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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.4743 of 2022
and
W.M.P.No.4857 of 2022

N.Thangaraj

...Petitioner

vs.

- 1.The Government of Tamilnadu,
Rep. by its Secretary to Govt,
Revenue Department,
Fort St.George, Chennai.
- 2.The District Collector,
Tiruvarur.
- 3.The Director of Revenue Administration,
Chennai - 600 005.
- 4.The Tahsildar, Taluk Office,
Nannilam, Tiruvarur District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent in connection with Na.Ka.No.20295/2010/A-3 dated 07.01.2021 and quash the same and further direct the respondents to regularize the service of the petitioner w.e.f. 09.01.1989, being the date of initial appointment, by holding that the petitioner having belong to Scheduled Class Community, do not require relaxation for such regularization and grant all revised terminal benefits including pension as fixed in VII Pay Commission w.e.f. 01.05.2019 within specified time.

For Petitioner : MS.T.Aananthi

For Respondents : Mr.V.Jeevagiridharan

Additional Government Pleader



O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, quashing the impugned order passed by the 2nd respondent in Na.Ka.No.20295/2010/A-3 dated 07.01.2021 and consequently, direct the respondents to regularize the service of the petitioner from the date of his initial appointment and to grant all revised terminal benefits.

2. The case of the petitioner in brief:

The petitioner herein was appointed as Night Watchman in the 4th respondent's office on 09.01.1989, through Employment Exchange, and his service was regularized only with effect from 23.11.2001 and he retired from service on superannuation on 30.04.2019. Though the petitioner made requests to regularise his service from the date of initial appointment and the fourth respondent recommended the petitioner's case vide proceedings 08/2004, no action taken. Hence, he filed a writ petition in W.P.No.49754 of 2006 and this court vide order dated 30.04.2019, has directed the respondents to consider the case of the petitioner. In response to the above order, the second respondent passed order, rejecting the claim of the petitioner, stating that his case was considered for regularization only on relaxation of age. According to the petitioner, he belongs to Scheduled Caste and he deserves age limit upto 30 years to consider for appointment on regular basis, however, at the time of appointment, he was aged 29 years 9 months. Therefore, without any application of mind, the respondent had regularised the service of the petitioner from the date of passing of G.O.523 dated 23.11.2001. Hence the petitioner put to heavy monetary loss and he is also entitled to get revised pension with all arrears, by calculating the entire service for qualifying service for Pension from the date of initial appointment. Hence this writ petition.

3. The learned counsel appearing for the respondents submitted that the petitioner had joined duty as Watchman on 17.01.1989 on temporary daily wages. However, as per G.O.Ms.No.523 dated 23.11.2001, his service was regularized from 23.11.2001. Since the service of the petitioner was already regularised from the date of Government Order, now the claim for regularizing his service from the date of initial appointment for pensionary benefit, with retrospective effect, cannot be considered.



4. Admittedly, the petitioner was appointed on 17.01.1989 as Night Watchman on daily wages and thereafter, his service was regularized from 23.11.2001, as per G.O.Ms.No.523 dated 23.11.2001. Now, the petitioner sought for regularization from the date of his initial appointment and to give pensionary benefits with retrospective effect.

5. It is pertinent to note that the Hon'ble Supreme Court, in the case of Secretary to Government, School Education Department, Chennai .vs. R.Govindasamy reported in (2014) 4 SCC 769, has held as follows.

6.The legal principles settled by the Constitution Bench was reiterated by the two Judges Bench of the Hon'ble Supreme Court, in the case of Secretary to Government, School Education Department, Chennai .vs. R.Govindasamy reported in (2014) 4 SCC 769 is extracted hereunder:

8. This Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under: (SCC P. 435, para 12)
“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the



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constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(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.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cutoff date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cutoff dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute." (Emphasis supplied)



6. In the writ petition filed by the petitioner in W.P.No.49754 of 2006, seeking regularization of his service from the date of his initial appointment i.e. 09.01.1989, this Hon'ble Court has passed the following order.

" The representation shall be submitted to the respondents within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of such representation, the respondents are directed to pass a reasoned speaking order, duly taking into consideration the letter dated 21.04.1998 from the Secretary to Government and the G.O.Ms.No.523 dated 23.11.2001. The representation shall be considered and disposed of within a period of six weeks of receipt thereof."

7. At this juncture, it is relevant to extract the relevant portion of Government letter No.7244 dated 21.04.1988, which reads thus.

" 4. Questions have now been raised whether there is feed to re-open already settled cases. This matter has been examined in details. Government considered that already settled cases need not be re-opened at this distance of time ".

8. The second respondent, after analysing the above Government letter and the above said G.O.Ms.523 dated 23.11.2001, has passed the order (impugned), wherein, it is specifically stated that, as per the guidelines issued in Government letter No.7244 dated 21.04.1988, the petitioner's case cannot be considered, as his case was already settled and his service was already regularised. Further, it is stated that in the impugned order that since the service of the petitioner was already regularised, by relaxing the rule, as per G.O.Ms.No.523 dated 23.11.2001, the claim of the petitioner cannot be granted.

9. Therefore, in the light of the decision of the Apex Court and also in view of the above discussions, the petitioner is not entitled for regularization with retrospective effect from the date of his initial appointment. Hence, the orders passed by the second respondent is perfectly valid and it does not warrant any interference by this court.



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10. Accordingly, this writ petition is dismissed. No costs. Consequently, connected writ miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mst
To

1.The Secretary,
Revenue Department,
Fort St.George, Chennai.

2.The District Collector,
Tiruvarur.

3.The Director,
Department of Revenue Administration,
Chennai - 600 005.

4.The Tahsildar,
Taluk Office, Nannilam,
Tiruvarur District.

+1 CC to The Government Pleader sr 15052.

W.P.No.4743 of 2022 and
WMP No.4857 of 2022

MG (CO)
SP (03/06/2022)