



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.31436 of 2014

and

M.P.No.1 of 2014

S.Vasanthi

... Petitioner

Vs.

1. The Secretary,
Government of Tamil Nadu
Rural Development and Local Administration,
Fort St. George, Chennai - 600 009.
2. The Director of Rural Development,
Panagal Building, Saidapet, Chennai - 600 015.
3. The District Collector,
Thiruvarur District, Thiruvuarur.
4. The Commissioner,
Panchayat Union, Kodavasai,
Thiruvarur District.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for records on the file of the fourth respondent in connection with proceedings in Na.Ka.No.2086/2011/A5 dated 28.07.2014 and quash the same as unconstitutional and consequently direct the respondents to continue to grant all benefits by regularizing w.e.f. 20.09.1993 including arrears in the light of the judgment of the Division Bench in W.A.No.763 of 2013 dated 03.04.2014.

For Petitioner : Mr.T.Aananthi

For R1 to R3 : Mr.S.Thangavel,
Special Government Pleader

Mr.Mayilraj - R4

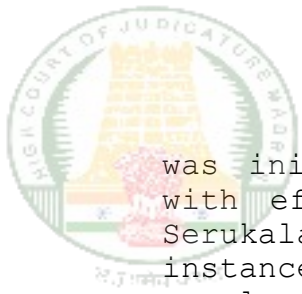


ORDER

This writ petition has been filed to quash the proceedings of the fourth respondent in Na.Ka.No.2086/2011/A5 dated 28.07.2014 and consequently, direct the respondents to continue to grant all benefits by regularising the service of the petitioner with effect from 20.09.1993 including arrears, in the light of the judgment of the Division Bench in W.A.No.763 of 2013 dated 03.04.2014.

2. According to the petitioner, she was appointed as Sweeper through Employment Exchange by the fourth respondent on 15.09.1983 and she joined the service on 21.09.1983 on consolidated pay with allowances. Subsequently, her service was regularized with effect from 20.09.1993 upon completion of 10 years and she was also granted regular scale of pay and increments with arrears including Selection Grade Pay by the fourth respondent in his proceedings dated 06.02.2001 and 29.03.2005. While so, the third respondent vide proceedings dated 11.09.2007 cancelled the order of regularisation of the petitioner's service with effect from 20.09.1993 and granted regularization with effect from the date of issuance of G.O.Ms.No.161, Rural Development Department dated 26.06.2000. Pursuant to the same, the pay and allowances granted to the petitioner were refixed by the fourth respondent and accordingly, the excess amount of Rs.1,06,034/- allegedly paid to her from 20.09.1993 to 30.09.2007 was directed to be recovered from the salary of the petitioner. Challenging the orders of revising the date of regularisation and recovery, the petitioner filed W.P.No.19499 of 2011, which was disposed of on 26.06.2012 by setting aside the impugned orders and remitting the matter back to the respondents for fresh consideration and the amount already recovered was directed to be refunded to the petitioner within a period of four weeks. Since the said order was not complied with, within the stipulated period, the petitioner filed Contempt Petition No.830 of 2013. During the pendency of the same, the fourth respondent issued a show cause notice dated 03.06.2013, calling upon the petitioner to submit her explanation as to why her service should not be regularised with effect from 26.06.2000 and thereafter, refunded the amount recovered from the petitioner. Though the petitioner submitted her explanation, the fourth respondent passed the order dated 28.07.2014, regularising the service of the petitioner with effect from 26.06.2000, instead of 20.09.1993. Feeling aggrieved, the petitioner is before this Court with the present writ petition.

