



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2021

CORAM:

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THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.9847 of 2014

and

W.P.(MD).No.1976 of 2015

and

W.M.P.(MD).No.10160 of 2017

1.A. Krishnammal
2.D. Ramani
3.P. Pangajamathivathani ...Petitioners inW.P(MD)No.9847/2014
4.T.Jegan Mohini ...Petitioner in W.P(MD)No.1976/2015

Vs.

1.The Director,
Backward Class Welfare Department,
Chepauk,
Chennai - 600 005.

2.The District Backward Class and Minorities Welfare Officer,
Sivagangai,
Sivagangai District. ... Respondents in both W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.Y.1/452/2014, dated 10.04.2014 and 02.09.2014 on the file the respondent No.2 and quash the same as illegal and consequently to direct the respondents to regularize the service of the petitioners in the post of cook with effect from 25.09.1998 on par with the similarly appointed persons with all monetary benefits within the time stipulated by this Court.

For Petitioner in
both W.Ps : Mr. G. Chandrasekar

For R1 and R2 : Mr. M.Linga Durai
in both W.Ps Government Advocate

COMMON ORDER

These writ petitions are filed for issuance of writ of Certiorarified Mandamus to quash the impugned order passed by the second respondent dated 10.04.2014 and 02.09.2014 and to direct the



respondents to regularize the service of the petitioners in the post of cook with effect from 25.09.1998 on par with the similarly appointed persons with all monetary benefits.

2.The petitioners were appointed in the year 1997 as cook helper and they were posted on various girls hostels in the year 1998 by revising salary of the petitioner. All the petitioners in W.P.(MD)No.9847 of 2014 were appointed by proceedings dated 22.09.1997 and the petitioners in W.P.(MD)No.1976 of 2015 was appointed on 22.01.1997. Their appointments was on consolidated pay of Rs.100/- per month. Later, the consolidated pay of the petitioners was enhanced from Rs.100/- per month to Rs.500/- per month. It is the case of the petitioners that they completed the period of probation. It is also stated by the petitioners that they were regularized by an order of regularization dated 31.12.2010 and 31.08.2007 respectively.

3.The grievances of the petitioners is that the petitioners were regularized with effect from 2007, whereas several other persons, who are appointed along with the petitioners were regularized with effect from the date of appointment upon completion of 10 years of service. Stating that there is no logic in denying regularization as it was given to other persons with effect from the date of appointment upon the completion of 10 years of service.

4.The learned counsel appearing for the petitioners submitted that the order of appointment given to the petitioners in the year 1997 is against the permanent vacancy and therefore they cannot be treated differently. The petitioner's counsel submitted that the impugned order was highly arbitrary and suffers from non-application of mind and apart from that being violative of Articles 14 and 16 of the Constitution of India. Since all the petitioners were appointed as Cook Assistants, different yardstick cannot be adopted. This Court is unable to reject the contention of the petitioners on the basis of explanation made by the respondents in the counter affidavit.

5.In the counter affidavit filed by the second respondent, in para No.5, it is stated as follows:

"5.It is true that service of Arumugam and Muthuramalingam service were regularized made prior the petitioner's service regularization since the earlier vacancy arose in the men hostel at Kombukaranenthal and Maravamangalam men hostel in view of creation of new hostel and the said vacancy was filled by Arumugam and one K. Muthiah. As regards Muthuramalingam is concerned there was vacancy arose due to the death of Asirvatham who was working as cook at Pudukkottai Government men hostel. Hence according to seniority among from men cook his service was regularized and posted at pudukkottai under time scale of pay. Even in the proceedings in Na. Ka. No. B4/13407/06 dated 18.12.2006 issued by the first respondent it is stated that men should be appointed in men hostel and women should be appointed in women hostel. That is why we



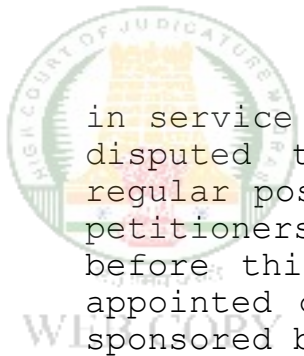
have maintained the separate seniority between men and women irrespective of date of appointment between men and women. The persons who are working as cook on consolidated pay will be brought under time scale of pay based on their seniority as well as vacancy."

The averments made in para No.5 of the counter affidavit filed by the second respondent is not acceptable. It is not disputed that the petitioners were also appointed along with several other persons and hence there cannot be a discrimination. It is the specific case of the petitioners that the petitioners were appointed along with various others and that the respondents cannot reject the regularization of the petitioners by citing artificial reasons.

6.The learned counsel appearing for the petitioners relied upon the judgement of the Hon'ble Supreme Court in the case of **Sabha Shanker Dube -vs- Divisional Forest Officer and others**, in Civil Appeal No.10956 of 2018, wherein the Hon'ble Supreme Court has held as follows:

"11.In view of the judgment in Jagjit Singh (supra), we are unable to uphold the view of the High Court that the appellants herein are not entitled to be paid the minimum of the pay scales. We are not called upon to adjudicate on the rights of the appellants relating to the regularization of their services. We are concerned only with the principle laid down by this Court initially in Putti Lal (supra) relating to persons who are similarly situated to the appellants and later affirmed in Jagjit Singh (supra) that temporary employees are entitled to minimum of the pay scales as long as they continue in service."

7.This court is unable to reject the contention of the petitioner's counsel that the appointment of the petitioners were against the sanctioned post and that equals cannot be treated unequal, while providing employment or granting pay scale to employees. It is brought to the notice of this Court that the services of several others were regularized with effect from 01.07.1998. When all the persons were appointed pursuant to a process of recruitment, they should be treated as equals. In this case, it is admitted that the petitioners were appointed on consolidated pay against sanctioned post. All the petitioners were appointed as sponsored by the employment exchange. The petitioners and others were given consolidated salary of Rs.100/- per month till the salary was revised, by order dated 25.07.2011 from Rs.100/- per month to Rs.500/- per month. By proceedings of the respondents, several other employees were appointed as against the sanctioned post were regularized long before the petitioners were regularized. No valid reason is assigned in the counter affidavit to justify such discrimination. Though it is stated in the counter affidavit that the petitioners are different from others, it is not demonstrated before this court how the others are different from the petitioners



in service or different from the petitioners. It is not specifically disputed that the petitioners were also appointed against the regular post. By artificial means, the nature of posts in which the petitioners were appointed cannot be made different. It is admitted before this Court that the petitioners and other candidates were appointed on the same day. It is also stated that as per the list sponsored by the employment exchange, the petitioners were seniors.

8. In such circumstances the petitioners should be considered as seniors to others and cannot be denied the benefits of regularization as it was extended to other candidates, who are juniors to the petitioners. Therefore, the petitioners are entitled to succeed, accordingly the impugned orders passed by the second respondent, are quashed. The respondents are directed to regularize the petitioners in the post of cook with effect from 25.09.1998 on par with similarly appointed persons. It is needless to say that the petitioners are also entitled to all other monetary benefits which are consequential. This Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

Sn/Ns

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 Director,
Backward Class Welfare Department,
Chepauk, Chennai - 600 005.

2. The District Backward Class and Minorities Welfare Officer,
Sivagangai, Sivagangai District.

+3 CC to M/s.G.CHANDRASEKAR, Advocate(SR-28259[F] dated 06/09/2021)

+1 CC to M/s.GP (SR-28494[F] dated 08/09/2021)

W.P. (MD) .No.9847 of 2014

and

W.P. (MD) .No.1976 of 2015

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