

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 20698 of 2012

and

W.M.P. No. 1 of 2012

G.Thamilnambi

... Petitioner

-vs-

1. Secretary to Government,
School Education Department,
Fort St.George, Chennai.

2. Director of School Education,
DPI Campus, Nungampakkam,
Chennai.

3. Chief Educational Officer,
Nagapattinam,
Nagapattinam District.

4. District Educational Officer,
Mayiladudurai,
Nagapattinam District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondents to regularise the services of the petitioner from the date of his appointment, i.e., on 01.07.2002 in the post of Office Assistant as per G.O.Ms.No.22 dated 28.02.2006 Personnel and Administrative Reforms (F) Department, with all attendant service benefits including arrears of pay.

For Petitioner : Ms.R.Anitha

For Respondents : Mr.S.Sureshkumar
Government Advocate

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondents to regularise the services of the petitioner from the date of his appointment, i.e., on 01.07.2002 in the post of Office Assistant as per G.O.Ms.No.22 dated

28.02.2006 Personnel and Administrative Reforms (F) Department, with all attendant service benefits including arrears of pay.

2. The petitioner was appointed as Office Assistant at the Government Girls Higher Secondary School, Manalmedu, Nagapattinam District on 01.07.2002, of course through the Parent and Teachers Association (PTA) and he had been working in that capacity for more than ten years.

3. Despite his long service of ten years rendered by the petitioner at the said school as OA, the service of the petitioner had not been regularised.

4. In this context, according to the petitioner, there has been number of orders passed by this Court, where, if any employee like the petitioner has been appointed and has been worked continuously for more than ten years, the service of such employees, viz., temporary employee or daily wages employee can be regularised on completion of ten years of service.

5. In this context, though the petitioner has made a request to the respondents to regularise the service and in this regard, the Service Certificate to that effect dated 20.07.2012 was given by the Headmaster of the school concerned, stating that, he was appointed on 01.07.2002 and had been continuously working till 20.07.2012, subsequently also nothing was forthcoming from the respondents, the petitioner has filed this Writ Petition with the aforesaid prayer.

6. Heard Ms.R.Anitha, learned counsel appearing for the petitioner who would submit that, the reason for non-selection of the candidature of the petitioner in regularising the service of him even after he has completed ten years of service on temporary basis, according to the respondents, is that, the appointment was initially made by the Parent Teachers Association and thereafter, no appointment has been made by the Parent Teachers Association. Without the name being sponsored by the Employment Exchange, it cannot be treated as regular appointment. Therefore, in this regard, whenever the Government Orders are passed, those benefits shall be extended by the respondents to the employees.

7. The learned counsel appearing for the petitioner would also submit that, the present issue has already came up before this Court in a batch of Writ Petitions and Writ Appeals before the Division Bench of this Court in W.P. No. 1258 of 2019 etc., batch in the matter of Home Secretary of Tamil Nadu and others vs. G.Sugumaran, where the Division Bench of this Court, by order dated 13.09.2019 has considered the issue exhaustively and a direction was issued to the respondents, to regularise those

who were appointed in various capacities like the petitioner by Parent Teachers Association of the Government Schools by taking the import of the G.O.Ms.No.47, School Education Department, dated 02.03.2012 at least from the date of issuance of the said G.O,.

8. By relying upon the said judgment of the Division Bench, the learned counsel seeks indulgence of this Court to give a direction to that effect for extending the benefit as has been envisaged in the Division Bench Judgment to the petitioner also for regularising his service on completion of ten years of service or issuance of G.O.Ms.No.47.

9. Per contra, the learned Government Advocate appearing for the respondents would rely upon the following averments of the counter affidavit, which reads thus:

"Regarding the averments in para 8 of the affidavit of the petitioner, it is submitted that the petitioner has been engaged to work as Office Assistant in the Government Girls Higher Secondary School, Manalmedu only on payment of wages from the funds of Parent and Teachers Association which cannot amount to the Government employment either on daily wages or on consolidated salary borne from the funds of the Government. It is further submitted that the mode of recruitment in the Government departments is only through Employment Exchange whenever there is a sanctioned post. It is therefore submitted that the petitioner cannot claim for regular appointment as a matter of right on the basis of the services rendered outside the scope of the regular employment."