3. Upon notice, the respondents filed a detailed counter affidavit, wherein, it is inter alia stated that the petitioner



was initially appointed as Sweeper purely on contingent basis with effect from 21.09.1983 in Panchayat Union Dispensary at Serukalathur of Kodavasal Panchayat Union; at the first instance, the services of the petitioner was brought into regular time scale of pay on completion of 10 years of service i.e., with effect from 20.09.1993 as per the proceedings of the third respondent in Rc.No.50/2000/A3 (RD) dated 23.01.2001 with reference to the G.O.Ms.No.367, Rural Development (E7) Department, dated 22.12.1999 and G.O.Ms.No.161 Rural Development (E7) Department, dated 26.06.2000; the matter of date of regularization of those contingent employees was clarified and instructions were issued by the second respondent vide letter No.13055/2000/E1 dated 03.08.2007 to the effect that the contingent employees appointed in Panchayat Unions shall be brought into regular Establishment only from the date of issue of the G.O.Ms.No.161, Rural Development Department dated 26.06.2000; consequently, the third respondent passed orders in Rc.No.181/2007/A3(Dev) dated 11.09.2007, cancelling the earlier orders regularising the services with effect from 20.09.1993 and regularised the services of the petitioner with effect from the date of issuance of the Government Order i.e., 26.06.2000; and based on the same, the fourth respondent passed orders in Rc.No.1299/2007/A5 dated 12.10.2007 and 25.01.2008, which were impugned in WP.No.19499 of 2011. It is further stated therein that after considering the explanation of the petitioner dated 21.04.2014, the fourth respondent passed the order dated 28.07.2014 regularising the services of the petitioner with effect from 26.06.2000, which is challenged in this writ petition. It is also stated therein that the Government is adopting a policy in the matter of regularization of temporary and contingent employees with effect from the date of issuance of the said Government Order, since it involves huge expenditure in case of regularization with retrospective effect; and that as a matter of right, the petitioner cannot claim retrospective regularisation of services with effect from the date of appointment, which was made purely on contingent basis. With these averments, the respondents sought to dismiss this writ petition.

4.The learned counsel for the petitioner submitted that the issue involved herein is covered by the judgment of a Division Bench of this Court dated 03.04.2014 in W.A.No.763 of 2013 and hence, the case of the petitioner may be directed to be considered in the light of the said decision.

5.Reiterating the averments made in the counter affidavit, the learned Special Government Pleader appearing for the respondents made his submissions.



6. This Court considered the rival submissions and also perused the materials available on record.

7. In this writ petition, the petitioner questioned the order passed by the fourth respondent regularising her service only from the date of issuance of G.O. Ms. No. 161 dated 26.06.2000. According to her, it has to be regularised on completion of 10 years of service i.e., 20.09.1993.

8. It is seen from the records that the petitioner already filed WP. No. 19499 of 2011 challenging the order of regularisation from the date of issuance of G.O., besides questioning the order of recovery and this Court in paragraph 9 of its order dated 26.06.2012 categorically observed that the persons like the petitioner can claim regularisation only from the date of creation of the post, as they were brought over from the contingency establishment to the regular establishment; and it is a fundamental principle of service jurisprudence that there must be a sanctioned post, for a person to be absorbed or regularised. After observing so, the orders impugned therein were set aside only on the limited ground of violation of the principles of natural justice. It is further seen that in the case decided by the Division Bench cited on the side of the petitioner, the appellant was sponsored by the Employment Exchange and he was appointed as Night Watchman on 04.11.1982; subsequently, he was promoted as office Assistant in the place of one Subramaniam in the time scale pay of Rs. 450-10-570-15-720 on 11.10.1985; thereafter, his services were regularised on 15.10.1986 and he also got selection grade in the post of office Assistant on 18.11.1995; and hence, it was held that the regularisation of his services from the date of issuance of G.O. Ms. No. 161 dated 26.06.2000, cannot be sustainable in law. Whereas, here is the case, wherein the petitioner was engaged on consolidated pay and her service was purely on temporary basis, till the date of regularization. As such, the said decision of the Division Bench, in the opinion of this Court, cannot be applicable to the facts of the present case.

9. However, in paragraph 13 of the counter affidavit filed by the respondents, it is specifically averred that the petitioner instead of preferring an appeal to the first respondent, rushed to this Court without exhausting the appeal remedy. In view of the same, this Court finds it appropriate to direct the petitioner to file an appeal before the first respondent as against the order passed by the fourth respondent dated 28.07.2014.

10. Accordingly, this writ petition stands disposed of, directing the petitioner to file an appeal before the first



respondent within a period of two weeks from the date of receipt of a copy of this order. On filing of such appeal by the petitioner, the first respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, without influencing any observation made in this order, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Secretary,
Government of Tamil Nadu
Rural Development and Local Administration,
Fort St. George, Chennai - 600 009.
2. The Director of Rural Development,
Panagal Building, Saidapet, Chennai - 600 015.
3. The District Collector,
Thiruvarur District, Thiruvuarur.
4. The Commissioner,
Panchayat Union, Kodavasai,
Thiruvarur District.

+lcc to the Government Pleader Sr.11014
+lcc to Mr.T.Aananthi, Advocate Sr.10967

W.P.No.31436 of 2014

srg 19/07/2021