

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.02.2021

Judgment Delivered on : 16.04.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.1961 of 2019
and
C.M.P.No.13279 of 2019

R.Ravi,
S/o K.Ramaiyan ... Appellant/Petitioner
Vs.

1. Government of Tamil Nadu,
Represented by its Principal Secretary,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai-600 009.
2. The Director/Commissioner,
Rural Development and Panchayat Raj Department,
having Office at Panagal Maaligai,
Saidapet, Chennai-600 015.
3. The District Collector, Cuddalore District.
4. The Block Development Officer,
Office of the Block Development Officer (BP)
Kattumannaarkovil Panchayat Unit,
Kattumannaarkovil,
Cuddalore District. सत्यमेव जयते Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 15.04.2019 passed by the learned Single Judge, in W.P.No.26804 of 2018, on the file of this Court.

Prayer in WP.No.26804 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Mandamus, directing the respondents to consider the claims of the petitioner for regularization of service as computer operators from the date of his original appointment with all attended benefits. And pass appropriate order based on the G.O.MS.NO.878, Rural Development, dated 15.05.1981.

For appellant : Mr.V.Vijay Shankar
For respondents : Mrs.A.Srijayanthi,
Special Government Pleader

JUDGMENT

R.SUBBIAH, J

This Writ Appeal has been filed as against the order dated 15.04.2019 passed in W.P.No.26804 of 2018, whereby the learned Single Judge had disposed of the said Writ Petition which has been filed for directing the respondents to consider the claim of the appellant for regularisation of his service as Computer Operator from the date of his original appointment with all attendant benefits and to pass appropriate orders based on G.O.Ms.No.878, Rural Development Department, dated 15.05.1981.

2. Before traversing into the legal question involved in this appeal, it is appropriate to state the brief facts as follows:

(i) The appellant had passed SSLC in the year 1992, XII Std. in the year 1994 and did B.Com. in 1998. Thereafter, he completed Diploma in Commerce (Co-operation) in the year 2001. He got technically qualified in Typing both Tamil and English higher grade in the year 1996. While he was waiting for employment, he was engaged as Typist on daily wages by the fourth respondent, namely Block Development Officer, Kattumannorkoil, on 01.10.2003. From that date onwards, he is working continuously. In the year 1981, the Government issued a Government Order in G.O.Ms.No.878, Rural Development and Local Administration Department, dated 15.05.1981, to regularise the contingent full time staff in respect of Panchayat Union who have completed 10 years of service as on 01.04.1981 and be brought into regular time scale of pay, subject to condition laid down in the said G.O. Subsequently, the Government issued another order in G.O.Ms.No.267, Rural Development Department, dated 22.12.1999 and delegated the power to the Collector of the concerned District to regularise the service of the contingent employees who have completed ten years of service. Accordingly, the service of 2018 daily wage employees were regularised by the concerned District Collectors, based on the Government's policy decision, dated 15.05.1981. The Government also issued an order in G.O.Ms.No.55, Rural Development Department, dated 15.06.2006 and decided to regularise the Hand Pump Operator Assistants who have completed ten years of service. The said G.O. was passed based on the representation given by the Hand Pump Operator Assistants, who have completed ten years of service from 1982 to 01.04.1997. Hence, according to the appellants, the Government

had taken a policy decision in G.O.Ms.No.878, Rural Development Department, dated 15.05.1981 to regularise the service of contingent full time staff in respect of the Panchayat Union(s), who have completed ten years of service. The writ petitioner is working for more than ten years from 2003 onwards and therefore, he is entitled for regularisation of service as Computer Operator from the date of his original appointment with all attendant benefits based on G.O.Ms.No.878.

3. The learned Single Judge had dismissed the Writ Petition placing reliance on the judgment of the Supreme Court in the case of State of Karnataka Vs. Umadevi reported in 2006 (4) SCC 1, and also in 2017 (4) SCC 113 (State of Tamil Nadu Vs. A.Singamuthu) holding that the benefit of regularisation cannot be extended in view of the legal principles settled by the Supreme Court in the above cases. Aggrieved by the same, the present appeal has been filed by the Writ Petitioner.

4. The learned counsel for the appellant/writ petitioner submitted that the appellant herein has been working from 01.10.2003 as Computer Assistant in the office of the fourth respondent/BDO, Kattumannarkoil and has completed uninterrupted service of 18 years till now. He had been receiving monthly salary of Rs.11.500/- approximately. Since he is working for more than ten years, he is entitled for regularisation based on the said G.O.Ms.No.878. In this regard, the learned counsel for the appellant/writ petitioner submitted that, in the year 1981, the Government had issued the said G.O.Ms.No.878, Rural Development and Local Administration Department, dated 15.05.1981, which provides for regularising the service of the employees working in the Panchayat Unions, who have completed ten years of service. This G.O. clearly says that, in future, as and when the employees borne on the contingent establishment completes ten years of service, the Executive Authority of the Panchayat institution should send necessary proposal to bring them to time scale of pay through the Collector of the District Concerned and the Director of Rural Development, Madras (Chennai) for approval of the Government and the total strength in each category, is to be fixed by the Collector or the Director of Rural Development, as the case may be. Subsequently, the Government had issued G.O.(Ms).No.267, Rural Development Department, dated 22.12.1999 and G.O.(Ms).No.161, Rural Development Department, dated 26.06.2000 for regularising the staff who have completed ten years of service. These G.Os. show that the employees appointed in 1998, 1999 and 2000 were brought to regular establishment on completion of service of ten years in 2008, 2009 and 2010. There are several other G.Os. similar to these G.Os. Thus, it is evident that several employees similarly placed like that of the appellant/writ petitioner, were regularised on completion of ten years of service, based on

