

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.35939 of 2019 and WMP No.36855 of 2019

J.Durai raj

... Petitioner

Vs.

1. The Secretary to Government,
Department of Elementary Education and Literacy,
Ministry of Human Resources Development,
Government of India,
New Delhi - 200 000.
 2. The State of Tamil Nadu
Rep. by the Secretary to Government,
School Education Department,
Chennai - 9.
 3. The State Project Director,
Sarva Shiksha Abiyan,
District Primary Education Programme,
Chennai - 2
- ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to regularize the service of the petitioner with effect from the date of appointment in the post of Civil Engineer engaged to carry on Sarva Shiksha Abiyan Programme aimed to attain the mandate of Article 21 of the Constitution and in line with Para No.53 of the Uma Devi case in 2006 (4) SCC 1 (CB), Siksha Sarthi Association Vs.State in 2018 (1) LLJ 173 (FB) and in W.A.No.755 of 2013 dated 03.01.2019 passed by this Court by considering petitioner representation dated 19.06.2019.

For Petitioner : Mr.S.Vinoth Kumar

For Respondents : Mrs.N.K.Nithilavani,
Additional Central Government
Standing Counsel for R1
Mrs.V.Annalakshmi,
Government Advocate for R2&R3

O R D E R

This writ petition has been filed for the issue of writ of Mandamus directing the respondents to regularize the service of the petitioner with effect from the date of his appointment in the post of Civil Engineer under the Sarva Shiksha Abhiyan (SSA) Programme.

2. The case of the petitioner is that the SSA programme was started in the year 2001 and the main object of this programme is to provide elementary education for all children, who fall within the age group of 6 to 14 years. The petitioner was appointed on a consolidated pay in the year 2007 and he had completed more than 10 years of service. The petitioner has made a representation seeking for regularization of his service on the ground that similarly placed persons have already been granted such a relief. Since the representation was not considered, the present writ petition has been filed before this Court.

3. The learned counsel appearing for the petitioner would submit that the Hon'ble Supreme Court in the case of State of Karnataka Vs.M.L.Kesari reported in 2010 9 SCC 247 had taken into consideration the earlier Constitution Bench judgment in Umadevi case (2006 (4) SCC 1) and has categorically held that if an employee has worked for 10 years or more in a sanctioned post and has been employed by the State voluntarily and continuously, is entitled to be considered for regularization. The learned counsel also relied upon the judgment of the Full Bench of the Gauhati High Court in Kamrup District Siksha Sarathi (I) Association Vs. State of Assam. The learned counsel submitted that the Gauhati High Court has categorically held that persons who were employed under the Sarva Shiksha Abhiyan scheme continuously for more than 10 years, a scheme should be formulated for regularization of the employees.

4. The learned counsel submitted that similarly placed employees like the petitioners approached this Court for regularization and the relief was initially rejected and thereafter, an Appeal was filed in W.A.No.755 of 2013. The Division Bench of this Court had taken into consideration the above Full Bench judgment and issued certain directions.

5. The learned counsel subsequently relied upon paragraph No.9 and 10 of the Division Bench Judgment and the same is extracted hereunder :-

9. We may hasten to add that the need for the appellants still continues. As stated, they have

been working continuously for more than two decades now. To continue them as temporary and contractual employees forever would certainly amount to unfair labour practice. It is not as if they wanted to join the Scheme. They have been brought under the Scheme pursuant to the Manual of the Central Government. Though at that point of time it was thought to be a time-bound scheme, the fact remains that it is being continued over the years (15 years).

10. Thus, in the light of the above, we are inclined to direct the respondent No.1 to frame a comprehensive scheme for the purpose of absorbing the appellants as directed by the Full Bench in Kamrup District Siksha Sarathi(I) Association (supra). The above said exercise will have to be done by the State Government within a period of three months from the date of receipt of a copy of this order.

6. The learned counsel submitted that the petitioner has completed the required period of service to be considered for regularization and the petitioner has made a representation to the respondents in this regard. The learned counsel therefore requested this Court to give appropriate directions to the respondent to regularize the service of the petitioner, in line with the above judgments and in line with G.O.Ms.No.22 dated 22.02.2006.

7. Per contra, Mrs.V.Annalakshmi, learned Government Advocate submitted appearing for respondents 2 and 3 submitted that the respondents will consider the representation made by the petitioner strictly in accordance with law and pass orders.

8. Taking into consideration the facts and circumstances of the case and also the submissions made on either side, this Court is inclined to issue directions to the 3rd respondent to forward all the particulars regarding the petitioner to the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order. The 2nd respondent on receipt of such proposal given by the 3rd respondent, shall consider the same strictly in accordance with law and in line with the judgments cited supra and pass appropriate orders, within a period of twelve weeks thereafter. The petitioner is directed to make a fresh representation to the 3rd respondent in this regard along with all particulars. In the meantime, status quo as on today shall be maintained till the final orders are passed by the 2nd respondent.

9. This writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Department of Elementary Education and Literacy,
Ministry of Human Resources Development,
Government of India,
New Delhi - 200 000.
2. The Secretary to Government,
The State of Tamil Nadu
School Education Department,
Chennai - 9.
3. The State Project Director,
Sarva Shiksha Abiyan,
District Primary Education Programme,
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+1cc to Mr.S.Vinoth Kumar, Advocate SR.No.1504

W.P.No.35939 of 2019

GMV (14/02/2020)

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