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W.P(MD)No.16099 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2020

(Reserved on 07.02.2020)

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.16099 of 2014

and

M.P(MD)No.1 of 2014 and WMP(MD)No.13406 of 2017

R.Savarimuthu

... Petitioner

vs.

1)The Agricultural Production Commissioner,
The Secretary to Government,
Agricultural Department,
Fort St.George,
Chennai-600 009.

2)The Director of Agriculture,
Chepauk,
Chennai-600 005.

3)The Joint Director of Agriculture,
Kattu Pudhukulam, Pudukottai.

4)The Regional Accounts Officer (Audit)
Agricultural Department,
Pudhukkottai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 2nd respondent in AaUPa2/17553/2011 dated 02.05.2014 and quash the same and consequently direct the respondents to regularise the petitioner's service and to disburse all the monetary benefits from the date of appointment as a watchman from 31.07.1976 with promotions and increments and all other benefits as per the pay prescribed to the post of office assistant from 25.02.1982.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.S.Dhayalan
Government Advocate

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 2nd respondent in AaUPa2/17553/2011 dated 02.05.2014 and quash the same and consequently direct the respondents to regularise the petitioner's service and to disburse all the monetary benefits from the date of appointment as a watchman from 31.07.1976 with promotions and increments and all other benefits as per the pay prescribed to the post of office assistant from 25.02.1982.

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2.The petitioner would submit that he has studied only upto 4th Standard and registered his name in the employment exchange bearing No.126/71. He was sponsored by the employment exchange for the post of Watchman in the respondents' office and accordingly, he was appointed as Watchman under miscellaneous expenses on 31.07.1976 by the proceedings of the Divisional Agricultural Engineer, Agricultural Machinery Training Centre, Kudumianmalai, in No.Aa/494/76 dated 21.07.1976 and from the said date, he was working continuously without any blemishes. While so, G.O.No.52, Finance FR II, dated 14.01.1977, was passed regularising the services of the contingent employees on completion of 5 years. According to the petitioner, he completed more than 5 years of continuous service as on 01.08.1981 and therefore, as per G.O.No.52, his services ought to have been regularised, but it was not done. On 17.02.1982, the respondents fixed the petitioner's scale of pay in the cadre as Basic Servant with the pay scale of Rs.250-5-330-10-400 after completion of more than 5 years and 6 months and no increment was given to the petitioner stating that his services were not regularised. While so, the petitioner was promoted as Office Assistant on 25.02.1982. On 09.03.1987, G.O.Ms.No.294, was issued, by which, it was directed that the persons whose services were regularised with retrospective effect on or before 31.03.1982, be placed in the scale of Rs.250-5-330-10-400 and based on the said G.O., the petitioner's scale of pay was fixed at Rs.250-5-320-10-400, but his service was not considered to be regularised.

3.The petitioner would further submit that by communication dated 09.03.1987, the 2nd respondent issued a Government Letter wherein, relaxation was granted to the individuals who were appointed regularly as Watchman in the Agriculture Department. In the said letter, several persons were included, but his name was left out. On 26.10.2009, the 3rd respondent by a communication to the 2nd respondent, requested to regularise the petitioner's services as Office Assistant, in which, the petitioner's name was found at Serial No.18. In the said communication, it has been categorically stated that the services of the petitioner in the post of Watchman has to be regularised as per the communication of the Commissioner of Agriculture, dated 18.03.2003. Since there was no response despite the recommendation dated 20.12.2010, the petitioner made a representation which was not considered and therefore, he filed W.P (MD)No.739 of 2011 which was disposed of by order dated 28.06.2011, with a direction to consider the petitioner's representation.

4.The petitioner would further state that on 19.04.2012, the respondents rejected the petitioner's claim stating that as per G.O.Ms.No.52, a person can be regularised only in the post only when he has completed 5 years and the said G.O was issued on 14.01.1997, whereas the petitioner entered into the service on 31.07.1976. On 31.08.2012, the petitioner was permitted to retire without any benefits after 36 years of blemishless service. Thereafter, the

