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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2021

PRONOUNCED ON : 12.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.32145 of 2019

and

WMP.No.1684 of 2020

C.Nandhakumar

... Petitioner

Vs.

1.The Government of Tamil Nadu
rep. by Secretary to Government,
Health & Family Welfare Department,
Secretariat,
Chennai-600 009.

2.The Deputy Director of Health Services,
Tirupattur,
Vellore District-635 601.

3.The Director of Public Health &
Preventive Medicines,
Chennai-600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in letter No.8824/AB-1/2016-2, dated 04.04.2016, quash the same and direct the respondents to regularise the services of the petitioner as per the representations dated 04.03.2019 & 08.04.2019.

For Petitioner : Mr.S.N.Kirubanandam

For Respondents : Mr.K.Thippu Sultan, GA

ORDER

The present Writ Petition is heard through Video Conferencing on 01.07.2021.



2. Heard Mr.S.N.Kirubanandam, learned Senior counsel appearing for the petitioner and Mr.Thippu Sultan, learned counsel appearing on behalf of the Official respondents.

3. The petitioner herein was engaged as a driver on daily wage basis by the second respondent in their Community Health Centre from 12.11.2014 onwards. After more than four years, his services were disengaged on 16.02.2019. Prior to this, this Court in an order dated 12.02.2016 passed in W.P.No.5405 of 2016, had directed the Government to consider the petitioner's request for regular absorption in the post of driver. On 04.04.2016, the first respondent herein had rejected the petitioner's claim stating that the petitioner's engagement as driver on contract basis was not through a proper method of appointment process and therefore, his services cannot be regularized. Challenging the said order, the present Writ Petition has been filed.

4. It is not in dispute that the third respondent herein had retained the services of the petitioner herein as a driver on daily wage basis from 12.11.2014 to 16.02.2019. The only reason assigned in the impugned order is that the initial absorption of the petitioner was only on a contract daily wage basis under the National Rural Health Mission Scheme from 12.11.2014 onwards and that, such temporary absorption was not in accordance with the general method of appointments by following the Rule of Reservation etc. The fact remains that the petitioner's services were retained for over four years, as admitted in the counter affidavit filed by the respondents herein. When the services of person is engaged by the Government Departments for a considerable time on a daily wage basis, without absorbing them in a regular capacity, the same could be termed as "unjust".

5. In identical circumstances, in the case of S.Murugan Vs. The Government of Tamil Nadu, rep. by the Secretary to Government, Environment & Forests Department, Chennai and Others passed in W.P.(MD) No.11106 of 2013 dated 01.12.2016, this Court had directed regularization of the services of a driver in the Forest Department, whose services were retained on daily wages for a considerable number of years. The relevant portion of the order reads as follows:

"7.The primary and core issue is that whether the petitioner is entitled to regularisation or not ? The petitioner is been inducted into service on 15.10.1997 and still discharging his duty which is not denied by the Respondents which will prove that the Petitioner is in continuous 5 employment and his service is essential and un-dispensable one. The second



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respondent while sending the proposal has categorically held that the petitioner has put in 13 years and 8 months of service and also sought for relaxation of rules in order to regularise his service. But, the first respondent has rejected the proposal on the sole ground that they have not completed 10 years of service as on 01.01.2006 vide G.O.Ms.No.22, P & A.R. Department dated 28.02.2006 but there is no reply or refusal in regard to the extension of the benefit given to others by the Government Advocate.

8. After utilising the Petitioner's service for more than 13 years and still utilising as on date is shocking the conscious of this Court. Further, the respondents are liable as they have extracted the service of the Petitioner and based on principles of promissory estoppel and legitimate expectation, the impugned order is liable to be quashed in so far as the Petitioner is concerned. Further the Petitioner is not entitled to the regularisation from the date of initial appointment but only from the date of completion of 10 years of service.

9. In the result:

(a) the writ petition is allowed by setting aside the impugned order passed by the 1st respondent in his proceedings in Letter No.15393/tdk;-2/2012-9 dated 6 09.05.2013, so far as the petitioner is concerned;

(b) the respondents are hereby directed to regularize the service of the petitioner from the date of completion of 10 years service and pay back all the service and monetary benefits to the petitioner;

(c) the respondents are directed to complete the said exercise within a period of three months from the date of receipt of a copy of this order. No costs."

6. The appeal filed against the aforesaid order of the learned Single Judge, was dismissed by the Hon'ble Division Bench of this Court through its order dated W.A.(MD) No.686 of 2017. While dismissing the appeal, the Hon'ble Division Bench had opined that, even though the driver therein did not possess the essential requirements for regularization, thought it fit in



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not interfering with the order of the learned Single Judge. There relevant portions of the judgment reads as under:

"3. Even though the appellant is right in contending that as on 01 January 2006, the writ petitioner had not completed 10 years and therefore he cannot avail the benefit in terms of G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28 February 2006, we are still not inclined to interfere with the order passed by the learned Single Judge. We note that in similar cases, the Government had granted relaxation and regularized such services. For instance in G.O.Ms.No.3, Environment and Forest Department, 2013, dated 10 January 2013, the services of as many as 14 persons who were working in the appellant department were regularized. In fact the said 14 persons had completed 10 years only as on 01 January 2011. It is not the case of the appellant that the writ petitioner had gained back door entry.

4. Admittedly, he had been in service right from 15 October 1997. There is no break in service. To deny the benefit of the regularization to an employee, who had completed 19 years as on date would not be just or equitable. Taking into account the special circumstances obtaining in this case, we do not wish to interfere with the order of regularization made in favour of the respondent herein."

7. The further appeal against the aforesaid judgment of the Hon'ble Division Bench was dismissed by the Hon'ble Supreme Court in SLP (Civil) D.No.29276 of 2018 dated 04.09.2018. The aforesaid decisions clearly applies to the facts of the case in hand, the services of the petitioner herein, was retained on daily wage basis for considerable time and though he did not meet the requirements for regularization, by applying the principles of promissory estoppel and legitimate expectation, the basis on which the aforesaid ratio was held by the learned Single Judge in S.Murugan's case (supra), as confirmed by the Hon'ble Division Bench, as well as the Hon'ble Supreme Court, it could be held that the petitioner herein would be entitled for regularization.

8. In the light of the above observations, the impugned



order dated 04.04.2016, is hereby quashed. Consequently, the respondents herein are called upon to pass appropriate orders, regularizing the services of the petitioner herein, as a driver on permanent basis, within a period of three months from the date of receipt of a copy of this order. It is made clear that the petitioner herein would not be entitled to any monetary of service benefits till the date of regularization. The Writ Petition Stands allowed accordingly. There shall be no orders as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

- 1.The Secretary,
Government of Tamil Nadu
Health & Family Welfare Department,
Secretariat,
Chennai-600 009.
- 2.The Deputy Director of Health Services,
Tirupattur,
Vellore District-635 601.
- 3.The Director of Public Health &
Preventive Medicines,
Chennai-600 006.

+1CC to M/s.S.N.Kirubanandam, Advocate (SR No.32411)

W.P.No.32145 of 2019
and
WMP.No.1684 of 2020

VSNI (CO)
PR (19/07/2021)