

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.Nos.22977 & 22978 of 2018

and

W.M.P.Nos.26885 & 26886 of 2018

- 1.Union of India,
Represented by Union Territory of Puducherry,
By its Secretary to Government for
Department of Personnel & Administrative Reforms,
Chief Secretariat, Puducherry.
- 2.Secretary,
Animal Husbandry and Animal Welfare Department,
Secretariat, Puducherry.
- 3.The Director,
Animal Husbandry and Animal Welfare Department,
Puducherry. ... Petitioners
in both writ petitions

Vs.

- 1.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.
- 2.K.Subramanian
- 3.K.Kadhiravan
- 4.G.Chandrasekaran
- 5.J.Chezhan
- 6.G.Rajasekar
- 7.S.Vijayalakshmi
- 8.S.Kalaiselvi

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9.T.Srinivasan

10.N.Rejith

... Respondents
in W.P.No.22977 of 2018

1.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

2.P.Sabapathy

... Respondents
in W.P.No.22978 of 2018

Prayer in W.P.No.22977 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 1st respondent Tribunal dated 21.02.2017 in O.A.No.1132 of 2012 and to quash the same.

Prayer in W.P.No.22978 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 1st respondent Tribunal dated 21.02.2017 in O.A.No.1319 of 2012 and to quash the same.

For Petitioners : Mr.R.Syed Mustafa
Special Government Pleader
(Puducherry)
in both writ petitions

For R2,8 & R10 : Mr.C.Samivel
in W.P.No.22977 of 2018

For R2 : Mr.C.Samivel
in W.P.No.22978 of 2018

C O M M O N O R D E R

(Order of the Court was made by M. SATHYANARAYANAN, J.)
(Through Video Conferencing)

Both these writ petitions are taken up together and are disposed of by this common order, as the issue to be decided and adjudicated is one and the same.

2.The private respondents in W.P.No.22977 of 2018 filed O.A.No.1132 of 2012 against the petitioners/official respondents, praying for appropriate direction for

regularisation of their services as Attendants from 01.01.2003, and consequently, grant attendant monetary benefits and promotion, for which they are legally entitled to, in accordance with law.

3. Similarly, the private respondents in W.P.No.22978 of 2018 had filed O.A.No.1319 of 2012 for the similar relief.

4. It is the case of the private respondents that they were working as Daily Rated Sanitary Assistants in the Animal Husbandry and Animal Welfare Department of Government of Puducherry for more than 10 years and were discharging their regular duties as Attendants - Group-D Post in the Department. Originally, they along with other Daily Rated employees of Puducherry Animal Husbandry and Animal Welfare Daily Rated Employees Association, had filed a case before the 1st respondent Tribunal in O.A.No.173 of 2010 and it came to be disposed of on 17.03.2010 with certain directions. According to the private respondents/original applicants, on account of the filing of the case, the writ petitioners/official respondents developed vengeance against them, and as such, they have not regularised their services. It is also brought to the knowledge of the Tribunal by the private respondents/original applicants that O.A.No.173 of 2010 was filed by 24 Daily Rated Sanitary Attendants and one Lift Operator of the Animal Husbandry and Animal Welfare Department, praying for quashing of the records relating to the recruitment through open market, appeared in the form of advertisement in the News daily, dated 27.11.2019, and it came to be disposed of on 17.03.2010, by directing the official respondents therein to consider their claim for the regularisation in the post of Attendants, by taking into account their continuous service in the said Department and their participation in the selection process. Despite such direction, the services of the private respondents/original applicants have not been regularised.

5. It is the specific case of the private respondents/original applicants that they have completed the required services as Sanitary Assistants for the purpose of getting regularised, and further points out that this Court, in W.P.No.17165 of 2010, has also passed an order stating among other things that the one-time exercise should consider all daily wage/adhoc/those employees who had put in 10 years of continuous service without availing the protection of any interim orders of Courts or Tribunals, and that apart, the Hon'ble Minister of Animal Husbandry and Animal Welfare Department has also made an announcement on the Floor of the Assembly for the regularisation of 34 Daily Rated Sanitary Assistants. It is also brought to the knowledge of the Tribunal that the Government has issued G.O.Ms.No.40 dated 20.05.1989 as

well as a policy of regularisation in Government Memo dated 20.12.1988, and in the light of the same, prays for appropriate orders for regularisation of the services.

