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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM

The Hon'ble Mrs. Justice Pushpa Sathyanarayana
and
The Hon'ble Mr. Justice Krishnan Ramasamy

W.A. No.2001 of 2018

&

C.M.P.No.15874 of 2018

1. The Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.
2. The Director of School Education,
DPI Campus,
College Road, Chennai-600 006.
3. The Chief Educational Officer,
Salem District, Salem.
4. The District Educational Officer,
Salem District, Salem.

... Appellants/Respondents

versus

P.Alamma

...Respondent/Petitioner

Prayer: Writ Appeal filed under clause 15 of the Letters Patent against the order, dated 08.10.2013, passed in W.P.No.27783 of 2013.

Prayer in W.P.No.27783 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of mandamus to direct the respondents to regularize the service of the petitioners husband by notionally in the light of the orders passed by the first respondent in G.O.Ms.No.247 School Education (R1) Department dated 03.10.2012 G.O.MS.No.99 School Education (R1) Department dated 08.06.2011 and G.O.(Ms)No.88 School Education (R1) Department 01.04.2010 ad G.O.Ms.No.22, Personnel and Administration Department from the date of completion of ten years from the initial appointment with all monetary and service benefits payable to the



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petitioner's husband and consequently release the same to the petitioner.

For Appellants : Mr.R.Neelakandan,
State Govt.Counsel

For Respondents : Mr.M.Rajendiran

JUDGMENT

(Delivered by Krishnan Ramasamy, J.,)

This Writ Appeal is directed against the order passed by the learned Single Judge, in W.P.No.27783 of 2013, dated 08.10.2013, in and by which, the appellants herein have been directed to consider the claim of the writ petitioner for regularization of her husband's services from the date of completion of ten years from his initial appointment and grant all monetary and service benefits.

2. The respondent herein is the writ petitioner. The case of the writ petitioner is that her husband, Late Periyasamy was appointed as a Part time Sweeper on 12.02.1987 through Employment Exchange in Government High School, Vadachennimalai, Attur, Salem District and after rendering 18 years of service, he died in harness on 29.12.2005. Though, the petitioner's husband had put in 18 years of service, his services were not regularized till his death. In the mean time, the Government of Tamil Nadu issued a G.O.Ms.No.22 dated 28.02.2006 ordering regularization of part time workers who have put in 10 years or more of service. Pursuant to the said G.O., number of part time employees who had put in 10 years or more of service were brought in under regular time scale and their services were regularized from the date of completion of 10 years. The grievance of the writ petitioner is that the services of similarly placed persons like that of her husband were regularized, but her husband's services were not regularized despite he had put in 18 years of service and no notional benefits were granted, which prompted her to approach this Court.

3. After taking note of the earlier order of this Court passed in Writ Petition No.18126 of 2008 wherein, a learned single Judge of this Court, directed the respondents/authorities therein to regularize services of the petitioner therein who was a part time employee put in more than 10 years of service and also dismissal of consequent Writ Appeal in W.A.No.1520 of 2010



filed by the respondents/authorities, the learned single Judge allowed the Writ Petition, directing the appellants herein to consider the claim of the writ petitioner in the light of the order passed in W.P.No.18126 of 2008 dated 29.07.2008 and G.O.Ms.No.22 dated 28.02.2006 and pass orders within a period of 12 weeks from the date of receipt of a copy of the said order. Challenging the said order of the learned single Judge, the appellants/authorities have preferred the present Writ Appeal.

4. Mr.R.Neelakandan, learned State Government Counsel would contend that, as per the Government order G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006, only full time daily wage employees were directed to be regularised on completion of 10 years of continuous service as on 01.01.2006, however, since this Court in various writ petitions, considered the claim of part time employees who put in 10 years of service, the Government subsequently issued G.O.Ms.No.74 Personnel and Administrative Reforms Department dated 27.06.2013 and clarified that G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006, is applicable only to the full time daily wage employees, who had completed 10 years of continuous service as on 01.01.2006. Therefore, the learned State Government Counsel would submit that since the husband of the writ petitioner was a part time sweeper and he was not daily wage employee and further since he was not in service as on 01.01.2006, the claim of the writ petitioner cannot be considered. It was contended further that the learned single Judge without taking into consideration the fact that the husband of the writ petitioner is not entitled to the benefit of regularisation and simply followed the earlier orders of this Court and erroneously passed the order, which is liable to be set aside.

