

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.23587 of 2013

T.Renganathan ... Petitioner

Vs.

1. The Secretary to Government,
M.A & W.S.Department,
State of Tamil Nadu,
Fort St. George, Chennai.
2. The Commissioner,
Corporation of Coimbatore,
Coimbatore. Respondents

Prayer: This writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of writ to call for the records relating to 2nd respondent's proceedings Na.Ka.No.6825/2001/Mc3 dated 25.07.2006 and quash the same in so far as the regularisation of the service of the petitioner is concerned from 23.02.2006 and consequently direct the respondents to regularise the service of the petitioner in times scale of pay after completion of 10 years service from the date of his initial appointment made pursuant to and in accordance with G.O.Ms.No.1644 RDLA Department dated 12.10.1979, as well as G.O.Ms.No.258 MA and WS Department dated 15.03.1988 with all attendant benefits.

For Petitioner : Mr.Muthappan

For Respondents : Mr.J.Ramesh, Addl.Gov.Pleader
(for R1)
Mr.J.Sathyaranarayana Prasad
(for R2)

O R D E R

This petition has been filed to quash the 2nd respondent's proceedings Na.Ka.No.6825/2001/Mc3 dated 25.07.2006 in so far as the regularisation of the service of the petitioner is concerned from 23.02.2006 and consequently direct the respondents to regularise the service of the petitioner in times scale of pay after completion of 10 years service from the date of his initial appointment made pursuant

to and in accordance with G.O.Ms.No.1644 RDLA Department dated 12.10.1979, as well as G.O.Ms.No.258 MA and WS Department dated 15.03.1988 with all attendant benefits.

2. The case of the writ petitioner in nutshell is as follows

The petitioner was appointed as Work Mastri temporarily in the Coimbatore Municipality in pay scale on 18.01.1979. Thereafter, his pay was modified in daily wages on 28.05.1979 and he has been continuously working in the said Municipality, which later became Corporation. The government has passed G.O.Ms.No.1644 RDLA Department dated 12.10.1979, wherein, it is stated that the employees in Municipalities under contingent and work charges establishment on NMR, who have completed 10 years of service without break as on 01.10.1979, are brought under regular establishment on a time scale of pay. It is further stated in Clause V that, in future also, as and when an employee completed 10 years of service, the officers of the concern Municipality shall send a proposal for bringing them to time scale of pay.

2.1. The Government has also issued G.O.Ms.No.258 MA & W.S. Department dated 15.03.1988 to regularise the contingent workers, who had completed 10 years of service with condone the break in service of 180 days.

2.2. The Government has sanctioned the post of sanitary workers in the Town Panchayats as per G.O.Ms.No.199 M.A & W.S. Department dated 12.08.1997 and directed to appoint the NMR's in the said posts for a period of three years in consolidate pay and thereafter, to regularise them to time scale of pay. Further, with respect to the other categories, as per G.O.Ms.No.125 MA & W.S. Department dated 27.05.1999, the government had directed the concerned Municipalities/Corporations/Town Panchayats to appoint the NMRs in the Entry level posts and regularise their service from that date, by fixing consolidate pay for the period of one year and thereafter in time scale of pay.

2.3. In pursuant to the G.O.Ms.No.1644 dated 12.10.1979, the service of many of the employees in the Corporation was regularised. Hence, the petitioner made representation dated 19.05.1989 to the 2nd respondent to regularise his service and the 2nd respondent has sent a proposal to the first first respondent on 20.08.1991 for regularisation. On 16.08.1993, the 2nd respondent again sent a proposal for regularisation of the service of the petitioner. But, no response from the frist respondent.

2.4. In the meantime, the first respondent issued G.O.Ms.No.21 M.A. & W.S.(MC3) Department dated 23.02.2006 to regularise the service of the employees, who worked on consolidated pay and NMR on daily wages in Municipalities. However, the 2nd respondent regularised the service of the petitioner and brought into time scale of pay only from

23.02.2006.

2.5. Pursuant to the G.O.ms.No.199 dated 12.08.1997, many employees in the category of sanitary works filed writ petitioner to regularise their service in the time scale of pay, after completion of 3 years and the same was allowed and the Division Bench also confirmed the same in W.A.No.47 of 2014 dated 23.06.2010. Aggrieved over the same, the Municipality filed SLP (Civil) No.26605 of 2010 and the same was dismissed by the Supreme Court vide order dated 27.09.2010. Therefore, on advise, the petitioner made representation to the 2nd respondent dated 24.06.2013 to regularise his service after completion of 10 years period in NMR service, as per G.O.Ms.No.1644 dated 12.10.1979 and G.O.Ms.No.259 dated 15.03.1988. But the 2nd respondent did not do so. Hence this writ petition.