6.The official respondents filed their reply statement opposing the claim and took a stand that, in terms of the order, dated 17.03.2010, passed in O.A.No.173 of 2010, the private respondents were allowed to participate in the interview in pursuance to the notification, dated 27.11.2009. Despite the fact that they have not fulfilled the age criteria, after obtaining one time age relaxation from the Administrator/Lieutenant Governor of Union Territory of Puducherry, they were allowed to participate. It is further pointed out that, as per the Recruitment Rules, the method of selection is cent percent by direct recruitment, and therefore, the existing vacancies could not be filled up by regularisation or absorption of Daily Rated (full time) Casual Labourers, apart from denying the specific averment that, in the interview, deliberately low marks have been awarded.

7.Mr.R.Syed Mustafa, learned Special Government Pleader (Puducherry), appearing for the petitioners, would submit that the Tribunal had taken up both the original applications in O.A.Nos.1319 of 2012 and 1132 of 2012 filed by the private respondents in these writ petitions and passed the following order and it is relevant to extract the same :

"Learned counsel for the respondents informed that 13 adhoc promotions of Group D were pending before the Lieutenant Governor and if it is cleared, then the services of the applicants as daily rated Sanitary Assistants could be regularised against consequential vacancies and the applicants would be promoted as Attendant. Under the above mentioned circumstances, the respondents are directed to regularize the services of the applicants as Sanitary Assistant and promote them to the post of Attendant as per the 2010 select list published once the proposal of promotion of 13 persons from Group D fructifies. With the above direction the OAs are allowed. As we are passing order in OAs itself, MA 658/2015 for interim injunction stands closed. No costs."

8.The primordial submission made by the learned Special Government Pleader appearing for the petitioners is that the regularisation in the post of Sanitary Assistants ought not to have been given for the reason that no such post existed in the Department, and that apart, the Recruitment Rules to the post of Attendant (re-designated as Veterinary Attendant) did not provide for absorption from the post of Part Time Sanitary

Assistant/Daily Rated Sanitary Assistant/Daily Rated Lift Operator.

9. Therefore, aggrieved by the said direction given in the common impugned order, the present writ petitions have been filed, which were entertained.

10. Pending these writ petitions, the Department of Animal Husbandry and Animal Welfare Department of Government of Puducherry, vide order dated 29.10.2020, has ordered regularisation of services of Veterinary Attendants on the recommendations of Departmental Promotion Committee and the date of regular appointment is indicated in Column-3 of the said order. A memo, dated 18.11.2020, has been filed by the learned Special Government Pleader to that effect and the same is taken on file.

11. It is the submission of the learned Special Government Pleader that, in the light of the said development, nothing remains for further adjudication in these writ petitions for the reason that the prayer sought for by the private respondents has been granted.

12. Per contra, Mr. C. Samivel, learned counsel appearing for the private respondents would submit that they are entitled for regularisation from the year 2003, and in all fairness, while regularising the services, the date of regular appointment should have been fixed as in the year 2003, and prays for appropriate orders.

13. This Court has paid its best attention to the rival submissions and also perused the materials placed before it.

14. It is well settled position of law that regularisation of services in respect of the part time/adhoc employees is not a matter of right and it is relevant to refer to the decision reported in 2017 (3) Scale Pg.365 [Secretary to Govt. Commercial Taxes and Registration Department, Secretariat and another v. A. Singamuthu], wherein, the Hon'ble Supreme Court has referred to the judgment reported in State of Rajasthan and Others v. Daya Lal and Others [(2011) 2 SCC 429], wherein, while considering the issue relating to the regularisation of irregular or part-time appointments, has laid down the proposition that the part-time employees are not entitled to seek regularisation as they do not work against any sanctioned post and that the part-time employees in Government-run institutions can in no case claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

15. Similarly, the fixation of cut-off date for regularisation also falls within the exclusive scope of the Appointing Authority, and it is relevant to cite the decision reported in 2013 (6) CTC 593 [S.Dhanasekaran & 24 others v. Government of Tamil Nadu and others]. Legality of fixing the date of regularisation of services came up for consideration in the light of the relevant Government Orders passed by the Government of Tamil Nadu. The Full Bench of this Court has taken note of the judgment of the Hon'ble Apex Court reported in 2006 (6) SCC 558 [K.Madalaimuthu and another v. State of T.N. and others] and it is relevant to extract Para No.24 of the said judgment :

"24. On a consideration of the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view appears to be the one canvassed on behalf of the appellants. The decisions cited by Mr. Rao have been rendered in the context of Rule 10(a)(i)(1) and the other relevant rules, which are also applicable to the facts of the instant case. Apart from the above, the law is well established that initial appointment to a post without recourse to the rules of recruitment is not an appointment to a service as contemplated under Rule 2 (1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact, Rule 39(c) of the General Rules indicates that a person temporarily promoted in terms of Rule 39(a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the rules. It stands to reason that a person, who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time his appointment is regularized. It, therefore, follows that it is only from the date on which his services are regularized that such appointee can count his seniority in the cadre."

