



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.22210 of 2021

and

W.M.P.No.23429 of 2021

(Through Video Conferencing)

1.S.Periyasamy

2.M.Govindaraj

... Petitioners

Vs.

1.Government of Tamilnadu,
Represented by its Secretary,
Environment and Forest Department,
Fort St.George, Chennai - 600 009.

2.The Principal Chief Conservator of Forests,
Panagal Maaligai, Jeenis Road,
Saidapet, Chennai - 015.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus directing the respondents to regularize the service of petitioners after completion of ten years from date of initial appointment as a Plot Watcher on daily wage basis for the purpose of getting pension and family pension in the light of Hon'ble Supreme Court judgment delivered in C.A.No.6798 of 2018 dated 02.09.2019 and order in W.P.No.19023 of 2021 dated 09.09.2021 confer all consequential pensionary benefits.

For Petitioners : Mr.S.Mani

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate



ORDER

Mr.L.S.M.Hasan Fizal, learned Government Advocate takes notice on behalf of the respondents and admits that the issue is no longer res integra and is covered by the decision of this Court dated 09.09.2021 in W.P.No.19023 of 2021. In the aforesaid order, this Court has followed the decision of the Hon'ble Supreme Court in Prem Singh Vs State of Uttar Pradesh and others, passed in C.A.No.6798 of 2019 dated 02.09.2019 and distinguished the decision of the Hon'ble Supreme Court in State of Karnataka and others Vs Uma Devi, 2006 (4) SCC 1.

2. The relevant portion from the said order in W.P.No.19023 of 2021 reads as under:-

"5. The learned counsel for the petitioners has drawn attention to Paragraphs 35 and 36 of the aforesaid decision, which reads as under:-

"35. There are some of the employees who have not been regularized in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularized under the Government instructions and even as per the decision of this Court in Secretary, State of Karnataka & Ors. v. Uma Devi 2006 (4) SCC 1. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one time measure, the services be regularized of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularized. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age



WEB COPY

of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.

36. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."

6. The Hon'ble Supreme Court there was concerned Rule 3(8) of the Uttar Pradesh Retirement Benefit Rules, 1961, which reads as under:-

"Rule 3. In these rules, unless is anything repugnant in the subject or context-

(1)

(2)

(8) "Qualifying service" means service which qualifies for pension in accordance with the provisions of [Article 368](#) of the Civil Service Regulations.

Provided that continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post except-

(i) periods of temporary or officiating service in a non-pensionable establishment.

(ii) periods of service in a work-charged establishment and

(iii) periods of service in a post paid from contingencies shall also count as qualifying service.

Note:- If service rendered in a non-



WEB COPY

pensionable establishment work-charged establishment or in a post paid from contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service."

7. The learned counsel for the petitioners submits that a similar provision in G.O.Ms.No.131, Personnel and Administrative Reforms (F) Department dated 28.11.2020 has been issued. In this connection, the learned counsel for the petitioners has referred to Paragraphs 4 to 6 of the aforesaid Government Order which reads as under:-

"4. In the above said "Umadevi case", among other things, the Constitution Bench of the Supreme Court of India, emphasized that if rules have been made under Article-309 of the Constitution, then the Government can make appointments only in accordance with the rules. If sanctioned posts are vacant, the State will take immediate steps for filling those posts, by a regular process of selection. The State Government and their instrumentalities should take steps to regularize, as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts, but not under cover of orders of the courts or of Tribunals, and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that required to be filled up, in cases, where temporary employees or daily wages are being now employed. If sanctioned posts are vacant, the State will take immediate steps for filling those posts, by a regular process of selection. There should be no further bypassing of the Constitutional requirement, regularizing or making permanent, those not duly appointed as per the Constitutional scheme.



WEB COPY

5. In view of the above, it is hereby reiterated that in case of posts governed by Rules, in all the Services, including Tamil Nadu Basic Service, appointment shall be made only with reference to the existing rules. While selecting candidates for appointment, the claim of the contesting candidates shall be weighed with reference to the rules, in force, as emphasized in the "Umadevi Case" [State of Karnataka Vs. Umadevi (2006)4 SCC 1].

6. All the appointing authorities should adhere to the above instructions scrupulously, failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules, against the persons responsible for the said lapses. All Heads of Departments are directed to ensure that the above said instructions are followed, without fail."

8. If the above view of the Hon'ble Supreme Court in State of Karnataka Vs. Umadevi (2006)4 SCC 1 has been followed by the Government of Tamil Nadu in G.O.Ms.No.131, Personnel and Administrative Reforms (F) Department dated 28.11.2020, the petitioners services was to be regularized at the expiry of ten years on the date of which they were originally appointed.

9. Considering the fact that they were appointed ten years earlier, they are also entitled to pension and the other attendant benefits. Further, Government Order in G.O.Ms.No.131, Personnel and Administrative Reforms (F) Department dated 28.11.2020 is binding on the respondents. Merely because the petitioners have attained the age of superannuation prior to the aforesaid date would not mean that the petitioners should not be given the benefit for the services rendered by them with the respondents Forest Department. Under these circumstances, this Writ Petition deserves to be allowed and is accordingly allowed. No costs. Consequently, connected Writ Miscellaneous Petition



is closed."

3. Considering the fact that this issue is now squarely covered by the aforesaid order dated 09.09.2021, this Writ Petition is allowed by directing the respondents to pass appropriate orders within a period of sixteen weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

arb

To

1.The Secretary,
Government of Tamilnadu,
Environment and Forest Department,
Fort St.George, Chennai - 600 009.

2.The Principal Chief Conservator of Forests.
Panagal Maaligai, Jeenis Road,
Saidapet, Chennai - 015.

+2CCs to M/s.S.Mani, Advocate, SR.No. 54378

W.P.No.22210 of 2021
and
W.M.P.No.23429 of 2021

AK(CO)
B.VC (08/11/2021)