

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.02.2020
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
W.P.No.11481 of 2018
and
W.M.P.Nos.13409 & 13410 of 2018

1.G. Santhi W/o.K.Ashok Kumar
2.N. Kavitha
3.G. Santhi D/o.M.Govindasamy
4.P. Siva

... Petitioners

Vs.

1.State of Tamil Nadu rep.by
its Secretary to Government,
Rural Development & Panchayat Raj's Department
Panagal buildings, Chennai - 600 009.

2.The Director,
Rural Development & Panchayat Raj
Saidapet, Chennai - 600 015.

3.The District Collector,
Nagapattinam District,
Nagapattinam.

4.The District Collector,
Karur District,
Karur.

5.The District Collector,
Krishnagiri District,
Krishnagiri.

6.The District Collector,
Vilupuram District,
Vilupuram.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, calling for the records the impugned letter dated 12.03.2018 in Na.Ka.No.23485/PA 7/2013-24 issued by the first respondent, quash the same and direct the first respondent and second respondent to regularise the petitioner to the post of Typist along with attended benefits.

For Petitioners: Mr. L. Chandrakumar
for M/S. P. Kannan
For Respondents: Mr. P.S. Siva Shanmuga Sundaram,
Spl., Government Pleader

O R D E R

This writ petition has been filed challenging the impugned letter dated 12.03.2018 issued by the first respondent and for a consequential direction to the first and second respondents to regularize the petitioners in the post of Typist along with all attendant benefits.

2. The case of the petitioners is that they were appointed as typist on a Daily wage as follows:-

(i) First petitioner in the year 1995 in the office of the third respondent.

(ii) Second petitioner in the year 1996 in the office of the fourth respondent.

(iii) Third petitioner in the year 1990 in the office of the fifth respondent.

(iv) Fourth petitioner in the year 1986 in the office of the sixth respondent.

3. The petitioners further claimed that they were subsequently issued with appointment orders during November 2007 and they have all been brought under the time scale of pay. However, the petitioners were not regularized in the post of Typist.

4. The petitioners had made a representation to the respondents seeking for regularization. The first respondent by the impugned letter dated 12.03.2018 has rejected the claim made by the petitioners for regularization on the ground that the petitioners come within the purview of Tamil Nadu Public Service Commission (hereinafter referred to as TNPSC) since the said post has been filled up by direct recruitment by TNPSC and in the absence of TNPSC declining to regularize the petitioners, the Government cannot pass any orders in that regard.

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5. Mr. L. Chandrakumar, learned counsel for the petitioner submitted that the first respondent had passed G.O (1D) No. 754 dated 26.12.2006 directing the Director of Rural Development and Panchayat Raj to fill up all the vacancies to the post of Typist. The relevant portion in the Government order that was brought to the notice of this Court is extracted hereunder:-

"3.The Government have examined the proposal of the Director of Rural Development and Panchayat Raj, referred to in the letter sixth read above and fix the total estimate of vacancies as 568 for the posts as Typist and permit to fill up 559 vacancies in the Directorate of Rural Development and Panchayat Raj and in various office of the Rural Development and Panchayat Raj Department in the Districts for the year 2006-2007 by direct recruitment through the Commissioner of technically education, one post on compassionate ground and 8 posts on daily wages as indicated in the annexure to this Government order."

6. The learned counsel by drawing attention of this Court to the above Government order submitted that the Government had specifically directed that Director of Rural Development and Panchayat Raj should also take into consideration the 8 posts which are held on daily wage basis. The Annexure appended to the Government order specifically indicates the post held by the petitioners during the relevant point of time at Serial Nos.4, 10, 15 and 18.

7. The learned counsel submitted that the Government had passed two G.O., namely G.O.Ms.No.22 and G.O.Ms.No.74, which deals with regularization of service of persons who are working on daily wage basis and who have been engaged for more than 10 years. The learned counsel submitted that even if these two Government orders are not made applicable to the petitioners, the earlier Government order where the Government has specifically taken note of the four petitioners and given appropriate directions, should have been taken into consideration the continued services of the petitioners in the post of Typist and they should have been regularized.

