

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :25.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.22207 OF 2013

G.Balasundaram

.. Petitioner

- Vs -

1.The Secretary to Government
The State of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
Secretariat, fort St. George
Chennai 600 009.

2.The Director,
Adi Dravidar and Tribal Welfare Department,
Chepauk,
Chennai 600 005.

3.The district Adi Dravidar & Tribal Welfare Officer,
Villupuram district,
Villupuram.

4.The Headmaster,
Government ADW Higher Secondary School,
Kavarai, Gingee Taluk,
Villupuram District.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the 1st and 2nd respondents to consider the claim of the petitioner for regularization of services in the post of sanitary worker based on the proposal forwarded by the 4th respondent to the 2nd respondent in Na. Ka. NO.A3/07/008 dated 5.2.2008 on completion of 10 years of services from the date of appointment with consequential benefits as per G.O.Ms. NO.22 P & AR Department dated 28.2.2006 within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Shankaran

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For Respondents : Mr. A.N.Thambidurai, Spl.G.P.

ORDER

This Writ petition has been filed by the petitioner, to direct the 1st and 2nd respondents to consider the claim of the petitioner for regularization of services in the post of sanitary worker based on the proposal forwarded by the 4th respondent to the 2nd respondent in Na. Ka. NO.A3/07/008 dated 5.2.2008 on completion of 10 years of services from the date of appointment with consequential benefits as per G.O.Ms. NO.22 P & AR Department dated 28.2.2006 within a time frame to be fixed by this Court.

2.The case of the petitioner is he petitioner was appointed as sanitary worker on 01.09.1989 in the 4th respondent school on consolidated pay in the vacancy, which arose due to sanctioning of post in G.O.Ms.NO.1096, Social Welfare Department dated 25.06.1987 (on upgradation of middle school as high school). After some time the petitioner was paid with daily wages and he was continuously employed as sanitary worker till filing writ petition. Based on the representation made by the petitioner, proposals have been forwarded for regularisation of service. On 05.02.2008 the 4th respondent forwarded a proposal to the 2nd respondent for regularization of the services of the petitioner by referring to the fact that he was appointed in the year 1989 and continuously working in the school and he is being paid daily wages at the rate of Rs.48/- per day. Even thereafter no action has been taken for regularization of service for the petitioner in spite of Government orders in G.O.Ms.No.22 P&AR department dated 28.02.2006, which was duly implemented for regularization of services of daily wage employees/part time employees. Aggrieved against the same, the petitioner has filed this writ petition with the above said prayer.

3. Learned counsel appearing for the petitioner submitted that though the petitioner was appointed by the then DRO on 24.01.1989 in sanctioned post available at the relevant point of time, thereafter the government issued G.O.Ms.NO.22, P&AR department on 28.02.2006 and as per the G.O., the petitioner is entitled for regularisation thereby he made representation to the respondents. In such circumstances, this Court may issue a direction to the respondent to consider the petitioner's representation in accordance with law. Accordingly he prays for allowing the writ petition.

4.Per contra, learned Special Government Pleader appearing for the respondents stated that the petitioner has not been

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appointed on daily wage basis and that the petitioner herein is not eligible to be considered for regularisation as per G.O.Ms.No.22 dated 28.02.2006. He further stated that in supersession of the G.O.Ms.NO.22, dated 28.02.2006, orders have been issue vide G.O.Ms.No.74, P&AR (F) Department, dated 27.06.2013 revising the norms for regularising the services of full time daily wage employees working in all departments, especially condition NO. (ii) in case of relaxation of service rule, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed, where the petitioner has been appointed on consolidated pay not in consultation with employment exchange. Therefore the petitioner's appointment is clearly in deviation of the above mentioned condition. Accordingly, he prays for dismissal of the petition.

5.This Court heard the rival submissions made by either side learned counsel and also perused the materials available on records.

6. A perusal of the materials available on record reveals that in supersession of the G.O.Ms.NO.22, dated 28.02.2006, the Government, vide G.O.Ms.No.74, P&AR (F) Department, dated 27.06.2013 has revised the norms relating to regularisation of services of full time daily wage employees working in all departments. In this regard, condition No.(ii), which has been brought to the notice of this Court mandates that relaxation cannot be granted in certain cases, which are provided in the said condition. More importantly, relaxation is impermissible insofar as educational qualification and mode of recruitment are concerned. It is not the case of the petitioner that he has been appointed based on the sponsorship by the employment exchange. The petitioner not having been sponsored by the employment exchange, it is clearly not in consonance with the condition No.(ii) and, therefore, no relaxation can be granted to the petitioner to have his services regularised. Therefore, the prayer as sought for by the petitioner cannot be granted.

7. For the reasons aforesaid, this petition lacks merit and, accordingly, the same is dismissed. However that shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
The State of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
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- 2.The Director,
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- 3.The district Adi Dravidar & \Tribal Welfare Officer,
Villupuram district,
Villupuram.

+1cc to the Government Pleader, SR.31712

W.P. NO.22207 OF 2013

SPD(CO)
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