

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25493 of 2013

1. R.Murali
2. K.Sekar
3. P.Kumaresan
4. G.Poovendiran
5. C.Ganesan

... Petitioners

vs.

1. The Secretary to Government,
M.A. & W.S. Department,
State of Tamil Nadu,
Fort St. George,
Chennai 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.
3. The Municipal Commissioner,
Vaniyambadi Municipality,
Vaniyambadi,
Vellore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the 3rd Respondent's proceedings in Na.Ka.No.5957/2007/C1, dated 31.08.2007 and quash the same insofar as regularisation of service of the Petitioners are concerned from the date of order and consequently direct the Respondents herein to regularize the service of the Petitioners in Time scale of pay after completion of 10 years service from the date of their 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 & WS dated 15.03.1988, with all attendant benefits.

For Petitioners : Mr.M.Muthappan
For Respondents 1 & 2 : Mr.A.N.Thambidurai,
Special Govt. Pleader
For 3rd Respondent : Mr.L.Joseph

ORDER

Petitioners herein have come up with the above Writ Petition seeking to quash the proceedings passed by the 3rd Respondent herein, insofar as regularization of their service is concerned and for a consequential direction to the Respondents herein to regularize their service in the time scale of pay after completion of 10 years service from the date of their 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 & WS dated 15.03.1988, with all attendant benefits.

2. The issue in question pertains to regularization of service of the Petitioners. By the present Writ Petition, Petitioners claim regularization from the date of their initial appointment, while their services were regularised from the date of the Government Order. The question put before this Court is whether the regularization ought to be from the date of initial appointment or from the date of the Government Order.

3. When the matter is taken up for consideration, learned counsel appearing on either side brought to the notice of this Court that, the issue raised in the present case is covered by an order passed by the learned single Judge of this Court in the case of T.Renganathan - Vs - Secretary to Govt., Government of Tamil Nadu & Ors. (W.P. No.23587 of 2013, etc. dated 18.2.2020) and, therefore, they pray that, similar order may be passed in the present Writ Petition, as well.

4. This Court heard the learned counsel on either side and perused the materials available on record as also the decisions relied on.

5. Learned single Judge of this Court, in T.Renganathan's case (cited supra), had an occasion to consider similar circumstances as raised in the present Writ Petition and referring to the decision of the Hon'ble Supreme Court in the matter of regularization, held as under :

"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 for 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."

6. Aggrieved by the said order of dismissal, the Petitioner therein viz. T.Renganathan filed W.A.No.913 of 2020 and by a judgment dated 09.10.2020, the First Bench of this Court upheld the order passed by the learned single Judge of this Court, by holding as under:

"7. He further submits that reliance placed by learned Single Judge on the judgment of the Apex Court referred to in paragraph 9 of the impugned judgment does not in any way impede the claim of the appellant inasmuch as the appellant has been regularized in service in accordance with Rule. It is not the case of the Respondents that the Appellant is deficient on any ground so as to render him unqualified or ineligible.

8. Having considered the submissions raised, we find that there is no valid explanation for having represented the matter as late as in the year 2013 and then arrived before this Court by filing a Writ Petition after almost seven years of the regularization order.

9. The conclusion on this issue therefore by the learned Single Judge does not suffer from any infirmity and refusal to exercise discretion cannot be said to be unwarranted.

10. However, the refusal to exercise the discretion by the High Court may not prevent the Appellant from seeking any relief from the Government and therefore, it will be open to the Appellant to seek such relief as may be admissible by approaching the authorities on the administrative side, as further judicial review in the matter does not appear to be permissible.

11. The writ appeal is consigned to records. No costs."

7. Petitioners in the present case are identically placed as the Petitioner in the above Writ Petition. Therefore, the order passed above stands squarely attracted to the case of the Petitioners herein. In such view of the matter, this Court is of the considered opinion that, this Writ Petition is liable to be dismissed in the light of the order passed in T.Renganathan's case (cited supra).

8. Accordingly, this Writ Petition stands dismissed in the light of the order passed in T.Renganathan's case (cited supra). No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

(aeb)

To:

1. The Secretary to Government,
M.A. & W.S. Department,
State of Tamil Nadu,
Fort St. George,
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2. The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.
3. The Municipal Commissioner,
Vaniyambadi Municipality,
Vaniyambadi,
Vellore District.

+1 CC to Mr.M.Muthappan, Advocate sr 37035.

+1 CC to The Government Pleader sr 36968.

W.P.No.25493 of 2013

SSV(CO)
SP(31/12/2020)