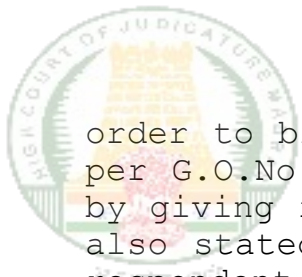


petitioner challenged the above rejection order dated 19.04.2012 by filing W.P(MD)No.8372 of 2012 which was disposed of by order dated 11.12.2013 with a direction to consider the request of the petitioner for regularisation in the post of Watchman. Based on the said order, on 13.03.2014, the 3rd respondent recommended to the 2nd respondent to regularise the petitioner's service with retrospective effect from 01.01.2006 as per G.O.Ms.No.74 dated 27.06.2013. The 2nd respondent passed the impugned order dated 02.05.2014, once again rejecting the request of the petitioner stating that the petitioner was appointed as Watchman through the employment exchange on 31.07.1976 under miscellaneous expenses and thereafter, on 25.02.1982, he was appointed as Office Assistant without the requisite qualification and as per G.O.Ms.No.52, dated 14.01.1977, a person can be regularised only in the post in which he has completed 5 years of service, but since the petitioner was posted as Office Assistant from 01.04.1982 without the requisite qualification, his services cannot be regularised. Challenging the said order, the petitioner has filed this writ petition.

5.Learned counsel for the petitioner would submit that G.O.Ms.No.52, clearly states that the Head of the Department should send proposal on 1st January of every year for bringing into regular establishment for the contingent employees who have completed 5 years of service as on 1st January. As admitted by the respondents, the petitioner who was appointed on 31.07.1976, has completed 5 years and 5 months as on January 1982 and instead of forwarding proposal for the petitioner, his request was turned down.

6.He would further submit that the basic qualification for appointment of Class IV employees is read and write which has also been reiterated in Government Letter No.107, Personnel and Administrative Reforms Department, dated 05.02.1987. He would also state that as per G.O.Ms.No.374, Personnel and Administrative Reforms Department, dated 22.10.1983, those who have passed IIIrd form or 8th Standard and ESLC and completed probation in class IV and served in the said class for not less than 1 year shall be eligible for appointment on transfer from the category in class IV to the category in class III of the said service. As such, the petitioner is also entitled to be posted as Office Assistant inasmuch as he has worked in class IV service for a long period from 31.07.1976 to 25.02.1980

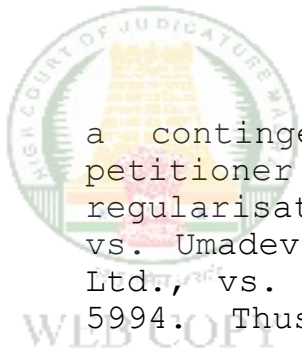
7.Learned counsel for the petitioner would submit that the respondents ought to have regularised the petitioner's service as per G.O.Ms.No.107 dated 05.02.1987 which states that persons who were appointed on or before 01.04.1977 and continued in the miscellaneous expenses have to be regularised by 01.04.1982. He would further state that as per Government Letter No.294, dated 09.03.1987, sanction has been accorded for creation of 41 posts of Watchman, unskilled Mazdoor under the Tamil Nadu Basic Service in



order to bring 41 contingent menials under regular establishment as per G.O.No.52, in which, several contingent employees were included by giving relaxation, but the petitioner alone was left out. It is also stated that as per G.O.No.52 and the recommendation of the 3rd respondent dated 13.03.2014, the petitioner ought to have been regularised. He would also state that in similar circumstances, when one Mrs.Baby who was appointed as Office Assistant on temporary basis was terminated on the ground of production of fake certificate, on the orders of the Administrative Tribunal, her services were regularised even by regularising the break in service. Likewise, when one Mumtaj Begam who was appointed as Office Assistant without the requisite qualification, was terminated on the ground of production of fake certificate, the service of the said individual was later on regularised. According to the learned counsel, similar benefits were not extended to the petitioner. Thus, he would pray for setting aside the impugned order with consequential prayer.

8.The respondents 3 and 4 have filed separate counter affidavits. Learned Government Advocate appearing for the respondents would state that due to the exigency condition prevailing in the respondent department, the petitioner was appointed under the emergency provision and his appointment order dated 31.07.1976 itself shows that he was appointed in the post of Watchman as contingent employee for a temporary period of three months in the scale of pay of Rs.18/- + usual allowances under the rules in force and further, there was a specific clause in the appointment order that the appointment is purely on emergency basis and he cannot claim any right for regular appointment. Therefore, he would submit that the petitioner who has been appointed as contingent employee has no right to claim regularisation. He would further state that as per G.O.Ms.No.52, those who have completed 5 years of service as contingent employee on the date of G.O namely, 14.01.1977 alone can be regularised, whereas, the petitioner completed 5 years of service only on 01.08.1981 and therefore, he is not entitled for regularisation.