3. The 2nd respondent filed counter affidavit, wherein, it is stated as follows.

The petitioner was appointed as Special NMR from 18.01.1979. Subsequently, his salary was regularised as time scale w.e.f. 23.02.2006, as per G.O.No.21 dated 23.02.2006 vide proceedings of the Commissioner, Coimbatore Corporation dated 25.07.2006. The petitioner is the beneficiary of G.O.No.199 dated 12.08.1977, which is only for the sanitary workers. The petitioner has not given any representation to the 2nd respondent through proper channel to regularise his service in time scale of pay, after completion of 10 years from the date of his initial appointment. Hence, the writ petition is liable to be dismissed.

4. Heard the learned counsel appearing for the writ petitioner as well as the respondents. I have perused the materials on record.

5. The learned counsel appearing for the petitioner submitted that the petitioner was entered into the service during the year 1979 and subsequently, the 2nd respondent regularised the service of the similarly placed persons worked in the Corporation. However, the 2nd respondent, instead of applying the G.O.Ms.No.1644 dated 12.10.1979 and G.O.Ms.No.258 dated 15.03.1988, by the government order in G.O.Ms.No.21 dated 23.02.2006, regularised the service of the petitioner only from 23.02.2006. Hence, he prayed to regularise the service of the petitioner from the date of his initial appointment.

6. The point for consideration is whether the petitioner is entitled for regularisation of his service on completion of 10 years of service as NMR.

7. This court has carefully analysed the facts and circumstances of the case. The petitioner has mainly quoted the two government orders namely

i) G.O.Ms.No.1644 RDLA Department dated 12.10.1979 and

ii) G.O.Ms.No.258 M.A. & W.S. Department dated 15.03.1998 and seeks regularisation of his service after completion of 10 years of service as NMR. The 2nd respondent vide order dated 25.07.2006, regularised the service of the petitioner only from 23.02.2006, as per the G.O.Ms.No.21 M.A. & W.S.(MC3) Department dated 23.02.2006. The above said order of the 2nd respondent was accepted by the petitioner and he has not challenged the above said order. After a lapse of 8 years, that too at the verge of retirement stage, the petitioner now challenged the above said order and filed this writ petition. A perusal of the affidavit shows that there is no explanation for such enormous delay and hence, the claim of the petitioner is certainly barred by limitation. More over, since the above said order of the 2nd respondent was acted upon, the petitioner is estopped from seeking such claim as sought in this writ petition.

8. The contention of the respondent is that the petitioner has not made any representation through proper channel to regularise his service in time scale of pay, after completion of 10 years of service from the date of his initial appointment. According to him, the petitioner has filed the writ petition without making any explanation for seeking such a claim belatedly and therefore, the same is not maintainable.

9. At this juncture, it is useful to extract the relevant portion of the decision rendered by the Honourable Supreme Court in Secretary to Government, School Education Department, Chennai Vs. R.Goindaswamy and others in Civil Appeal Nos.2726 to 2729 of 2014 (arising out of SLP (C) No.681 to 5684 of 2014) @ C.C.No.19326 to 19329 of 2013)

7. This court in State of Rajasthan and others V.Daya Lal and others. AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part time appointment in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. the same are as under.

8(i) 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 containing 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.

(ii) Mere continuation of service by a temporary or adhoc or daily wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, adhoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right."

In the above said decision, the Honourable Supreme Court has given some directions to regularise the service of the employee.

10. Here in this case, initially the petitioner was appointed under daily wages on consolidated pay and thereafter, his service was regularised on 23.02.2006, as per the G.O.Ms.No.21 dated 23.02.2006. Further, the petitioner has not made any representation to regularise his service, after completion of 10 years of service as NMR. Now, after a lapse of several years, the petitioner has come forward with this writ petition, which is not maintainable. Therefore, there is no merits in this writ petition and the same is liable to be dismissed.

11. In fine, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

mst

To

1. The Secretary to Government,
M.A & W.S.Department,
State of Tamil Nadu,
Fort St. George, Chennai.
2. The Commissioner,
Corporation of Coimbatore,
Coimbatore.

+1cc to Mr.J.Sathyaranarayana Prasad, Advocate SR.No.14419

+1cc to Mr.M.Muthappan, Advocate SR.No.13554

W.P.No.23587 of 2013

(CO)
GMY (22/05/2020)



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