The Full Bench held that the regularisation takes effect from the date of the Government Order, i.e. 23.02.2006, and not from the date on which the petitioners therein had completed three years of service from the date of their initial entry.

16. The writ petitioners/official respondents had shown benevolence in the form of order of regularisation, dated 29.10.2020, in favour of the private respondents.

17.It is also well settled position of law that this Court cannot pass any positive order of regularisation unless the persons regularly placed have been accorded with the said benevolence/benefit.

18.In the light of the well settled legal position enunciated supra, coupled with the fact that the order of regularisation, dated 29.10.2020, has been passed by the petitioners 2 and 3, no further orders are required in these writ petitions. It is also to be noted at this juncture that, even in the impugned common order, which is the subject matter of challenge in these writ petitions, there is no positive direction to regularise the services of the private respondents from the year 2003. As already pointed out with regard to the fixation of cut-off date, it falls within the exclusive domain of the concerned Appointing Authority, and this Court, in exercise of its powers of judicial review, cannot alter the fixation of the cut-off date.

In the result, these writ petitions stand disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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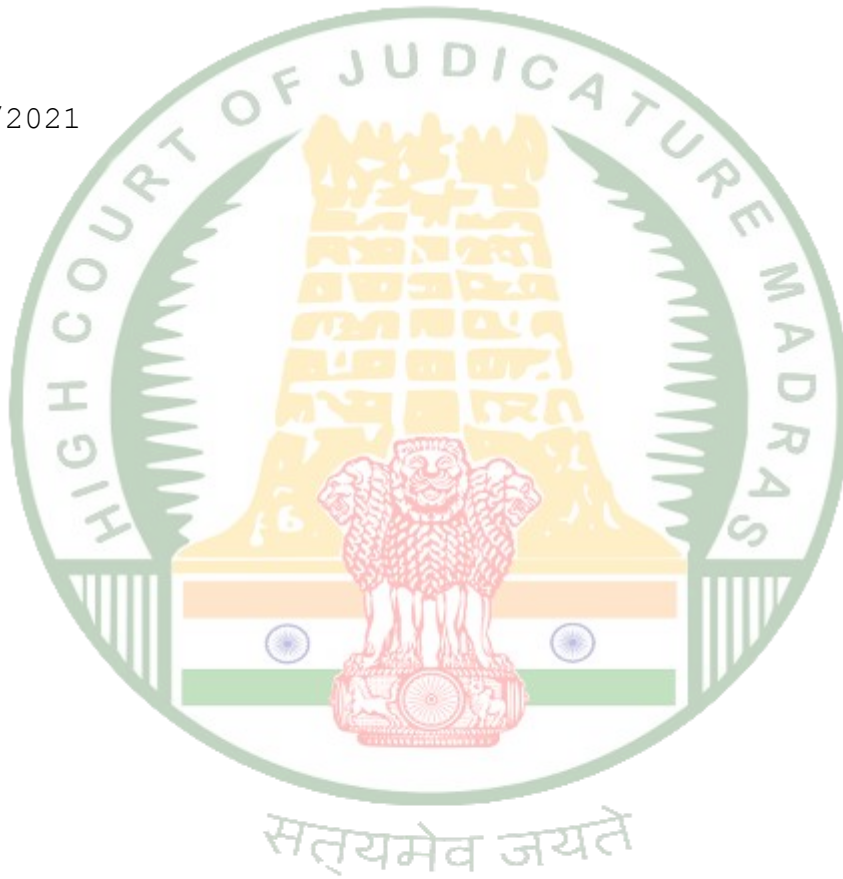
- 1.The Registrar,
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- 2.The Secretary to Government for
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Chief Secretariat, Puducherry.
- 3.The Secretary,
Animal Husbandry and Animal Welfare Department,
Secretariat, Puducherry.

4.The Director,
Animal Husbandry and Animal Welfare Department,
Puducherry.

+1cc to M/s.C.Samivel, Advocate Sr.1254
+1cc to the Government pleader Sr.1392, 1393

W.P.Nos.22977 & 22978 of 2018

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