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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.03.2020

Delivered on: 02.06.2020

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P. No.18772 of 2019

& WMP No.18117 of 2019

N.Premavathi

... Petitioner

Vs.

1.The District Collector,
Kanchipuram District.

2.The Block Development Officer,
Elathur Panchayat Union,
Kanchipuram District.

3.The District Elementary Educational Officer,
Kanchipuram District.

.... Respondents

PRAYER : Writ Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the order of the first respondent made in Na.Ka.No.7728/2018/PA4 dated 15.11.2018, to quash the same, and to consequently direct the respondents to forthwith regularize the services of the petitioner to any eligible last grade government servant's post and to extend all benefits both service and monetary.

For Petitioner
For RR1 & 2

: Mr.L.Chandrakumar
: Mr.M.D.Ilayaraja

For R3

Government Advocate
: Mr.P.Raja
Government Advocate

ORDER

This Writ Petition has been filed by the petitioner, seeking for the issuance of a Writ of Certiorarified Mandamus, to call for records relating to the order of the first respondent made in Na.Ka.No.7728/2018/PA4 dated 15.11.2018 quash



the same and consequently direct the respondents to forthwith regularize the services of the petitioner to any eligible last grade government servant's post and extend all benefits both service and monetary.

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2. The petitioner herein was appointed as Conductress in the Panchayat Union Elementary School, Kovathur, Chiyar taluk, Kanchepuram District on 01.01.1986. Ever since her appointment from 1.1.1986, the petitioner has been continued in service in the same position till date. According to the petitioner, as on date, she has been paid Rs.165/- being employed as part time Conductress and although the petitioner has been working since 1986, neither her services were regularized nor she has been brought on regular time scale of pay.

3. According to the petitioner, though she has been treated as part time employee but by the very nature of duties discharged by her, it is practically a full time job. According to her, earlier the first respondent by proceedings dated 16.2.2009 regularized 11 similarly placed employees who completed 10 years of service. However, the petitioner was not included for reasons unknown to her. Therefore, the petitioner submitted representations periodically to the respondents seeking for regularization of her service and also for grant of regular time scale of pay.

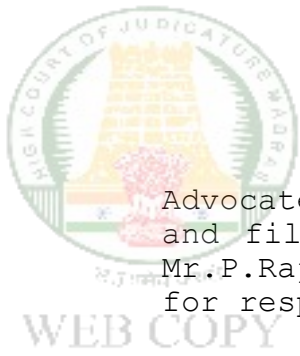
4. Since no action was forthcoming from the respondents, the petitioner approached this Court in W.P.No. 41768 of 2016 seeking for a direction to the authorities to grant the relief of regularization and regular time scale of pay. This Court, by order dated 25.07.2018, directed the respondents to consider the claim of the petitioner as projected in her representations submitted to the authorities. While disposing of the Writ Petition, this Court has issued a direction in paragraph 8 as under:

"8. There shall be a direction to the first respondent to consider the representation submitted by the petitioner on 12.08.2016, with reference to the G.O.Ms.No.385, Finance (Pay Cell) Department, dated 01.10.2010 and also with reference to the recommendations of the second respondent vide proceedings dated 12.11.2012 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that if similarly placed persons have been granted the benefits in terms of the aforesaid Government order and also with reference to the



5. Subsequent to the above direction of this Court as extracted above, the claim of the petitioner appears to have been considered, but came to be rejected by the first respondent in his proceeding dated 15.11.2018 on the ground that G.O.Ms.No.385 Finance Department dated 01.10.2010 would only apply to Scavengers and not to the Conductors and consequently, the benefit of the Government Order is not available to the petitioner. Being aggrieved, the petitioner is once again before this Court, challenging the said rejection order.

7. The learned counsel would submit that in fact, in the proceedings dated 16.2.2009, several Government Orders were referred to for regularizing the employees like the petitioner who completed 10 years of service. The learned counsel would submit that as far as the Sweeper category is concerned, the Government has passed G.O.Ms.No.385 Finance Department dated 01.10.2010 wherein, Sweepers who had put in 3 years of service were brought on special time scale of pay Rs.1300-3000. Though the respondents are trying to distinguish the case of the petitioner as being employed as Conductress and not as Sweeper, yet the special time scale of pay which was granted to the Sweepers, ought to have been extended to the petitioner as well. As on date, the petitioner has put in 34 years of service, and yet she has been denied regular time scale of pay and benefits of regularization that are applicable to last grade service. Therefore, he would urge this Court to direct the respondents to regularize the services of the petitioner, extending the benefits as granted to the similarly placed employees who were benefitted vide proceedings of the first respondent dated 16.02.2009 or under any other beneficial Government Order granting regularization of last grade Government servants for their continuous service more than 10 years.



8. After notice, Mr.M.D.Ilayaraja, learned Government Advocate has entered appearance on behalf of respondents 1 and 2 and filed a counter affidavit on behalf of respondent No.1 and Mr.P.Raja, learned Government Advocate has entered appearance for respondent No.3.

9. The principal objection raised on behalf of the respondent No.1 in the counter affidavit is that as per G.O.Ms.No.878 Rural Development and Local Administration Department dated 15.05.1981, no appointment was permissible in the cadre of contingent appointment after 01.04.1981. Since in the case on hand, the petitioner was appointed on 01.01.1986, her appointment was irregular and invalid and therefore, she became disentitled for grant of benefits envisaged in various G.Os. This objection has been repeated in all most all paragraphs in the counter affidavit and that appears to be the only and the solitary objection resisting the claim of the petitioner for regularization. In fact, the same objection has been spelt out in the rejection order as well.