8. The learned counsel for the petitioners further brought to the notice of this Court, the letter written by the Tamil Nadu Public Service Commission on 31.01.2018, wherein it has been specifically stated that only the Government will have to take a decision with regard to the regularization of the petitioners and the TNPSC cannot take any decision in this

regard. The further case of the petitioner is that pursuant to the Government order dated 26.12.2006, similarly placed persons have all been regularized except the petitioners. Therefore, the petitioners are being made to run from pillar to post. The two authorities i.e., TNPSC and Government are passing the buck and ultimately the petitioners are being left in lurch.

9. The respondents have filed a counter in this case. A specific stand has been taken by the respondents to the effect that G.O.Ms.No.22 will not apply and G.O.Ms.No.74 will not apply to the case of the petitioners since these Government orders will not cover the Department of Rural Development and Panchayat Raj. It is further stated in the counter that the petitioners are continuing to work as temporary Typist on monthly remuneration and they do not have the right to claim for regularization. It is further stated that since TNPSC has specifically denied to give concurrence for the regularization of the service of the petitioners, the State Government cannot grant the said relief and if such regularization is granted, the State Government will only be allowing persons who have come through Back door to get their service regularized.

10. Mr. P.S. Siva Shanmuga Sundaram, learned Special Government Pleader appearing on behalf of the respondents submitted that the petitioners do not have any legal right to be considered for regularization since they have not been appointed in any sanctioned post and they were only given temporary appointment by fixing a monthly salary. The learned counsel further submitted that the post of Typist is filled up by direct recruitment conducted by TNPSC and therefore, it is for TNPSC to consider the regularization of the petitioners. However, the TNPSC has left it to the Government and the Government has ultimately rejected the claim made by the petitioners. The learned Special Government Pleader concluded his arguments by submitting that if at all the petitioners are considered for regularization, the same can only be done under the Tamil Nadu Ministerial Service Rules and it is for the first respondent to take a decision in that regard.

11. This Court has carefully considered the submissions made on either side and perused the materials available on record.

12. It is clear from the records that there is no serious dispute with regard to the fact that the petitioner was working as Typist in the respective Collectorate office for years together. Initially they were working on daily wage basis and subsequently in the year 2007, an appointment order was issued

to the petitioners and they were brought within a time scale of pay.

13. G.O(1D) No.754 dated 26.12.2006, which has been extracted supra clearly shows that the Government had examined the proposal given by the Director of Panchayat Raj and had permitted filling up of 556 vacancies in various offices falling within the said department. While issuing this G.O., the Government had also taken into consideration 8 posts which was held on daily wages out of which 4 posts were held by the petitioners during the relevant point of time. The Director of Rural Development and Panchayat Raj was specifically directed to fill up the vacancies in the manner indicated in the paragraph 3 of the Government order. What had happened subsequently was that the petitioners were brought within the regular time scale of pay and they were issued with appointment orders but however, the claim for regularization was not taken care.

14. The petitioners have put in long period of service continuously and the same has been recognised by the second respondent as early as 2006 itself. Therefore, the same has to be taken into consideration by the first respondent and the services rendered by the petitioners will have to be recognized and it has to be regularized. After having put in long service continuously, the petitioners should not be left in lurch and in the absence of regularization, the petitioners will not be entitled for any attendant benefits. In spite of putting in such a long service, the petitioners will be deprived of all the attendant benefits and allowance which a regular Typist will be entitled to. While identifying the vacancy in the year 2006, the posts that were held by the petitioners was also counted in the vacancy.

15. The TNPSC by its letter dated 31.01.2018 has taken a stand that it is for the Government which has to take an appropriate decision and the TNPSC has no say in the present case. This has been brought to the knowledge of the first respondent and therefore the claim made by the petitioners has been rejected. The petitioners having worked in a regular time scale of pay from the year 2007 onwards, must be regularized considering the continuous service that has been put in by them and also taking into consideration the recognition that was made by the Government while passing the Government order GO.Ms.754, dated 26.12.2006. The learned Special Government Pleader submitted that the claim of the petitioner for regularization can be considered only under the Tamil Nadu Ministerial Service Rules and the first respondent will have to take a decision in that regard.

