

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27589 of 2014

A.Perumal

... Petitioner

Vs.

- 1.The Government of Tamilnadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St.George,
Chennai – 600 009.
 - 2.The Director of School Education,
College Road,
Chennai – 600 006.
 - 3.District Educational Officer,
Erode, Erode District.
 - 4.The Head Master,
Government Boy's Higher Secondary School,
Sivagari,
Erode District – 638 109.
- ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to regularize the service of the petitioner as 'Sweeper' fixing time-scale of pay with effect from 01.01.1996 applying G.O.Ms.No.22, Personnel &

Administrative Reforms (F) Department dated 28.02.2006, besides disbursing the arrears of back-wages with all allowances increments etc with effect from 01.01.1996, the date of the petitioner's initial appointment, apart from counting 50% of the earlier service rendered by the petitioner from 01.01.1996 for the purpose of the applicability and sanctioning of pension under Old Pension Scheme considering the petitioner's entry into service with effect from 01.01.1996 in the light of the proceedings of the third respondent made in Na.Ka.No.224/Aa1/2011, dated 09.08.2011.

For Petitioner : Mr.A.Amal Raj
For Respondents : Mr.S.Suresh Kumar
Government Advocate

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the respondents to regularize the service of the petitioner as 'Sweeper' fixing time-scale of pay with effect from 01.01.1996 applying G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department dated 28.02.2006, besides disbursing the arrears of back-wages with all allowances increments etc., with effect from 01.01.1996, the date of the petitioner's initial appointment, apart from counting 50% of the earlier service rendered by the petitioner

from 01.01.1996 for the purpose of the applicability and sanctioning of pension under Old Pension Scheme considering the petitioner's entry into service with effect from 01.01.1996 in the light of the proceedings of the third respondent made in Na.Ka.No.224/Aa1/2011, dated 09.08.2011.

2.The case of the petitioner is that the petitioner was appointed as Sweeper/ Sanitary Worker in the Education Department under Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Service Rules with effect from 01.06.1996. The grievance of the petitioner is that though he was appointed in a sanctioned post, his salary was fixed on consolidated mode instead of time scale of pay and that even though he has put in more than ten years of service, his service was not regularized. In this regard, the petitioner made representation to the respondents and since there was no action, has come forward to file this writ petition.

3.The learned counsel appearing for the petitioner would submit that the petitioner was appointed as Sweeper/ Sanitary Worker in the Education Department under Rule 10 (a) (i) of the Tamil Nadu State

and Subordinate Service Rules with effect from 01.06.1996. Hence, the petitioner has completed ten years of service as on 01.06.2006.

4.The learned counsel appearing for the petitioner would further submit that G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, emphasizes the regularisation of the services of daily paid employees who have put in ten years of service as on 01.01.2006 in all the Government Departments. Hence, this Court may issue direction to the respondents to pass appropriate orders on the petitioner's representation in terms of G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006.

5.In support of his contention, the learned counsel appearing for the petitioner relied upon the decision of the Hon'ble Apex Court reported in **(2010) 9 SCC 247 [State of Karnataka and others Vs. M.L.Kesari and others]**, the relevant portion of which reads as follows:

"7.It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, if the following conditions are fulfilled:

(i) The employee concerned should have

worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

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6.The learned Government Advocate would submit that as per

G.O.Ms.No.22, Personnel and Administrative Reforms Department,

dated 28.02.2006, the service of the daily wage employees who have rendered ten years service as on 01.01.2006 alone can be regularized, whereas, the petitioner is not a daily wage employee and has not completed ten years of service as on 01.01.2006.

7. Heard the arguments advanced on either side and perused the materials available on record.

8. Admittedly, the petitioner was appointed as Sweeper/ Sanitary Worker in the Education Department under Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Service Rules with effect from 01.06.1996 and the petitioner has completed ten years of service as on 01.06.2006. The representation made by the petitioner seeking regularisation of his service has not yet been considered by the respondents.

9. Hence, this Court directs the respondents to consider the representation made by the petitioner seeking regularisation of his service, on merits and in accordance with law and in the light of G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, if the said Government Order is applicable to the

petitioner, and pass appropriate orders, within a period of six weeks from the date of receipt of a copy of this order.

10.The writ petition is accordingly disposed of. No costs.

14.12.2020

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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