10. However, as regards continuous service of the petitioner from 1.1.1986, the same has been admitted in counter affidavit. In fact, it is admitted in the counter affidavit that the petitioner is continuing as Conductress even as on date and discharging her duties. As regards the grant of special time scale of pay of Rs.1300-3000/-, in the counter affidavit, it is stated that the same cannot be granted to the petitioner, since she has been working as Conductress, the special scale of pay is only made applicable to the Sweepers who have completed three years of service.

11. The sum and substance of the rejection of the petitioner's claim is firstly, that the petitioner is not entitled to the special time scale of pay of Rs1300-3000, since she being employed as Conductress and not as Sweeper, secondly, being appointed after 1.4.1981, she is not entitled to be considered for regularization, unlike the other similarly placed conductors whose services were regularized by the first respondent vide proceedings dated 16.2.2009. On both the above stated grounds, the petitioner appears to have lost her claim, despite her long years of continuous service of 34 years.

12. Heard Mr.L.Chandrakumar, the learned counsel appearing for the petitioner and the learned Government Advocates appearing for the respondents and perused the entire materials available on record.



13. The case on hand is a singularly unfortunate one, calling for appropriate judicial response to the prayer sought for in the writ petition. The cry of a lonely employee, the petitioner herein for over three decades, has not evoked gracious response from the respondents, but on the other hand, the legitimate claim of the petitioner seeking regularization of her services, unfortunately met with bureaucratic terseness of handing out a pedantic rejection. "A nation's greatness is measured by how it treats its weakest members" cautioned by the Father of the Nation, Shri Mahatma Gandhi. Thus, the Government has to be judged as to how it treats its last grade servants, in the realm of a claim of this nature, wherein, the petitioner is forced to languish, without any kind of modest benefits other than a pittance or measly amount paid to her as daily wages. The wages that has been paid to the petitioner all the years, is ridiculously low, hardly sufficient for a morsel of food and sustenance and despite being awfully unfair to the petitioner, the authorities have been extracting work from her till date.

14. The claim for regularization by N.M.R, Casual/temporary employees belonging to the Government service or quasi government service, etc., has always been a dicey issue hovering over uncertainty depending upon the benevolence shown by the Government/employer from time to time. Some categories of employees have been fortunate of being benefitted by certain Government Orders issued covering various periods of time. But there are many who have been unfortunate being not covered by any of the Government Orders and their employment under the Government even for several years continuously, has been allowed to perilously hang in status quo, depriving these persons of all benefits that are normally enjoyed by the regular Government servants employed in their positions. No doubt that there were Government Orders issued in the past covering various categories of casual employees, N.M.Rs etc., by providing a scheme for regularization and on the basis of such Government Orders, those employees had been regularized and granted all the benefits as that of regular Government servants. Despite such positive measures being taken benefitting scores of employees over a period of time, yet there are still certain areas where the benevolence of the Government is found wanting particularly in a claim like the present one where the petitioner is probably one of the few employees employed as conductors and her continuous employment fore over three decades earning a pittance of no consequence has not touched the right chords of the powers that be.



15. In a welfare State, like ours, when an affirmative action is a constitutional goal, a weaker citizen of this country, vulnerable to exploitation cannot be engaged continuously for 34 long years, without any benefit of subsistence. Acquiescence of such employment is not out of any choice, but it is because of hope that one day the Government will provide a relief in the form of granting benefit of regular time scale and regularization of service. The State which is the guardian of its citizens' rights against exploitation, cannot be the usurper of such rights itself.

16. In the said circumstances, the hope of such last grade servants ought to be addressed in all earnestness by the Government and the petitioner's claim for regularization must be reciprocated with display of due empathy and true understanding. Once continuous service of the petitioner is admitted by the respondents themselves, no matter whether the petitioner is appointed after 01.04.1981, her case has to be considered with reference to the action of the first respondent in his proceedings dated 16.02.2009 wherein similarly placed employees had been regularized in the past. The service of the petitioner is too long to be ignored by sticking to certain directives, as such directives cannot be ipso-facto applied to the exceptional claim like the present one wherein the respondents with their eyes wide open, have allowed the petitioner to be employed from 01.01.1986 to till date. Even in the absence of any Government Orders covering the post of conductor, for the purpose of regularization or for grant of regular time scale, the Government in order to advance the cause of fairness and good conscience has to formulate a scheme and grant regular time scale as it deems fit and also regularize the services of the petitioner.

17. In the above circumstances, there shall be a direction to the first respondent to initiate action for grant of regular time scale and also for regularization of services of the petitioner. In case the first respondent is the competent authority to grant regularization, he is directed to grant regular time scale and regularize the service of the petitioner from the date of her initial appointment as done in the case of similarly placed persons by proceedings dated 16.02.2009. The order of the first respondent shall be passed within a period of eight weeks from the date of receipt of a copy of this order.

18. In case the claim of the petitioner for regularization requires Government's intervention and approval, the first respondent is further directed to forward a proposal



for regularization of the petitioner within a period of four weeks from the date of receipt of a copy of this order and follow up the proposal with the Government to take the proposal to its desired end as expeditiously as possible.

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19. Accordingly, the Writ Petition is allowed on the above terms. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

- 1.The District Collector,
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- 2.The Block Development Officer,
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- 3.The District Elementary Educational Officer,
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