



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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W.P.(MD).No.6469 of 2014

K.Kalanjiam

... Petitioner

-Vs-

1.The Government of Tamil Nadu,
Represented Through its Secretary,
Fisheries Department,
Fort St. George, Chennai.

2.The Managing Director,
Tamil Nadu Fisheries Development Corporation,
129, R.K.Mutt Road, Raja Annamalaipuram,
Chennai.

3.The Manager,
Mandapam Camp,
Fisheries (Freezer) Department,
Mandapam Camp,
Ramanathapuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents resulting in the second respondent's impugned order in Rc.No.8825/P3/90, dated 29.05.2012 quash the same and direct the first respondent to decide the proposal sent by the second respondent regarding the relaxation of the petitioner's age and consequently, to regularize the service of the petitioner in the post of helper from the date of joining and consequently pay all the attendant and monetary benefits including backwages forthwith.

For Petitioner	: Mr.V.R.Venkatesan
For Respondents	: Mr.CM.Mari Chelliah Prabhu Additional Government Pleader (for R1) Mr.R.Karthick Rajan (for R2 and R3)

ORDER

The impugned order, dated 29.05.2012, is under challenge in the present writ petition.

2.The learned counsel for the petitioner states that he was appointed as an Office Assistant on 03.07.1973 as daily rated

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employee. The grievances of the writ petitioner is that he was continuing in service. However, he was retrieved after some period and thereafter, he was re-engaged only after a lapse of 18 years. The petitioner states that, it is not his fault. He was engaged as daily rated employee in the year 1973 and in the same year, he was retrieved. After 18 years, he was again provided with a job at the age of 41 years. Subsequently, he was worked and reached the age of superannuation and retired from service. The retirement benefits were settled. The learned counsel for the petitioner states that it is not the fault of the writ petitioner and he was erroneously retrieved from service and after a lapse of 18 years, he was re-engaged by the respondents.

3.The counter affidavit filed by the second respondent reveals that the petitioner was appointed as daily paid helper on 12.08.1992 through District Employment Exchange, Ramnad. His appoint was on temporary basis and he may be terminated at any point of time. The class regarding the discretion of the employer has been stated in the appointment order itself. The maximum age limit fixed for the post of helper is 30 years. However, the petitioner was over aged and therefore, even the proposal for relaxation was not materialised.

4.The impugned order also states that the office proposal to the Government requesting to relax the age condition to the writ petitioner was also not considered. In view of the fact that the petitioner reached 41 years at the time of initial recruitment as helper on daily rated basis.

5.Relaxation or permanent absorption cannot be granted in violation of the services rules in force. All appointments are to be made strictly in accordance with law, so also, the regularisation. Regularisation cannot be claimed as a matter of right. The irregular and illegal appointments cannot be regularised and relaxation is also to be granted only on certain exceptional circumstances, where there is a gross in justice. In all other circumstances, the recruitment rules and the service rules are to be followed scrupulously by the authorities competent. In the present case, even at the time of re-engagement of the writ petitioner in the year 1992 as daily rated temporary employee, he was aged about 41 years and the proposal is also not considered. This being the factum, now after retirement, the petitioner cannot be regularised in the permanent sanctioned post as the benefits as applicable to the temporary employees were settled in favour of the writ petitioner,

6.The Constitution Bench of the Hon'ble Supreme Court of India in the case of **Uma Devi** settled the legal principles in the matter of grant of regularisation and permanent absorption. Regularisation cannot be granted in violation of the rules in force.



Thus, the relief as such sought for cannot be granted and the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CSI)

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Sub Assistant Registrar(CS)

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To

1.The Secretary,
Government of Tamil Nadu,
Fisheries Department,
Fort St. George, Chennai.

2.The Managing Director,
Tamil Nadu Fisheries Development Corporation,
129, R.K.Mutt Road, Raja Annamalaipuram,
Chennai.

3.The Manager,
Mandapam Camp,
Fisheries (Freezer) Department,
Mandapam Camp,
Ramanathapuram District.

+1 CC to M/s.R. ANANDHARAJ, Advocate (SR-22595[F] dated 24/11/2020)

+1 CC to M/s.SPL GP (SR-22656[F] dated 24/11/2020)

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