



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :
04.02.2021

Orders Pronounced on :
15.03.2022

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Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No. 9299 of 2020
and
W.M.P.No.11342 of 2020

A. Murali,
son of S. Ayyavu

... Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Director of Town Panchayat,
Kuralagam
4th Floor
Chennai - 108
3. The District Collector
Erode District
Erode.
4. The Executive Officer,
Modakkurichi Town Pamchayat,
Erode District - 638 104.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 4th respondent in Na.Ka.No.138 of 2020 dated 22.09.2020 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 06.02.2013 as Tractor Driver under the 4th respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

(Prayer amended vide order dated 04.02.2022 made in WMP.No.1862/2021 in W.P.No.9299/2020 by VPNJ)



For petitioner : Mr. M. Guruprasad
For respondents : Mr.G.Nanmaran, Spl.G.P.
in all Writ Petitions : for RR-1 to 4

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O R D E R

The prayer in the Writ Petition is as follows:

Writ Petition No.9299 of 2020 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 4th respondent in Na.Ka.No.138 of 2020 dated 22.09.2020 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 06.02.2013 as Tractor Driver under the 4th respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

2. The collective and projected grievance of the petitioner in essence in this writ petition is that he is working presently as Tractor Driver under the control of the 4th respondent-Panchayat having been appointed in the year 2013. Despite being continuously employed as Tractor Driver all these years, his service have not been regularised as yet, notwithstanding his eligibility and qualification to hold the posts on a regular basis. According to the petitioner, he has valid heavy motor vehicle licence issued by the competent authority. He has been sponsored by the Employment Exchange at the time when he was recruited initially. According to him, he was subjected to regular selection rigour and only thereafter, he was selected and appointed. Unfortunately, when the appointment was made, the petitioner was employed on daily wage basis and continued for years together denying him the regular benefits as enjoyed by his counterparts working on a regular basis in similar post.

3. The post of Tractor Driver is classified as Class-VI, Category-1 in the Tamil Nadu Town Panchayat (Establishment) Rules, 1988. The post as on date can be filled up by both direct recruitment and also by promotion by appointing persons working as NMRs or on daily wages. The qualification prescribed for regular appointment is possession of Heavy Transport Vehicle Licence and experience of driving for atleast three years. As stated above, the petitioner is fully qualified to be considered for appointment on regular basis. According to him, regularising their service would be beneficial to the administration, as he is sufficiently experienced in handling the post, discharging his duties diligently and efficiently.



4. According to the petitioners, the first respondent has already sanctioned several posts in all categories in respect of the 4th respondent Panchayat and as far as the post of Tractor Driver is concerned, sanctioned posts are available. After introduction of Solid Waste Management Scheme in all the Panchayat in the State, the requirement of Tractor drivers has considerably increased which led to the sanctioning of the posts. There is always shortage of permanent man power in the posts. In the said circumstances, the petitioners have made representations seeking regularisation of their services having admittedly served the Panchayat continuously for several years. Similarly placed persons like that of the writ petitioner, had earlier approached this court in W.P.No.22738 to 22743, 22739 to 22744, 22748 & 22449 of 2018 etc. batch seeking a direction to regularise their service. The said writ petitions came to be disposed of by this Court on 30.01.2019, wherein it was observed as follows:

Though a broader relief is sought for in this writ petition, learned counsel for the petitioner submits that the ends of justice would be met if the respondents are directed to consider the case of the petitioner on merits and pass orders accordingly.

2. Mr.A.N.Thambidurai, learned Special Government Pleader, appearing on behalf of the first and second respondents, would submit that, necessary orders, on merits and in accordance with law, would be passed within the time stipulated by this Court. Mr.N.Srinivasan, learned counsel appearing on behalf of the third respondent would submit that the petitioner has not made any representation in this regard and if any such representation is made, the same shall be considered on merits and in accordance with law.

3. In view of the submissions made by the learned counsel on either side, without going into the merits of the matter, the petitioner is directed to make a representation along with a copy of this order, within two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondents are directed to consider the same on merits and in accordance with law, and pass necessary orders, after affording an opportunity of personal hearing to the petitioner, within a period of eight weeks thereafter. The writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.