He would further submit that, because of the reasons stated therein, the petitioner's request for regularising his service has not been considered as he was not appointed by sponsoring his name through Employment Exchange. Therefore such kind of irregularity or illegality cannot be approved by the respondents.

10. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

11. Insofar as the import of the Division Bench order as referred to above, the issue which was considered by the Division Bench was exactly similar to that of the case of the petitioner. In para. No. 2 of the said judgment, what was the issue placed before the Division Bench has been stated like this:

"2. Short facts leading to the filing of the writ appeals are that, Parent Teachers Association (PTA) of the schools, appointed as Office Assistants, Night Watchmen, Watchmen, Sweepers, Water Supply Attender, etc., and they are serving in various schools for more than ten years, on meagre consolidated wages."

12. After having exhaustively discussed the various aspects of several judgments and the import of the G.O., etc, the Division Bench has come to the following conclusion:

"46. When the Government have issued G.O.Ms.No.35, School Education Department, dated 09.02.2007, appointing vocational teachers, in the vacant posts for vocational teachers, why would the Government having regard to the principle of social justice as explained by the Hon'ble Supreme Court in the decisions considered supra, take a stand that the Government would not regularise the services of sweepers, watchmen, attendants and others in basic service.

47. Are they not poor, marginalised in society? Served for long years of service with meagre salary and how they can be discriminated? Present Government which claims that they are following the mandate of the former Hon'ble Chief Minister has not explained in clear terms, as to why the sweepers, watchmen, attendants vis-a-vis teachers appointed by the Parent Teachers Association, should be discriminated.

48. Being a welfare State, to achieve the constitutional goals of Justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation, Government cannot discriminate sweepers, watchmen and other basic servants, for appointment, as against the sanctioned full time posts, in basic service.

49. Appellants have a duty to consider the grievance of the serving sweepers, watchmen, etc., working for a long time in schools, with their knowledge, by granting exemption from the applicability of the rules such as mode of recruitment, communal roster etc., as done in the case of Vocational Teachers, appointed by the Parents Teachers Association and appoint

them in the sanctioned non-teaching posts on completion of ten years of service, by applying G.O.Ms.No.47, School Education (R1) Department dated 02.03.2012 and the said exercise, shall be completed within two months from today. With the above directions, all the writ appeals and WASRs are dismissed. No costs. Consequently, the connected civil miscellaneous petitions are closed."

13. If we look at the said import of the Division Bench order, the issue exactly projected by the petitioner has already been considered by the Division Bench, where number of similarly placed persons were already been appointed by the Parent Teachers Association without their name being sponsored by the Employment Exchange and those candidates have been considered for the purpose of regularization of course pursuant to the import of the G.O.Ms.No.47, School Education (R1) Department, dated 02.03.2012 after completing ten years of service.

14. In the present case, as per the Service Certificate issued by the Headmaster of the School concerned dated 20.07.2012, the petitioner was appointed on 01.07.2002 and he has completed ten years of service in July 2012. Therefore, he was eligible and entitled for regularisation for the post at least on completion of ten years of service.

15. Therefore, this Court feels that, there can be no further impediment to consider the claim of the petitioner to regularise his service. Hence this Court is inclined to dispose of this Writ Petition with the following directions:

"(i) That there shall be a direction to the respondents especially second and third respondents to consider the request of the petitioner by taking into account, the Service Certificate issued by the Headmaster of the school concerned and accordingly as per the import of the Division Bench Judgment referred to above in G.O.Ms.No.47 dated 02.03.2012, consider the candidature of the petitioner for the purpose of regularising his service in the post of OA on completion of ten years of service with effect from 01.07.2002, the date on which, he was originally appointed and accordingly, pass necessary orders to that effect within a period of twelve weeks from the date of receipt of a copy of this order.

(ii) It is needless to mention that, once regularization is given to the petitioner, the consequential service benefits shall also be

conferred on him and the needful as indicated above shall be undertaken within the time frame without fail."

16. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. Secretary to Government,
School Education Department,
Fort St.George, Chennai.
2. Director of School Education,
DPI Campus, Nungampakkam,
Chennai.
3. Chief Educational Officer,
Nagapattinam,
Nagapattinam District.
4. District Educational Officer,
Mayiladurai,
Nagapattinam District.

+1 CC to Mr.R. Anitha, Advocate sr 17074.

सत्यमेव जयते

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and
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GSM(CO)
SP(13/07/2021)

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