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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 17976 of 2010

and

W.M.P. No. 1 of 2010

B.Pingalan

... Petitioner

-vs-

1. The Government of Tamil Nadu,
Represented by its Secretary,
Rural Development Department,
Fort St.George,
Chennai - 9.

2. The District Collector,
Chairman, Dharmapuri District,
Social Economic Development Society,
Dharmapuri.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus, directing respondents to give employment to petitioner with retrospective effect with all backwages and attendant benefits with effect from 27.03.2007.

For Petitioner : Mr.K.Chandrasekaran

For Respondents : Mr.K.Magesh

Special Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondents to give employment to petitioner with retrospective effect with all backwages and attendant benefits with effect from 27.03.2007.

2. The petitioner was temporarily appointed on 13.03.1988 as Computer Programmer Assistant at Dharmapuri Development Corporation, which was established for a special purpose as per the project sponsored by the Government of India and implemented by Dharmapuri District Development Corporation.



3. In that capacity, he had been working for some years and subsequently, the Government decided to wind up the said Corporation, accordingly, they issued a Government Order in G.O.Ms.No.61, Rural Development Department dated 06.06.2003, by which, the corporation was directed to be wound up. The Administrative Staff like the petitioner, who were engaged or were worked in the Corporation whether to be absorbed in any newly formed society or in Rural Development Department, will be decided by the Collector in consultation with the Director of Rural Development.

4. In view of the said development, it seems that, the petitioner had been deputed to a newly formed society called "Vazhndhu Kattuvom Society", which has been subsequently renamed as "Tamil Nadu Pudu Vazhvu Society". For the said Society, he has been transferred by way of deputation and accordingly, he joined there on 21.07.2006. Though, he had joined and was worked from 21.07.2006 at the said Society, however, by proceedings dated 27.03.2007, the District Branch Manager of the said Society had issued an order, stating that, as per the direction of the Branch Manager of the Society, the petitioner was relieved from the Society with effect from 27.03.2007. Therefore, the service of the petitioner in that Society was less than one year and thereafter, he has neither been absorbed in the Rural Development Department, which according to the petitioner is the Parent Department, nor been permitted to continue in the said Society.

5. Therefore, seeking indulgence of this Court by way of mandamus to give a direction to the respondents to give employment to the petitioner with retrospective effect with all backwages and attendant benefits with effect from 27.03.2007, the date on which, he was relieved from the Society, the petitioner has filed this Writ Petition.

6. Heard Mr.K.Chandrasekaran, learned counsel appearing for the petitioner who would submit that, the petitioner was initially appointed on regular basis with time scale of pay on 13.03.1988 as Computer Programmer Assistant at Dharmapuri Development Corporation, i.e., DDC. After having worked for several years in that Corporation, since a decision was taken by the Government to wind up the said Corporation, the Administrative Staffs, who were working in the Corporation were neither been transferred nor deputed to other agencies including the Rural Development Department, but only to the Society called Vazhndhu Kattuvom Society, i.e., subsequently, renamed as Tamil Nadu Pudu Vazhvu Society, to which, the petitioner had been deputed and accordingly, he joined there on 21.07.2006. However, abruptly, he was relieved from service with effect from 27.03.2007 and thereafter, he has never been taken back by the



Society or by the Department. Therefore, seeking re-employment and also the subsequent absorption on regular basis on the Rural Development Department with all service and monetary benefits with retrospective effect from 27.03.2007, for which, the petitioner is entitled to, this Writ Petition has been filed, he contended.

7. In this context, he relied upon the import of the G.O.Ms.No.61, Rural Development Department, dated 06.06.2003 and also the language used in the order dated 27.03.2007 of the Society and therefore, he seeks indulgence of this Court for issuance of mandamus as prayed for.

8. Per contra, the learned Special Government Pleader appearing for the respondents, on instructions, would submit that, no doubt, the petitioner was appointed in DDC in the year 1988. Since the DDC was not the regular department, those who worked in that Corporation, if at all absorbed in the Rural Development Department as contemplated in the said G.O., however the Administrative Staff cannot claim any relief as claimed herein as a matter of right.

