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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.197 of 2013
and
M.P. No.1 of 2013

1. The District Collector,
Villupuram District.
Villupuram.
2. The Block Development Officer,
Mailam Panchayat Union,
Kutteripattu, Tindivanam Taluk,
Villupuram District.
3. The District Employment Officer,
Villupuram District, Villupuram ...Appellants/Respondents

-vs-

G. Suseela ... Respondent/Petitioner

Prayer :Writ appeal filed under clause 15 of the Letter Patent praying to allow the above writ appeal and set aside the order dated 25.04.2011 in W.P.No.27815 of 2008.

Prayer in WP.No.27815 of 2008: Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records of the respondents 1 to 3 particularly the 2nd respondents letter dated 08.09.2008 vide Ref.No.Na.ka.A4/1794/2008 and quash the same and consequently direct the 1st and 2nd respondents to give employment by sponsoring the petitioners name through the 3rd respondent by considering the petitioner's lengthy servie of 21 years under the respondents 1st and 2nd on the basis of the petitioner's representtion dted 05.03.2008 sent through the Taluk Legal Services Committee, Tindivanam.

For Appellants : Mr.U.M.Ravichandran
Special Government Pleader

For Respondent : Mr.T.S.Baskaran



J U D G M E N T

S.VAIDYANATHAN, J.
and
MOHAMMED SHAFFIQ, J.

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This Writ Appeal has been filed by the appellants challenging the order of the learned Single Judge in W.P. No.27815 of 2008 dated 25.04.2011, directing to reinstate the writ petitioner/Respondent in service.

2. The case of the Appellants is that though the Writ petitioner/Respondent was initially appointed in Mailam Panchayat Union/ 2nd appellant as Typist in the year 1986, which is a sanctioned post on daily wages basis and the salary was paid on monthly basis, she had subsequently started her own centre for job works under the name "Nirmal Job Typing" and therefore, she has not been covered under any Service Rules. The further case of the appellants is that, whenever there was a necessity for typing work, she was entrusted with the work, for which, remuneration was paid accordingly. Since the writ petitioner/respondent had not rendered continuous service and that her salary was paid under the Development Scheme under NMR (Nominal Muster Role) Project Scheme and not from the general fund, the 2nd appellant, vide proceedings in Na.Ka.No.A1/1794/2008 dated 08.09.2008 refused to grant the benefit of regularisation, on the ground that she had been entrusted with the typing work in the form of outsourcing and had not been treated as a daily wager. Aggrieved over the order of the 2nd appellant in Na.Ka.No.A1/1794/2008 dated 08.09.2008, the writ petitioner/ respondent herein filed a Writ Petition before this Court in W.P.No.27815 of 2008, wherein the learned Single Judge passed an order on 25.04.2011 with a direction to the 2nd Appellant to regularise the services of the writ petitioner/ respondent in accordance with law. Challenging the order passed in W.P. No.27815 of 2008 dated 25.04.2011, the Appellants have preferred the present writ appeal.

3. Mr.U.M.Ravichandran, learned Special Government Pleader, appearing for the appellants contended that the job of the respondent/writ petitioner was not a regular one and she was engaged in typing work whenever needed and was paid then and there. It was further contended that the salary to the respondent was disbursed through different heads but, however, wages were paid to the employee on a timely basis. Further, the writ petitioner/ respondent herein was aware that her employment was a temporary one and the same cannot be regularized. Hence,

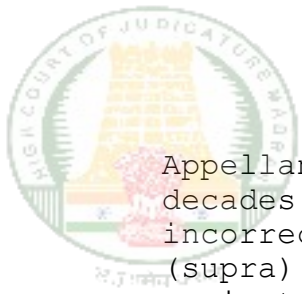


the claim made by the writ petitioner/ respondent to regularise her service cannot be accepted as she is not covered by any Service Rules. It was also stated by the Special Government Pleader, that the services of the writ petitioner/ respondent was on part time basis and not a regular one and in order to support his contention, he relied upon Judgment of the Hon'ble Supreme Court in the case of State of Tamil Nadu vs. Singamuthu reported in (2017) 4 SCC 113, wherein it was held that a person who was appointed without following the Rules and Regulations, on temporary or part-time basis cannot seek for regularisation of his/her service. He further relied upon the judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and others reported in (2006) 4 SCC 1, wherein it was held that daily wage earners cannot claim permanency as a matter of right and are not entitled to any relief. Thus, it was prayed that the order of the learned Single Judge is to be set aside.

