



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P (MD) No.13718 of 2021

WEB COPY

S. Krishnnan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Secretary to Government,
Municipal Administration and Water,
Supply Department,
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 005.

3. The Commissioner,
Devakottai Municipality,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent's impugned order in Na.Ka.No.3238/2006/C1 dated 17.03.2006 in Serial Number.7 and quash the same as devoid of merits and consequently directing the respondents 1 to 3 to grant entire service benefits to the petitioner as per the G.O.(Ms).No.125 dated 27.05.1999, G.O.(Ms).No.71 dated 05.05.1988 r/w G.O.(Ms).NO.101 dated 30.04.1997 by regularizing the petitioner's service from 1997, considering his representation dated 14.07.2021, within the period stipulated by this Court and pass orders.

For Petitioner : Mr. A. Haja Mohideen

For Respondents : Mr. S. Shanmugavel
Standing Counsel for State
for R1 and R2

Mr. J. Anand Kumar
Standing Counsel
for R3



ORDER

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent in Na.Ka.No.3238/2006/C1, dated 17.03.2006, in Serial No.7, and quash the same and consequently, direct the respondents 1 to 3 to grant entire service benefits to the petitioner as per G.O.Ms.No.125 dated 27.05.1999 and G.O.Ms.No.71 dated 05.05.1998 read with G.O.Ms.No.101 dated 30.04.1997, by regularising the petitioner's service from 1997, by considering the petitioner's representation dated 14.07.2021.

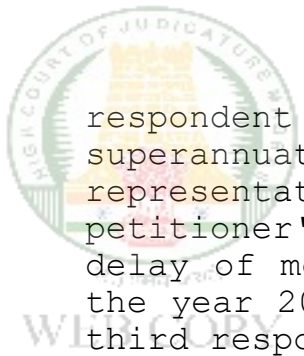
2. The writ petitioner was initially appointed as a daily wage employee under the third respondent Municipality. The Government passed an order in G.O.Ms.No.125 dated 25.07.1999 to regularise those employees, who were appointed prior to 1996 on temporary basis and worked for ten years continuously. On the basis of the said Government Order, the petitioner's services were regularised with effect from 17.03.2006. The petitioner continued as regular employee in the respondent municipality till the petitioner attained the age of superannuation on 31.03.2019. Thereafter, the present writ petition has been filed by the petitioner, seeking the aforesaid prayer to regularise the petitioner's service from the year 1997, in the light of the relevant Government Orders.

3. The third respondent has filed a counter-affidavit wherein it is stated that the petitioner's services were regularised with effect from 17.03.2006 by virtue of G.O.Ms.No.71 dated 05.05.1998 and G.O.Ms.No.21 dated 21.02.2006. The petitioner continued in service till his retirement, without raising any objection. The petitioner had accepted his regularisation with effect from 17.03.2006. Nearly after the lapse of 15 years, the petitioner has filed the present writ petition seeking for regularisation with effect from the year 1997. Therefore, the petitioner is not entitled for the relief as prayed for in the writ petition.

4. This court has anxiously considered the averments raised by the petitioner and perused the materials available on record.

5. The point for consideration in the writ petition is whether the writ petitioner is eligible for regularisation from the year 1997.

6. The petitioner was appointed as a daily wage employee under the third respondent municipality. The Government have passed an order in G.O.Ms.No.125 dated 27.05.1999 issuing guidelines for regularisation of services of an employee. Subsequently, G.O.Ms.No.71 dated 07.07.1998 and G.O.Ms.No.21 dated 21.02.2006 have been issued. Based on the said Government Orders, service of the petitioner was regularised with effect from 17.03.2006 by the third respondent. The writ petitioner accepted the said order of the third



respondent and continued his service till he attained the age of superannuation. After the petitioner retired from service, he made a representation on 14.07.2021 to the third respondent to consider the petitioner's regularisation with effect from the year 1997. After a delay of more than 15 years from the date of his regularisation in the year 2006, the petitioner has sought for such a relief from the third respondent and the present writ petition has been filed.

7. Learned Standing counsel for the municipality submitted that the appointment was made as per the relevant Government Order. Therefore, after the lapse of fifteen years, the petitioner cannot seek for regularisation from the year 1997. The same is contrary to the relevant Government Order. Further, the said regularisation itself is a concession given by the Government. Therefore, the petitioner cannot seek for regularisation with retrospective effect.

8. The Hon'ble Supreme Court in the *Regional Manager, APSRTC vs. N. Sathyanarayana and ors.*, dated 12.11.2007, has negatived the claim made by an employee who sought for regularisation after more than a decade of his service. The Hon'ble Supreme Court held that there was no explanation forthcoming for the delay in claiming regularisation and therefore, rejected the claim made by the employee. The relevant portion of the order reads as under :

10. Even a bare reading of paragraph-18 of the judgment on which reliance has been placed by the learned Single Judge and the Division Bench, it is clear that the relief was moulded to avoid anomalies and in view of the peculiar situation involved. This Court categorically held that the orders impugned in the appeals were not sustainable because the writ petitions were filed after a long lapse of time. Similar is the position here. The regularization was done w.e.f. 1.8.1987 and the writ petitions were filed in the year 1999. That being so and since in the writ petition without any explanation has been offered for the delayed approach, writ petition should have been dismissed on the ground of delay and laches.

9. In the case of *Secretary to Government, School Education Department, Chennai vs. R. Govindaswamy & Ors.* (2014) 4 SCC 769, the Hon'ble Supreme Court has quoted an earlier order in *State of Rajasthan & Ors. v. Daya Lal & Ors.*, (AIR 2011 SC 1193), which is as follows:

8 (ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into



service, as such service would be litigious employment. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

The Hon'ble Supreme Court held in R.Govindasamy as follows:

9. "The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgment. Therefore, the appeals are allowed. However, in light of the facts and circumstances of the case as Shri P.P. Rao, learned senior counsel has submitted that the appellant has already implemented the impugned judgments and does not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected."

Paragraph 4 of the order in W.P.(MD).No.4299 of 2015 is extracted hereunder:

4.This Court is of the considered opinion that the initial appointment of the writ petitioner was not in accordance with the recruitment rules in force. He was appointed only as a daily wage employee and subsequently converted as consolidated pay employee. This being the factum, retrospective regularization of service cannot be granted in respect of the irregular appointments made. The services of the writ petitioner was subsequently regularized from the year 2012 in the sanctioned post in the regular time scale of pay in respect of the irregular appointments grant of regularization itself is a concession. Thus, further concession cannot be granted for retrospective regularisation of the services with monetary benefits.

10. In the present case on hand, the petitioner has approached this court belatedly after a lapse of more than fifteen years, seeking for regularisation with effect from the year 1997. This court cannot entertain the prayer for regularisation and the said contention of the petitioner is not sustainable. The petitioner's service was regularised subject to the satisfaction of the guidelines that have been issued in G.O.Ms.No.125 dated 27.05.1999. The petitioner accepted the said Government Order and got his services regularised from the year 2006. After his retirement from service, such relief sought for by the petitioner is impermissible.



11. In the result, no prima facie has been made out in the writ petition. Therefore, this court cannot accept the contention of the petitioner and there is no merit in the writ petition. The writ petition is therefore dismissed. No costs.

Sd/-

Assistant Registrar (Records)

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/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water,
Supply Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 005.
3. The Commissioner,
Devakottai Municipality,
Sivagangai District.

+1 CC to M/s.SPL.GP (SR-31512[F] dated 07/10/2021)

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RD(29.11.2021) 5P 5C