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W.P.No.12219 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12219 of 2016

1.G.Gowriammal

...Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by Secretary to Government,
Revenue Department,
Fort St.George, Chennai – 9.
- 2.The Special Commissioner and Commissioner
of Urban Land Ceiling and Urban Land Tax,
Chepauk,
Chennai – 600 009
- 3.The Director,
Urban Land Ceiling and Urban Land Tax,
Chepauk,
Chennai – 600 005.
- 4.The Assistant Commissioner,
Urban Land Tax Department,
Coimbatore.
- 5.The District Collector,
Coimbatore,
Coimbatore District – 18.

..Respondents



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Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the issue of the impugned order G.O.No.(1D) No.11 dated 11.01.2016 passed by the 1st respondent and quash the same and further to direct the 1st respondent to regularize the petitioner's service with effect from 08.05.1990 with appropriate time scale of pay and to direct the 1st respondent to pay all monetary benefits including arrears of salary, allowance, pension benefits at all leaves salary etc., to the petitioner within a time frame as may be fixed by this Honourable Court.

For Petitioner : Mr.P.Gopinath
For Mr.G.Mutharasu

For R1 to R5 : Mr.P.Sathish
Additional Government Pleader

ORDER

The order of rejection, rejecting the claim of the writ petitioner for regularization and permanent absorption in the post of Process Server is under challenge in the present writ petition.

2. The petitioner states that she was appointed as Process Server by the 4th respondent in proceedings dated 25.04.1990 and joined on 08.05.1990 through Employment Exchange in the Revenue Department. The petitioner was appointed on consolidated pay salary and continued in service without



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any break. The petitioner was allowed to retire from service on 30.04.2015 and she made a request to regularize her services in the sanctioned post in time scale of pay and accordingly, grant pensionary benefits to her.

3. Pertinently, the writ petition itself was filed after the retirement of the writ petitioner on 30.04.2015. However, the application submitted before the Government by the petitioner was rejected in G.O.(1D).No.11 dated 11.01.2016. Therefore, the petitioner has chosen to file the present writ petition after her retirement.

4. The learned counsel for the petitioner mainly contended that the petitioner was served for about 25 years on consolidated pay salary and retired from service on 30.04.2015. The cases of similarly placed persons placed were considered, more specifically one Mr.P.Murali was appointed as Process Server on 20.01.1978 on consolidated basis through Employment Exchange and subsequently, his services were regularized and he was promoted to the post of Record Clerk, Junior Assistant, Assistant and Superintendent and retired from service on 30.11.2007. Thus, the case of the writ petitioner is also to be considered based on the case of Mr.P.Murali.



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5. The learned Additional Government Pleader appearing on behalf of the respondents objected the said contention by stating that the petitioner made a request to regularize her services based on the Government order issued in G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006, which was superseded by the Government and a revised order was issued in G.O.(Ms).No.74, Personnel and Administrative Reforms Department dated 27.06.2013. As per the revised Government order, only in the event of complying with the conditions stipulated in the order, the benefit of regularization and permanent absorption would be given, but not otherwise. The petitioner was not appointed in a sanctioned post and she was engaged as a temporary employee on consolidated pay salary in an unclassified post of Process Server. Thus, the Government rejected the claim of the writ petitioner for regularization of the services.

6. Regularization or permanent absorption cannot be claimed in violation of rules. It is to be granted strictly in accordance with the service rules in force. The petitioner was appointed in an unclassified post of Process Server, which was not duly sanctioned by the Government, when the



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petitioner was appointed. She was appointed on temporary basis and on a consolidated pay salary. She continued as such and retired from service in the year 2015. Now after a lapse of about 7 years from the date of retirement, the question of granting regularization of the services would not arise, since the petitioner was not appointed in a sanctioned post in accordance with the recruitment rules in force. Only if the appointment is made in consonance with the recruitment rules, the benefit of regularisation is to be granted, but not otherwise. Even if a mistake occurred in the case of one Mr.P.Murali, the said irregularity cannot be repeated by the Government by granting regularization to other cases. An irregularity or illegality cannot be a ground to claim equality under Article 14 of the Constitution of India. Therefore, a wrong precedent or an error committed by the Government authorities cannot be a ground to extend the benefit, which is otherwise not in consonance with the service rules in force.

7. The petitioner has filed a petition on 29.04.2015 and thereafter, filed W.P.No.19944 of 2015 before this Court and pursuant to the order, a direction was issued on 07.07.2015, directing the respondent to consider the representation. Thereafter, the order impugned has been passed. The



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respondents have stated that the case of the writ petitioner was considered on merits and with reference to the rules in force. Even as per the Government order issued in G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006, the services of the daily wage employees were regularized and therefore, the petitioner is not entitled as per the Government order issued in G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006, which was superseded by the Government by issuing another Government Order in G.O.Ms.No.74, Personnel and Administrative Reforms Department dated 27.06.2016.

8. The Post of Process Server, which is an unclassified post was sanctioned and it was filled up through District Employment exchange under consolidated pay salary. Therefore, the petitioner was appointed on consolidated pay and she was allowed to retire from service in the year 2015.

9. The principles regarding the regularization and permanent absorption are already settled and the High Court cannot issue any direction to the authorities to regularize the services of the temporary employees or consolidated pay employees in violation of the Service rules in force.



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WEB COPY 10. This being the principles settled, the relief as such sought for in the present writ petition deserves no merit consideration. Accordingly, the writ petition stands dismissed. No costs.

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Index : Yes
Speaking order: Yes
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S.M.SUBRAMANIAM, J.

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