9.Learned Government Advocate would further submit that the petitioner cannot claim regularisation as per G.O.Ms.No.294 as the said G.O is applicable only to those who were regularised with retrospective effect on or before the crucial date namely, 31.03.1982. He would further state that while filling up the basic servant posts from among the eligible employees, the petitioner was wrongly posted as basic servant and when proposals were sent, the Government rightly rejected the same citing that he has not completed 5 years of service as on 14.01.1977 as per G.O.No.52 and further he did not possess the required qualification of pass in 8th Standard and accordingly held that his appointment as basic servant was irregular. He would also state that G.O.Ms.Nos.107 and 74 are not at all applicable to the petitioner's case as the petitioner was



a contingent employee. Therefore, he would state that the petitioner who is a temporary employee has no right to claim regularisation and would rely on the judgments in State of Karnataka vs. Umadevi, 2006 (4) SCC 01 and Indian Drugs and Pharmaceuticals Ltd., vs. Workman, Indian Drugs and Pharmaceuticals Ltd., AIR SCW 5994. Thus, he would pray for dismissal of the writ petition.

10. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

11. It is an unfortunate case where a person who had been appointed in 1976 and had put in blemishless service of nearly 36 years till the date of his retirement was sent out without even regularising his services in spite of various G.Os which were in favour of him. Even this Court has directed the authorities and though W.P(MD)No.739/2011 was disposed of directing the respondents to consider the petitioner's representation, in order to satisfy the contempt proceedings initiated by the petitioner, the request of the petitioner was rejected on 19.04.2012 and again, the petitioner challenged the rejection order dated 19.04.2012 in W.P(MD)No.8372 of 2012 and this Court directed the respondents to consider the request of the petitioner for regularising in the post of Watchman. It is also seen that the 3rd respondent recommended to the 2nd respondent to regularise the petitioner's services with retrospective effect by giving relaxation as per G.O.Ms.No.74 dated 27.06.2013 and the same has been rejected by the impugned order.

12. The petitioner is a basic servant and it is not in dispute that the petitioner was appointed in 1976 under miscellaneous expenses through the Employment Exchange on 31.07.1976 and thereafter he was appointed as Office Assistant on 25.02.1982 without the requisite qualification which is not the fault of the petitioner. The contention of the petitioner has been rejected on the ground that the petitioner can seek regularisation in the post where he had completed 5 years of service, but since the petitioner was posted as Office Assistant from 01.04.1982 and his initial appointment as Watchman was under the miscellaneous expenses on 31.07.1976, his services cannot be regularised, which in my opinion is total failure of justice as the petitioner ought to have got regularisation even at the time of filing second writ petition W.P (MD)No.8372 of 2012. There is no application of mind on the part of the respondents. Even as per G.O.Ms.No.107, dated 05.02.1987 which states that persons who were appointed on or before 01.04.1977 and continued in the miscellaneous expenses have to be regularised by 01.04.1982. Here, the petitioner though was appointed under miscellaneous expenses in 1976, he had been promoted as Office Assistant in 1982 and the entire work has been extracted till the date of retirement but, the petitioner's service has not been regularised. Even as per Umadevi's case, the Executive and the Court in appropriate cases would have right to regularise an



appointment made after following due procedure in a scheme of public employment even though a non fundamental procedure is not followed. Admittedly, the petitioner's appointment was through the employment exchange and as per the Government Order passed, similar persons were regularised.

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13. Therefore, the order passed by the 2nd respondent in AaUPa2/17553/2011 dated 02.05.2014 is quashed and the respondents are directed to regularise the petitioner's service from his initial appointment and to disburse all the monetary benefits from the date of initial appointment as Watchman from 31.07.1976 and pay all the service benefits, monetary benefits and retirement benefits with interest at 9% per annum within a period of ten weeks from the date of receipt of a copy of this order.

14. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar (CS)

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To

1) The Agricultural Production Commissioner,
The Secretary to Government,
Agricultural Department, Fort St. George, Chennai-600 009.

2) The Director of Agriculture,
Chepauk, Chennai-600 005.

3) The Joint Director of Agriculture,
Kattu Pudhukulam, Pudukottai.

4) The Regional Accounts Officer (Audit)
Agricultural Department, Pudukkottai.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-5437[F] dated 10/02/2020)

PRE-DELIVERY ORDER MADE IN
W.P (MD) No.16099 of 2014
DATED : 26.11.2020

PU (CO)

KB (03.12.2020) 6P 6C

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