5. The learned counsel appearing for the respondent/writ petitioner would submit that the issue involved in the Writ Petition has been decided by this Court in various similar petitions and in fact, the learned single Judge having followed the same, has allowed the Writ Petition and therefore, the same does not warrant interference.

6. Head the learned State Government Counsel for the appellants and the learned counsel for the respondent/writ petitioner and perused the entire materials available on record.

7. It is not in dispute that G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006 was issued in favour of full time daily rated employees. However, based upon the G.O.Ms.No.22 Personnel and Administrative Reforms Department dated 28.02.2006 several individuals including part time employees, approached this Court and obtained orders in a



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batch of cases in Writ Petition Nos. 4859 of 2009. Subsequently, the said orders were also confirmed on appeals in Writ Appeal No. 1520 of 2010 batch, by a Division Bench of this Court, vide judgment dated 25.10.2010. Consequently, SLPs filed by the Government were also dismissed by the Apex Court. In such circumstances, the Government has subsequently issued G.O.Ms.No.74 Personnel and Administrative Reforms Department dated 27.06.2013 and specifically clarified that G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006, is applicable only to the full time daily wage employees, who had completed 10 years of continuous service as on 01.01.2006. It is also not in dispute that pursuant to the orders of this Court, the authorities have complied with and regularized the services of the individuals who approached the Court and obtained orders. However, in the present case, it is pertinent to note that the husband of the petitioner was sponsored through Employment Exchange and appointed as Part time Sweeper on 12.02.1987 and after rendering 18 years of service, he died in harness on 29.12.2005. The petitioner approached this Court and obtained the order as early as on 08.10.2013, but it is very unfortunate to note that till date, the authorities have not complied with despite the authorities were directed to pass orders within twelve weeks from the date of receipt of a copy of the said order, while the similarly placed persons like that of the husband of the petitioner, were regularized and given all attendant benefits. While the fact remains that the husband of the petitioner died on 29.12.2005, a strange contention was raised on behalf of the appellants/authorities that the husband of petitioner was not in service as on 01.01.2006 and therefore, he was not entitled to the benefit. The petitioner who is a widow of the employee, after obtaining the orders from this Court, was in anticipation all along with fond hope that her claim would be considered by the appellants/authorities in compliance to the order passed by this Court in her favour and if the appellant/authorities have complied with the order in time, the petitioner would have become beneficiary of the order. Therefore, there is no justification on the part of the appellants/authorities to deny the benefit of the order by virtue of the orders which were subsequently passed by the Courts. In such circumstances, we are of the view that the present case which is peculiar in nature wherein, the husband of the petitioner already died on 29.12.2005 after having put in 18 years of service, the embargo pointed out by the appellants that he was not in service as on 01.01.2006 would not stand in the way of granting benefit of the order when admittedly, the similarly placed persons were benefitted. In such view of the matter and in the peculiar circumstances, this Court is not inclined to entertain the present Writ Appeal.



8. Accordingly, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected CMP is closed. The interim order if any passed by this Court, shall stand vacated. The appellants are directed to implement the order of the learned single Judge within a period of 6 weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.
2. The Director of School Education,
DPI Campus,
College Road, Chennai-600 006.
3. The Chief Educational Officer,
Salem District, Salem.
4. The District Educational Officer,
Salem District, Salem.

+1cc to Mr.M.Rajendiran, Advocate, S.R.No.38576

+1cc to the Government Pleader, S.R.No.39120

W.A. No.2001 of 2018

VBM(CO)
SU(21/09/2021)