017, it is

specifically stated that the orders were issued as a special case.

12. On perusal of the impugned order of the learned single Judge, we note that it is recorded in paragraph 3 of the order that the Petitioner had prayed for a larger relief but had agreed to restrict the prayer to the extent that the pension benefits extended to other similarly placed persons by various Government Orders may also be extended to the Writ Petitioner. By taking note of this limited prayer, the impugned order came to be passed.

13. The main ground on which Mr. Munuswamy challenges the impugned order is the inapplicability of the said 3 G.O.'s on the basis that the said orders were passed as a special case pursuant to the orders of this Court in proceedings initiated by the persons concerned. For the principle that those G.O.'s do not create a right in favour of the Respondent/Petitioner, he relied on the judgment in Col. B.J. Akkara.

14. Upon consideration of the rival contentions, we do not find any infirmity in the impugned order except to the limited extent of clarifying that it shall be open to the Appellants to consider the representation of the Respondent/Petitioner for the limited purpose of pension benefits, on merits, by considering the 3 G.O.'s referred to supra, and deciding on the applicability of such benefit to the Respondent/Petitioner. If a representation has already been submitted by the Respondent/Petitioner, such representation may be examined on merits in the manner indicated above and disposed of within a period of four weeks from the date of receipt of a copy of this order. Otherwise, the Respondent/Petitioner is permitted to submit such representation within two weeks from the date of receipt of a copy of this order and the consideration and disposal thereof shall be, as indicated above, but within four weeks thereafter.

15. In the result, the Writ Appeal is disposed of on the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Govt of TamilNadu,
School Education, Department,
Secretariat, Chennai - 9.

2.The Director of Govt Examination,
Director of Government Examination,
College Road,
Chennai - 6.

3.The Secretary to the
Director of Govt Examination,
Directorate of Govt Examination,
College Road, Chennai - 6.

+lcc to Mr.G.Elanchezhiyan, Advocate, S.R.No.30855

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SSD(CO)
KKV/22/12/2020



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