5. Thereafter, a representation was submitted on behalf of the petitioner on 17.06.2020. Subsequently, by communications dated 22.09.2020, the 4th respondent rejected the request of the petitioner on the ground that the petitioner was appointed in the year 2013 only on contract basis and that in the appointment order, it was mentioned that the petitioner should not request for regularisation of his service and further, till date the Government has not introduced any permanent post for tractor drivers in the 4th respondent Town Panchayat. This statement has been factually refuted by the petitioner stating that the 4th respondent has not taken into consideration the G.O.(Ms) No.205, Rural Development Department dated 23.03.1989 and G.O.(Ms.)No.37, Municipal Administration and Water Supply (T.W.1) Department dated 01.02.2011 into picture and has simply rejected his representation stating that the post of permanent tractor driver is not introduced in the modakkurichi Town Panchayat. Challenging the rejection order, the petitioner is before this Court.

6. Mr.M.Guruprasad, the learned counsel for the petitioner would submit that the issue of regularisation, which gave rise to the similar claims was favourably considered by this Court in numerous decisions. According to him, the basis for rejection of the impugned proceedings is that no tractor driver post has been created by the government, which is untenable and contrary to the G.O. Ms. No. 23 Municipal Administration and Water Supply Department dated 03.03.1998, which directs and empowers the Municipal Commissioner to establish /create the driver post. The learned counsel in this regard would rely on the decisions of the learned single Judges as well as the Division Bench in support of the claim of the petitioner herein, which shall be referred to infra.

7. In response to the notice in the writ petition, counter affidavit has been filed by the 4th respondent. In the counter affidavit, it is stated that the driver is engaged on contract basis and the Tamil Nadu Town Panchayat Establishment Rules, 1988 applicable only to sanctioned post and not applicable to any contractual arrangements. According to the counter affidavit, the contract driver was engaged for Solid Waste Disposal only for particular hours and therefore, he cannot seek regularisation at all.

8. The learned counsel appearing for the respondents would submit that the employee who was essentially engaged on contract basis, cannot take advantage of the orders passed by this Court as the employees therein enjoyed a different status. According to the learned counsel, those employees were regularly selected and appointed on temporary basis and were subsequently regularised on the basis of the directions of this Court,



whereas this person has been appointed on contract basis only for limited hours a day and therefore, he cannot seek parity and seek regularisation of his service as that of the temporary employees, covered under various orders of this Court. Being engaged purely on contract basis, the petitioner herein is not entitled to the benefits as envisaged in any of the scheme of the Government towards his regularisation. He would therefore, submit that there is no merit in the writ petition and is liable to be dismissed.

9. By way of reply, the learned counsel for the petitioner would submit that the above contentions of the respondents are not to be countenanced both in law and on facts. This Court while allowing similar writ petitions was faced with similar status of employees, employed for a long duration continuously. Therefore, it is too late in the day for the respondents to oppose grant of the relief to the petitioner in this writ petition, as if this employee stand on a different footing.

10. The learned counsel would then proceed to rely on 2013 (14) SCC 65 (Nihal Singh and others vs. State of Punjab and others). This Court's attention has been drawn to paragraph Nos. 36 to 39 which are extracted hereunder.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is—the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks.

37. We are of the opinion that neither the



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Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] judgment cannot become a licence for exploitation by the State and its instrumentalities.

38. For all the abovementioned reasons, we are of the opinion that the appellants are entitled to be absorbed in the services of the State. The appeals are accordingly allowed. The judgments under appeal are set aside.

39. We direct the State of Punjab to regularise the services of the appellants by creating necessary posts within a period of three months from today. Upon such regularisation, the appellants would be entitled to all the benefits of services attached to the post which are similar in nature already in the cadre of the police services of the State. We are of the opinion that the appellants are entitled to the costs throughout. In the circumstances, we quantify the costs to Rs 10,000 to be paid to each of the appellants.

11. After referring to the above Supreme Court decision, this Court's series of decisions has been referred to as under.

(i) W.P.(MD).No.11106 of 2013 dated 01.12.2016. This Court's attention has been drawn to paragraph Nos. 7 to 9 which are extracted as under:

7.The primary and core issue is that whether the petitioner is entitled to regularisation or not ? The petitioner is been inducted into service on 15.10.1997 and still discharging his duty which is not denied by the Respondents which will prove that the Petitioner is in continuous employment and his service is essential and un-dispensable one. The second respondent while sending the proposal has categorically held that the petitioner has put in 13 years and 8 months of service and also sought for relaxation of rules in order to regularise his service. But, the first respondent has rejected the proposal on the sole ground that they have not completed 10 years of service as on 01.01.2006 vide G.O.Ms.No.22, P & A.R. Department dated 28.02.2006 but there is no reply or



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the services of as many as 14 persons who were working in the appellant department were regularized. In fact the said 14 persons had completed 10 years only as on 01 January 2011. It is not the case of the appellant that the writ petitioner had gained back door entry.