9. He would also submit that, the petitioner, in order to give him continuous employment, was deputed to the Society, where, he worked from 2006 to 2007, however, for administrative reasons, he was relived from the said Society with effect from 27.03.2007 and thereafter, the said Society itself was dissolved or closed and as of now, there is no such Society called "Pudhu Vazhvu Society", therefore, the question of giving further employment or re-employment to the petitioner as claimed by him does not arise.

10. In this context, the learned Special Government Pleader has brought to the notice of this Court the order passed by the learned Judge of this Court dated 03.10.2018 made in W.P. No. 1131 of 2018, where many number of Administrative Staffs working in the said Society had filed the batch of Writ Petitions seeking permanent employment and absorption in the regular department i.e., Rural Development Department of the State Government. However, the said plea was turned out and the batch of Writ Petitions were rejected by the said order of the learned Judge. Therefore, the petitioner also cannot claim any such relief by way of re-employment either in the Rural Development Department or in any other Organization under the said department. Hence, he seeks dismissal of this Writ Petition.

11. I have considered the rival submissions made on behalf of the parties and have perused the materials placed before this Court.



12. It is an admitted fact that, on 13.03.1988, the petitioner was appointed as Computer Programmer Assistant only in DDC, which was formed to undertake the project sponsored by Government of India for implementation in Dharmapuri District.

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13. The said Corporation was functioning for some years and in the year 2003, the Government decided to wind up the Corporation. Therefore, they issued a Government Order in G.O.Ms.No.61, Rural Development Department and the relevant portion of the G.O.Ms.No.61, reads thus:

"5. The Government have examined in detail the proposal and decided that a Society to be known as Dharmapuri District Economic Development Society be formed. Accordingly, the Government direct that the assets and liabilities of the erstwhile Dharmapuri District Development Corporation entitled be transferred to the Society. The Engineering staff of the Dharmapuri District Development Corporation Limited be transferred to the vacant Engineering posts in Rural Development Department. The question of absorption of the administrative staff in the newly formed society or in Rural Development Department will be decided by the Collector in consultation with the formed society be formulated and finalized by the District Collector in consultation with the Director of Rural Development."

14. Therefore, only the Engineering Staff working in the DDC were transferred to the Engineering posts, at Rural Development Department. However, the administrative staff were either to be transferred to similar Society or may be transferred to Rural Development Department and that modalities would be decided by the District Collector in consultation with the Rural Development Department.

15. Subsequently, the petitioner had been transferred to the "Puthu Vazhvu Society" and he joined there on 21.07.2006. However after some months, he was relieved from the service from the Society on 27.03.2007 and to this effect, order has been passed by the Society on 27.03.2007. However, the said order has not been challenged by the petitioner.

16. If at all the petitioner has got any grievance on the abrupt discharge of the petitioner from duties of the Society with effect from 27.03.2007, that should have been challenged. However the petitioner has not chosen to do and having accepted the said order, he only filed the present Writ Petition in the year 2010 seeking for a mandamus.



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17. However, the fact remains that, the relief from the Society from 27.03.2007 has become final and still goes unassailed.

18. Moreover, even though the Society was functioning for some years, at one point of time, i.e., in the year 2016, it was decided to wind up the said Society also and accordingly, it was wound up with effect from 30.06.2017. Therefore, after 30.06.2017, even the said Society was not functioning and by virtue of that, there are about 300 plus Administrative Staffs, who were engaged in the Society, had been abruptly rendered jobless. Therefore, they approached this Court by filing the batch of Writ Petitions, which were decided in a common order passed by the learned Judge, as cited above, by order dated 03.10.2018. In the said order, the learned Judge in the following paragraphs has held that, in view of the development taken place, the petitioners therein were not entitled to get the relief sought for. However, if any future engagement has come with similar project, employees of the Society can be considered. In order to appreciate the said orders of the learned Judge, the following portion of the orders are extracted hereunder:

"6. This Court is of the considered opinion that all appointments to the public posts are to be done only under the constitutional schemes and by following the recruitment rules in force. Equal opportunity in public employment is the constitutional mandate. The competent Authorities, while undertaking the process of selection are bound to follow the rules in force scrupulously. Rules on reservations are also to be followed while undertaking the process of selection to the public posts. The employees who were appointed on contract basis cannot claim permanent absorption or regularisation merely on the ground that they have continued in the project for few years or otherwise. The employees who joined as Contract employees have accepted the terms and conditions and therefore, they cannot claim permanent absorption or regularisation on completion of the project. In the present case on hand, the project was implemented over a period of 11 years upto 29.09.2016 and further extended for 9 months from 29.09.2016 to 30.06.2017. Finally, this project came to an end on 30.06.2017. The closure of the project was well published by the Competent



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Authorities. It is brought to the notice of this Court that as per the directions of the Project Director vide Roc.No.722/PVP-Admin./2014 dated 19.12.2014, the petitioners in respective positions have been selected and engaged as Team Leaders/Facilitators on contract basis with a consolidated remuneration. A contract agreement had been executed with the petitioners for every year, based on performance appraisal. This being the factum of the case, the claim of the writ petitioners for regularisation or permanent absorption cannot be considered in view of the legal principles settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of The State of Karnataka Vs Umadevi, reported in 2006 4 SCC.

9. In view of the legal principles settled by the Hon'ble Apex Court, the High Courts in exercising powers under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance unless the employees claiming regularisation has been appointed in pursuance of the regular recruitment in accordance with relevant rules in an open competitive process against the sanctioned vacant post. The equality clause contained in Article 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee, which would be violative of the constitutional schemes. While something that is irregular for want of compliance with one of the elements in the process of selection does not go to the root of the process can be regularized back door entries, appointments contrary to the constitutional schemes and appointment of individual candidates cannot be regularized.

10. This being the principles to be followed and the fact remains in respect of these writ petitions that all the writ petitioners were appointed on contract basis and every year the petitioners themselves have executed agreements with the employer consenting for the terms and conditions, there is no legally acceptable grounds to consider the case of the writ petitioners.

11. Accordingly these writ petitions are devoid of merits and stand dismissed. Consequently,



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connected miscellaneous petitions are closed. However, there shall be no order as to costs.

12. The learned counsel for the petitioners states that the petitioners are claiming to accommodate them in any other future projects to be implemented by the State. In this regard, it is made clear that in the event of commencement of any other new projects, the case of the writ petitioners also shall be considered along with all other candidates who are all submitting the respective applications to participate in the process of selection. The case of the petitioner also shall also be considered on merits and in accordance with law and on par with other similarly persons who are applying for such contract appointments."

19. In that view of the matter, that even the employees about 330, who were continuously worked till the Society was wound up in the year 2017, also were not given any such relief as claimed by them either for re-employment or for absorption in the Department i.e., Rural Development Department, the petitioner is no way better than those candidates as the petitioner admittedly was relieved from duty as early as on 27.03.2007 and against such relievement, the petitioner has not raised his voice and the said order has become final. Therefore, at this juncture, the relief sought for by way of Mandamus as prayed in this Writ Petition cannot be granted.

20. Therefore, this Writ Petition fails and hence it is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

vji
To

1. The Secretary,
Government of Tamil Nadu,
Rural Development Department,
Fort St.George, Chennai - 9.



2. The District Collector,
Chairman, Dharmapuri District,
Social Economic Development Society,
Dharmapuri.

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+1 CC to Mr.K.Chandrasekaran, Advocate sr 9812
+1 CC to The Government Pleader sr 99541
+1 CC to Mr.K.Magesh, Advocate sr 9673.

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and
W.M.P. No. 1 of 2010

KK(CO)
SP(27/07/2021)