



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.17221 of 2013

M.Kannan

...Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Personnel and Administrative
Reforms (P) Department,
Secretariat, Chennai - 9.
2. The Principal Secretary to Government,
Micro Small and Medium
Enterprises Department,
Secretariat, Chennai - 9.
3. Tamil Nadu Small Industries
Development Corporation Ltd.,
(A Govt. of Tamil Nadu Undertaking),
Rep. by the Chairman and Managing Director,
Kathipara, Chennai - 16.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned G.O.Ms.No.91, Micro Small and Medium Enterprises (c) Department, dated 10.07.2009, passed by the 2nd respondent and consequential order of the 3rd respondent passed in Na.Ka.No.7771/b2/06, dated 09.04.2010, and quash the same, insofar as petitioner is concerned and direct the 2nd respondent to regularize the service of the petitioner as Junior Drafting Officer/Technical Assistant, on completing 10 years of service i.e. 01.08.2001 with all consequential benefits and other attendant benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents: Mr.T.Chezhiyan,
Additional Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.



2. G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, provides that the employees working on daily wages in public services should be brought into regular establishment, on completion of 10 years of service, as on 01.01.2006. In the instant case, the petitioner was appointed on 01.08.1991. However, his services came to be regularized, through the impugned Government Order in G.O.Ms.No.91, Micro Small and Medium Enterprises (C) Department, dated 10.07.2009, giving effect from the date of the Government Order.

3. While the learned counsel for the petitioner submitted that the petitioner would be entitled for regularization on completion of 10 years of service from the date he was recruited as an NMR on daily wages, the learned Additional Government Pleader submitted that the petitioner had accepted the Government Order dated 10.07.2009, without objection and therefore, the present prayer cannot be maintained. The other reason assigned by the learned Additional Government Pleader was that there was a ban on direct recruitment, which was adopted by the third respondent on 02.12.2003, and therefore, when the ban was lifted, the impugned Government Order was passed, regularizing the petitioner's services. Therefore, the same does not suffer from any infirmity.

4. It is not in dispute that G.O.Ms.No.22, dated 28.02.2006, which provides for regularization of an employee in public services, after completion of 10 years, is applicable to the petitioner herein. The only reason assigned by the respondents, for regularizing the petitioner with effect from 10.07.2009, is that there was a ban on direct recruitment. Such an objection cannot be sustained for three reasons.

5. Firstly, the ban was only for direct appointments and not for regularization. Secondly, when the ban was adopted by the third respondent on 02.12.2003, the petitioner herein had already completed 10 years of service, commencing from 01.08.1991 and therefore, there was no impediment on the part of the third respondent in adopting G.O.Ms.No.22 and regularizing the petitioner at that point of time. Thirdly, this Court, in the case of G.Munusamy V. The Government of Tamil Nadu rep. by its Secretary, Department of School Education, Fort St. George, Chennai-600 009 & others in W.P.No.17594 of 2015 dated 18.04.2022, has held that after the ban in direct recruitment has been lifted, the petitioner would be entitled for regularization, on completion of 10 years of service, in view of G.O.Ms.No.22, dated 28.02.2006. In this background, the objection raised by the respondents cannot be sustained and consequently, the impugned order, regularizing the services of the petitioner from the date of G.O.Ms.No.91, i.e., 10.07.2009, cannot be sustained.



6. In the light of the above observations, the impugned order dated 10.07.2009, insofar as it gives effect from the date of regularization from 10.07.2009, is quashed. Consequently, the second respondent is called upon to pass appropriate orders, regularizing the services of the petitioner from the date on which he had completed 10 years of service, commencing from 01.08.2001, together with all service and monetary benefits, within a period of 3 months from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

hvk/DP

To

1. The Secretary to Government,
State of Tamil Nadu,
Personnel and Administrative
Reforms (P) Department,
Secretariat, Chennai - 9.
2. The Principal Secretary to Government,
Micro Small and Medium
Enterprises Department,
Secretariat, Chennai - 9.
3. The Chairman and Managing Director,
Tamil Nadu Small Industries
Development Corporation Ltd.,
(A Govt. of Tamil Nadu Undertaking),
Kathipara, Chennai - 16.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.27601

+1cc to Mr.S.P.Prabhakaran, Advocate, S.R.No.27765

+1cc to the Government Pleader, S.R.No.28636

W.P.No.17221 of 2013

MT[co]

NSK/17/06/2022