4. Admittedly, he had been in service right from 15 October 1997. There is no break in service. To deny the benefit of the regularization to an employee, who had completed 19 years as on date would not be just or equitable. Taking into account the special circumstances obtaining in this case, we do not wish to interfere with the order of regularization made in favour of the respondent herein.

5. Thus, the appeal is therefore dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

13. The learned counsel would also submit that the order of the Division Bench has also been confirmed by the Honb'le Supreme Court of India in S.L.P.(Civil) Diary Nos. 29276 of 2018 dated 04.09.2018.

14. Subsequently, in another batch of writ appeals (W.A.Nos. 391 & 393 to 401 of 2020) the First Bench of this Court disposed of the appeals on 13.03.2020 confirming the decision of the learned Single Judge, directing regularisation. As a matter of fact on behalf of the Government, it is submitted before the Bench that Special Leave Petition had been filed against the decisions rendered in W.A.No.1842/2012 batch dated 10.01.2019, that the issue in the appeal before the Supreme Court was in relation to the date of applicability of regularisation and not regularisation per se. After taking note of the submission made by the learned Additional Advocate General as above, the First Division bench disposed of the appeal as under.

6. His contention, therefore, is that the issue as to from which date will they get the benefit of regularisation, is the issue engaging the attention of the Apex Court.

7. We have considered the submissions raised and we find no reasons to differ from the view taken by the Division Bench while confirming the judgment of the learned Single Judge, issuing



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directions for regularization. But insofar as the date from which such regularization will be given effect to being sub-judice before the Apex Court, we direct that the respondents/petitioners shall be regularized and so far as the date of regularization is concerned, the same will be governed by the outcome of the judgment of the Apex Court.

8. The learned Additional Advocate General, on instructions, states that the respondents/petitioners will be regularized and the regularization orders will be issued within four weeks from the date of production of a copy of this order. We record this and direct accordingly.

9. The Writ Appeals stand disposed of. No costs. Connected civil miscellaneous petitions are closed.

15. In W.P.No.32145 of 2019, this Court vide order dated 12.07.2021, while relying upon earlier decisions on the subject matter has allowed the writ petition and given a direction to regularise the service as driver who was engaged on a daily wage basis in one of the Departments of the Government as under.

8. In the light of the above observations, the impugned order dated 04.04.2016, is hereby quashed. Consequently, the respondents herein are called upon to pass appropriate orders, regularizing the services of the petitioner herein, as a driver on permanent basis, within a period of three months from the date of receipt of a copy of this order. It is made clear that the petitioner herein would not be entitled to any monetary or service benefits till the date of regularisation. The Writ Petition Stands allowed accordingly. There shall be no orders as to costs.

16. It transpired further that SLP(C) Nos.28359 to 28361 of 2019 filed against W.A.Nos. 1842 to 1844 of 2018 came to be dismissed by the Hon'ble Supreme Court on 14.09.2021.

17. In addition to the above decisions on the issue of regularisation, the learned counsel has also relied on the orders passed by various Division Bench of this Court on the issue of creation of post of Drivers. Starting from 26.03.2018 order in W.A.No.587,287 of 2018 etc. batch, W.A.No.637/2018 on



27.03.2018 W.A.No.1332 of 2018 on 03.09.2018 and W.A.No.1070 of 2019 on 09.11.2020 were disposed of confirming the directions of the Single Judge for sanction of the posts of Drivers. The observation of the Division Bench in the first of its order passed on 26.03.2018 followed by the other Division bench decisions is extracted hereunder.

3. Though notice was issued and the respondent is represented by a counsel, so far, no counter is filed. The order passed by the learned Single Judge is to the effect that since already a proposal has been forwarded by the fourth respondent therein, one post of Driver for one vehicle has to be created so as to regularize the services of the writ petitioners. So far as the direction is concerned, it appears that it is totally uncalled for because of the fact that nature of appointment has not been examined and it is only contractual in nature. Moreover, a mandamus cannot be issued in case of appointment and to regularization of services. However, the authorities may consider, if they find that it so warrants and do the needful in accordance with law. The order passed by the learned Single Judge is modified with the above observation and the writ appeals are disposed of. No costs. The connected miscellaneous petitions are closed.