16. In view of the above discussion, the impugned order of the first respondent dated 12.03.2018 is hereby quashed and there shall be a direction to the first respondent to consider the petitioners to be falling under Tamil Nadu Ministerial Service Rules and order shall be passed regularizing the service of the petitioners in the post of Typist. The necessary proceedings shall be initiated and Government order shall be passed within a period of 12 weeks from the date of receipt of a copy of this order. The Government can specifically state in the Government order that the case of the petitioners have been considered on the peculiar facts and circumstances and it is regularized pursuant to the orders passed by this Court and it should not be treated as a precedent in any other case.

17. In the result, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

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Sub Asst. Registrar

at
To

- 1.The Secretary to Government,
State of Tamil Nadu,
Rural Development & Panchayat rajs Department
Panagal buildings, Chennai - 600 009.
- 2.The Director,
Rural Development & Panchyatraj
Saidapet, Chennai - 600 015.
- 3.The District Collector,
Nagapattinam District,
Nagapattinam.
- 4.The District Collector,
Karur District,
Karur.

5.The District Collector,
Krishnagiri District,
Krishnagiri.

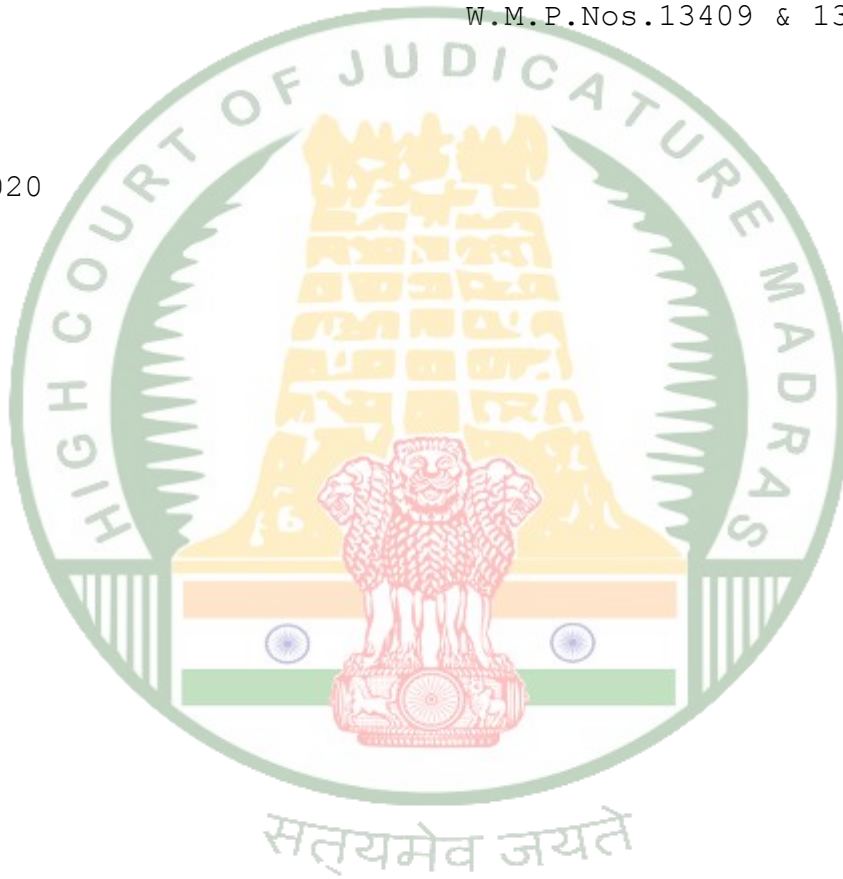
6.The District Collector,
Vilupuram District,
Vilupuram.

+5 cc to Mr.P.Kannankumar Advocate sr11225
+1 cc to Government Pleaer sr11801

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