G.O.Ms.No.878. In support of his submissions, the learned counsel for the appellant relied upon the following judgments:

- (a) 2014 (7) SCC 223 (State of Jharkhand Vs. Kamal Prasad);
- (b) 2015 (11) SCC 255 (Prem Ram Vs. Uttarakhand Pey Jal and Nirman Nigam);
- (c) 2016 (15) SCC 747 (Jivanlal Vs. Pravin Krishna);
- (d) 2018 (8) SCC 238 (Narendra Kumar Tiwari Vs. State of Jharkhand);
- (e) 2017 (4) SCC 113 (State of Tamil Nadu Vs. A.Singamuthu);
- (f) 2019 SCC Online SC 1360 (State of Bihar Vs. Devendra Sharma);
- (g) 2013 (14) SCC 65 (Nihal Singh Vs. State of Punjab), and
- (h) 2015 (17) SCC 504 (Dhananjay Karmakar Vs. State of West Bengal).

5. Thus, by relying upon the above cases, the learned counsel for the appellant/writ petitioner submitted that the employees who work for more than ten years, are entitled to be regularised and brought into regular establishment. More particularly, the learned counsel for the appellant relied on the decision of the Apex Court reported in 2013 (14) SCC 65 (cited supra) and submitted that the sanction of posts is in the Executive realm, but a rational and conscious decision is required to be taken with reference to the situation in each case, depending upon the availability of work, etc. and this cannot be a ruse to continue engagement of such persons on temporary/casual basis for decades.

6. The learned counsel for the appellant/writ petitioner also submitted that the appellant had completed 18 years of service and even today, he is working in the office of the BDO/fourth respondent, which shows that the work is available to accommodate him. Thus, the learned counsel for the appellant/writ petitioner sought for setting aside the order passed by the learned Single Judge and prayed to allow the Writ Appeal.

7. Countering the above submissions, the learned Special Government Pleader appearing for the respondents submitted that, none of the G.Os. relied upon by the learned counsel for the appellant/writ petitioner, is applicable to the case of the appellant/writ petitioner. G.O.Ms.No.878 was issued by the Government for regularisation of contingency staff like Watchman, Office Assistants (Basic Servants), who have completed ten years of service as on 01.04.1981. In this G.O., a condition had been stipulated that, no new post in the category of contingent establishment after 01.04.1981, should be created and vacancies after 01.04.1981 should not be filled up. The learned Special Government Pleader further relied upon the judgment reported in 2017 (4) SCC 113 (cited supra) , as per

which, the persons who have been appointed as daily wage employees and who have completed ten years of service after 01.01.2006, are not entitled for regularisation. The learned Special Government Pleader also relied upon the 2018 (3) SCC 680 (Upendra Singh Vs. State of Bihar), wherein it has been held by the Apex Court that the daily wage employees are not entitled for regularisation. In paragraph 9 therein, the Supreme Court referred to the judgment laid down in Uma Devi's case (2006 (4) SCC 1) (State of Karnataka Vs. Umadevi (3)), in which, it was held that neither a temporary nor daily wages employees though worked for more than ten years, be regularised, subject to the condition that they should have been appointed in a duly sanctioned post. In the last paragraph of the judgment in Upendra Singh case, it was observed by the Apex Court that an illegal appointment is void-ab-initio and contrary to the mandate under Article 14 of the Constitution of India, without open competitive selection and such appointment cannot be regularised under any circumstances. The learned Spl.G.P. also relied upon 2019 SCC Online SC 1360 = 2019 (14) SCALE 178 (State of Bihar Vs. Devender Sharma) (cited supra), for the similar proposition.

8. By way of reply, the learned counsel for the appellant/writ petitioner submitted that the decision reported in 2017 (4) SCC 113 (cited supra) relied upon by the learned Spl.G.P. relates to part-time employees. In fact, the learned Single Judge and a Division Bench of this Court had allowed several Writ Petitions holding that the claim of the petitioner (s) therein, observing that they are entitled for regularisation in terms of G.O.Ms.No.22, dated 28.02.2006 from the date they complete ten years of service. The Supreme Court also held that part-timers are not entitled for G.O.Ms.No.22 and the same will not apply to full time employees. So far as the present case is concerned, the appellant/writ petitioner is working as full-time employee for more than 18 years, and therefore, the benefits of G.O.Ms.No.22 is available to him. Therefore, the said judgment reported in 2017 (4) SCC 113, relied on by the learned counsel for the appellant cannot be made applicable to the facts of the present case. The learned counsel for the appellant/writ petitioner further replied that the judgment relied on by the learned Spl.G.P., reported in 2019 SCC Online SC 1360 (State of Bihar Vs. Devendra Sharma) is distinguishable. It is submitted that the said judgment of the Supreme Court relates to appointment on the basis of forged documents and such appointment was not made by competent persons. Therefore, such appointments were declared illegal and irregular appointments. While so, the said judgment cannot be made applicable to the facts of this case. Thus, the learned counsel for the appellant/writ petitioner prayed for allowing the appeal.

9. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

10. We find that it is the claim of the appellant/writ petitioner that he has been working from 01.10.2003 onwards as Computer Operator in the office of the fourth respondent. Though he had completed uninterrupted service of 18 years, he is still receiving consolidated payment of Rs.11,500/- without his service being regularised. The fact that even today he is working, goes to show that there is continuous work available in the office of the fourth respondent to accommodate him in all routine administrative work. Therefore, according to the learned counsel for the appellant/writ petitioner, the writ petitioner is entitled for regularisation. In this regard, the learned counsel for the appellant relied on G.O.Ms.No.878 (cited supra). But, on a perusal of the said G.O., it is seen that, no new post in the category of contingent establishment after 01.04.1981 should be created and the vacancies after 01.04.1981 should not be filled up. This gives a meaning that after 01.4.1981, those who have completed ten years, cannot be regularised. Similarly, as contended by the learned Spl.G.P., the judgment of the Supreme Court reported in 2017 (4) SCC 113 (cited supra) gives a fitting answer to the whole issue, wherein it has been held as follows:

"8. Part-time or casual employment is meant to serve the exigencies of administration. It is a settled principle of law that continuance in service for long period on part-time or temporary basis confers no right to seek regularisation in service. The person who is engaged on temporary or casual basis is well aware of the nature of his employment and he consciously accepted the same at the time of seeking employment. Generally, while directing that temporary or part-time appointments be regularised or made permanent, the courts are swayed by the long period of service rendered by the employees. However, this may not be always a correct approach to adopt especially when the scheme of regularisation is missing from the rule book and regularisation casts huge financial implications on public exchequer."

"10. In G.O.Ms.No.22 P & AR Dept, dated 28.02.2006, only full-time daily-wage employees were directed to be regularised on completion of ten years of continuous service as on 1-1-2006. This was clarified by the

Government in the government order passed subsequently G.O.Ms.No.74 P & AR Dept., dated 27.06.2013 clarifying that GO.Ms.No.22 P & AR Dept., dated 28.02.2006 is applicable only to the full-time daily-wage employees, who had completed ten years of continuous service as on 1-1-2006. In GO.Ms.No.74 dated 27.06.2013, it was made clear that the part-time employees are not entitled for regularisation and that full-time daily-wage employees who had completed 10 years of service after 1-1-2006 are also not entitled for regularisation of services."

"11. In GO.Ms.No.74, it was thus, made clear that the part-time employees are not entitled for regularisation and that full-time daily-wage employees who had completed ten years of service as on 1.1.2006 shall be regularised against regular vacancies in the sanctioned post. It was also made clear that the services of daily-wage employees who have completed ten years of service after 1-1-2006 are not entitled for regularisation."

11. A reading of the above judgment of the Apex Court shows that the part-time employees are not entitled for regularisation and that full time daily employees who have completed ten years, are entitled for regularisation only if they were appointed in the sanctioned post.

12. Furthermore, the said G.O.Ms.No.878 is applicable to basic servants, whereas the appellant/writ petitioner who is Computer Operator, comes under Group IV under the purview of the Tamil Nadu Public Service Commission (TNPSC), equivalent to Typist/Steno. In the instant case, the appellant/writ petitioner was not posted in the sanctioned post. Therefore, the appellant's case cannot be equated with the persons who are covered under G.O.Ms.No.878. In such circumstances, the regularisation of service is permissible only if a person is regularly appointed in a sanctioned post. Therefore, G.O.Ms.No.878 and the subsequent GOs are not applicable to the case of the appellant/writ petitioner. The ratio laid down by the Apex Court in 2017 (4) SCC 113 (cited supra) is squarely applicable to the case of the appellant. In such view of the matter, we are of the view that the learned Single Judge, on appreciation of the facts of the case, rightly dismissed the writ petition filed by the appellant. We do not find any reason

to interfere with the order passed by the learned Single Judge. Accordingly, the Writ Appeal is dismissed. No costs. C.M.P. is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai-600 009.
2. The Director/Commissioner,
Rural Development and Panchayat Raj Department,
having Office at Panagal Maaligai,
Saidapet, Chennai-600 015.
3. The District Collector,
Cuddalore District.
4. The Block Development Officer,
Office of the Block Development Officer (BP)
Kattumannaarkovil Panchayat Unit,
Kattumannaarkovil, Cuddalore District.

+1cc to Mr.V.Vijay Shankar, Advocate SR.NO..22998
+1cc to The Government Pleader SR.NO..23374

AKM/30.04.21/8P- 7C/

सत्यमेव जयते

Judgment
in W.A.No.1961 of 2019
Judgment delivered on 16.04.2021

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