

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.07.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.27903 & 27904 OF 2013 and
M.P.No.1 and 1 of 2013

L.Purushothaman .. Petitioner in WP 27903/13

G.Soundarajan .. Petitioner in WP 27904/13

- Vs -

1. The Secretary to Government
M.A. & W.S. Department (Municipal Administration
and Water Supply 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
Vaniyampadi Municipality
Vaniyambadi, Vellore District.
- ... Respondents in both petitions

Writ petitions filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records relating to 3rd respondent's proceedings Na.Ka.No1179/2006 C1 dated 28.2.2006 and quash the same in so far as the regularisation of the service of the petitioner is concerned from 28.02.2006 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 their 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 and service benefits.

For Petitioners : Mr. M.Muthappan

For Respondents : Mr. S.Thangavel, Spl. GP

COMMON ORDER

The petitioners have filed the present petitions to call for the records relating to 2nd respondent's proceedings Na.Ka.No1179/2006 C1 dated 28.2.2006 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.

2. The matter in issue pertains to regularisation of the service of the petitioners. By the present petition, the petitioners claim regularisation from the date of their initial appointment, while their services have been regularised from the date of the Government Order. The question put before the Court is whether the regularisation ought to be from the date of initial appointment or from the date of the 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 the 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.23587/2013, etc. - Dated 18.2.2020) and, therefore, pray that similar order may be passed in the present petition as well.

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

5. Learned single Judge of this Court, in T.Renganathan's case (supra), had occasion to consider similar circumstances as raised in the present petition and referring to the decision of the Hon'ble Supreme Court in the matter of regularisation, 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 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."

6. The 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 these writ petitions are liable to be dismissed in the light of the order passed in T.Renganathan's case (supra).

7. Accordingly, these writ petitions are dismissed in the light of the order passed in T.Renganathan's case (supra). There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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
Vaniyampadi Municipality
Vaniyambadi, Vellore District.

+2cc to Mr.Muthappan, Advocate Sr.25478, 25479
+1cc to the Government Pleader sr.25746

W.P. NOS. 27903 &
27904 OF 2013

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srg 17/08/2020