4. Mr.T.S.Baskaran, learned counsel for the respondent would submit that based on G.O.Ms.No.22 dated 28.02.2006, it was decided that the services of the daily wage employees who have rendered 10 years of service as on 01.01.2006, shall be regularized by appointing them in the time scale of pay in accordance with the service condition prescribed for the said post. Since the employee/respondent herein has completed more than 10 years of service, she should have been made permanent and depriving permanency is illegal.

5. Heard both sides and perused the materials on record.

6. It is not in dispute that the writ petitioner/ respondent joined the service in the year 1986 and continued till 2007 as could be seen from the copy of the vouchers produced before this Court. That apart, the Service Certificate, which was issued by the 2nd appellant from time to time, starting from 10.06.1987, would go to show that the respondent / writ petitioner had been working as Typist under Nominal Muster Role (NMR). It is pertinent to note that nowhere in the service certificate it has been mentioned that the writ petitioner/ respondent was working on part time basis and the same was rightly recorded by the learned Single Judge in W.P.No.27815 of 2008 dated 25.04.2011. On a perusal of the vouchers produced by the appellants, it is vividly clear that the writ petitioner / respondent was inducted as a part time employee. Merely because wages were paid from different head every month, it cannot be the ground to deny regularisation in the post. Admittedly, the respondent/ writ petitioner has been employed in the 2nd



Appellant/Mailam Panchayat Union against a sanctioned post for 2 decades and hence, denial of regularisation of her service is incorrect. The judgment cited by the Special Government Pleader (supra) is a distinguishable one, as the respondent was posted against the sanctioned post on daily wage basis as per Rules, of course, as part time employee. Moreover, a reading of G.O.Ms.No.22 dated 28.02.2006 leaves no manner of doubt that the employees, who have been engaged for more than 10 years on daily wage basis should be regularised.

7. At this juncture, it is pointed out by the learned Special Government Pleader for the appellants that the writ petitioner/ respondent had already attained the age of superannuation in the year 2017 and at this distant point of time, it is not possible to regularise the services of the employee / respondent based on G.O.Ms.No.22 dated 28.02.2006. It is relevant to point out that when the Appellants rely upon G.O.Ms.No.22 dated 28.02.2006, which is much prior to the judgment referred to by the learned counsel for the appellants, they should have immediately withdrawn G.O.Ms.No.22 and issued another Government Order in the light of the decision of the Apex Court, reported in (2006) 4 SCC 1 (supra) and admittedly, the G.O.Ms.No.22 was not withdrawn, which resulted in some of the employees being regularised in service based on the above Government Order.

8. In the present case, the appellants, having extracted work from the writ petitioner / respondent for more than two decades cannot refuse to consider regularisation of the services of the writ petitioner/ respondent, which is contrary to their own G.O.Ms.No.22 dated 28.02.2006. Therefore, we are of the view that the writ petitioner / respondent is entitled to avail benefits for the years of service rendered by her, as rightly mentioned by the learned Judge in the order dated 25.04.2011.

9. Since the writ petitioner / respondent has attained the age of superannuation and taking into account the pandemic situation, we are inclined to slightly modify the relief granted by the learned Single Judge, thereby depriving the entire back wages payable to her. However, the writ petitioner / respondent is granted the relief of permanent status and she is entitled to gratuity for the entire services rendered from 1986 to 2017, apart from the pensionary benefits, if applicable, to the said post. The entire benefits due to the writ petitioner/ respondent shall be disbursed to the writ petitioner/ Respondent within a period of three months from the date of receipt of a copy of this order, failing which it carries interest @ 10% per annum which shall be recovered from the officials, who are responsible to disburse the amount to the writ petitioner/respondent.



10. With the above observation and direction, this Writ Appeal stands disposed of. Consequently, the connected miscellaneous petition is closed. No costs.

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Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

smn/mka

To:

1. The District Collector,
Villupuram District.
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2. The Block Development Officer,
Mailam Panchayat Union,
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3. The District Employment Officer,
Villupuram District,
Villupuram.

+1cc to Mr.Baskaran, Advocate, S.R.No.12104

+1cc to the Government Pleader, S.R.No.12785

W.A. No.197 of 2013

MG (CO)
SU (30/03/2022)