The learned counsel would therefore submit that the relief as prayed for is no more res integra and implore this Court to allow this writ petition.

18. In the light of the repeated decisions of this Court, no further perspective needed to be added by this Court on the subject matter of consideration. This Court is in complete agreement with the submissions made by the learned counsel for the petitioner. The decisions as cited above have taken consistent view both by the learned single Judge as well as the Division Bench is that the NMR, adhoc or temporary employees engaged for a longer period of time continuously are to be regularised by sanctioning of posts, if there are no sanctioned posts available. This Court, even considered the case of adhoc employees, not sponsored by employment exchange, directed the Government to regularise their service on the premise, their services having been extracted continuously for long years.

19. It is not the case of the respondents herein that the petitioner's service was not required at all. The very fact that his service has been engaged for more than seven years continuously is a reflective of the fact of the need of his



service by the respondent panchayat. Moreover, after introduction of the modern Solid Waste Management Scheme all over the State from the Panchayat level, there will be more need of Tractor Drivers for proper implementation of the Scheme. In such circumstances, it is unfair and inequitable for the respondents to plead the nature of employment of the petitioner being contractual and therefore, he is not entitled to the benefit of regularisation.

20. It is needles to mention that the Government have benevolently come up with several schemes for regularisation of employees in various Departments and issued Orders in that regard from time to time acceding to the request of regularisation of several hundred NMRs adhoc employees. When such benevolence and grace has been shown to the employees in the other wings of the Department, as this petitioner has also been employed for more than seven years and whose hard toil has been extracted by the respondents, it may not be fair on the part of the respondents to oppose the grant of relief to this petitioner.

21. Moreover, engaging the petitioner on contract basis for an indefinite period of time continuously and then repudiate his claim for regularisation is a reflection of barren mindset on the part of the jaded administration. The fall out of such mindset invariably result in putting up stereo-type opposition to the grant of relief of regularisation to the poor employees, who eke out their measly livelihood, forced to live on the edge for years together in not knowing their future, has in store for them. To put the employment of scores of employees for years together on the tenterhooks is opposed to the constitutional values namely fair play, equity, good conscience and justice. The Government being a model employer, cannot be allowed to justify its exploitation of the despairing employees, on the ground their employment is irregular or temporary, adhoc etc. Such negative plea is not particularly available after employing them continuously for longer duration. If such plea were to be entertained, it would be a tacit approval of the exploitative nature of employment resorted to by the Government for decades under one pretext or the other.

22. At the end of the day, whatever be the reasons, the fact of the matter is that the petitioner has been continuously employed for more than seven years and by that very fact, the claim of the petitioner is to be considered favourably, without any reservation from the respondents. No doubt as stated above, the Government had been benevolent in the past by regularising scores of NMR, adhoc employees though its policy decision ameliorating the working conditions



of its employees. But the Government must ensure that such affirmative policy action ought to permeate to all levels of employment and administration, so that some section of despairing employees agonising wait for their employment security attains its fruition forthwith.

23. Besides the ratio laid down in all the decisions as stated supra and the directions given therein squarely apply to the factual matrix of this case and denial of the claim of the petitioner would only result in hostile discrimination, thus, would amount to offending Articles 14 and 16 of the Constitution of India.

24. For the above reasons, the Writ Petition is allowed and the impugned orders passed by the 4th respondent in Na.Ka.No.138 of 2020 dated 22.09.2020, is set aside.

25. The respondents are directed to initiate suitable action towards regularisation of the service of the petitioner herein by sanctioning of regular post, if not already sanctioned as Tractor Driver from the date of his initial appointment, in the 4th respondent Panchayat.

26. The respondents/ competent authority are directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order.

27. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

vsi

To

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Director of Town Panchayat,
Kuralagam
4th Floor
Chennai - 108



3. The District Collector
Erode District
Erode.

4. The Executive Officer,
Modakkurichi Town Pamchayat,
Erode District - 638 104.

+1cc to Mr. M. Guruprasad, Advocate, S.R.No.17613
+1cc to the Government Pleader, S.R.No.18149

W.P.No. 9299 of 2020 and
W.M.P.No.11342 of 2020

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