



W.A.No.2688 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.2688 of 2019

P.Manickam

...Appellant

Vs.

1.Additional Principal Chief Conservator of Forests & Director,
Arignar Anna Zoological Park,
Vandalur, Chennai – 600 048.

2.The Principal Chief Conservator of Forests (HOD),
Panagal Building, Saidapet,
Chennai – 600 015.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P.No.16695 of 1998 dated 05.03.2019.

For Appellant : Mr.S.Kumaraswamy
for K.Bharathi

For Respondents : Mr.G.Nanmaran
Special Government Pleader

J U D G M E N T



W.A.No.2688 of 2019

(Judgment was made by **R.SUBRAMANIAN, J.**)

WEB COPY

The appellant is aggrieved by the dismissal of his writ petition in W.P.No.16695 of 2018, wherein, he had prayed for a writ of mandamus directing the respondents to regularize his services with effect from 01.02.1999 as per the recommendation of the 2nd respondent dated 17.02.2016.

2. The writ Court had gone on a presumption that the petitioner is seeking regularization for the first time and has dismissed the writ petition relying upon the judgment in *State of Karnataka Vs. V.Umadevi and others* reported in **2006 (4) SCC 1**.

3. The facts are otherwise. The appellant along with several others was employed as a scavenger/ Mali in the Arignar Anna Zoological Park, Vandalur, when it was commenced in the year 1984. They were being employed at a daily wage basis. The petitioner approached the Tamil Nadu Administrative Tribunal in O.A.No.1093 of 1991 seeking a direction for regularization. The Tribunal by its order dated 13.10.2002 directed



W.A.No.2688 of 2019

regularization of his services.

WEB COPY

4. Since nothing was done pursuant to the order, the petitioner again approached this Court in W.P.No.12536 of 2006. The said writ petition was resisted by the respondents contending that the appellant is not entitled to regularization since his services were terminated due to misconduct between 16.06.1995 and 01.04.1996. This Court repelled the said contention and directed that the appellant's services should be regularized in the light of the order passed by the Tribunal and recommendation made by the Director of Arigna Anna Zoological Park, Vandalur on 06.03.2003.

5. Even on 06.03.2003, the 2nd respondent had recommended that the appellant's services be regularized with effect from 01.02.1999, wherein his immediate junior's services were regularized. Again after the disposal of the writ petition by this Court on 27.08.2010, the 2nd respondent sent in a recommendation on 17.02.2016 recommending regularization of the services of the appellant with effect from 25.01.1999 instead of 30.09.2010 as done in G.O.Ms.No.142 E&F (FR-V) Department.

6. It is at this stage, the petitioner again approached this Court



W.A.No.2688 of 2019

seeking a direction for being regularized with effect from 01.02.1999 as per the recommendation of the 1st respondent and it is in this writ petition, the writ Court passed the order impugned on the assumption that the petitioner is seeking regularization for the first time.

7. Mr.S.Kumaraswamy, learned counsel appearing for the appellant would vehemently contend that the order of the writ Court is flawed, in as much as, it went on an assumption that the petitioner is seeking regularization for the first time. This Court had issued direction to regularize the services of the appellant even in W.P.No.12536 of 2006 on 27.08.2010 and pursuant to the direction, the appellant's services were already regularized with effect from 30.09.2010 and he has also joined duty as regular employee from 01.10.2010. His grievance was that he should have been regularized with other employees even in the year 1999.

8. When the appeal came up for hearing, the learned Special Government Pleader has produced the proceedings of the 2nd respondent dated 18.08.2016, wherein, the claim of the appellant for regularization with



W.A.No.2688 of 2019

effect from 01.02.1999 was rejected. It is not shown that this proceeding was served on the petitioner. It is not addressed to the petitioner. It is addressed to the 1st respondent. The ground on which the claim of the appellant for regularization from 01.02.1999 has been rejected also appears to be more feeble.

9. Admittedly, the petitioner along with others were appointed as Scavenger/ Mali for doing the cleaning work in the zoological park. When the immediate junior of the petitioner one Thanganila was regularized with effect from 01.02.1999, the appellant's claim for regularization from 01.02.1999 has been rejected on the ground that the appellant was appointed as Mali and the junior was appointed as a Scavenger. To a query by us as to whether there are two lists casual labourers one for Mali and one for Scavengers the answers is in the negative. We therefore find that this classification is an artificial classification introduced only to deny the benefit of regularization to the appellant.

10. The proceeding of the 1st respondent dated 17.02.2016 very



W.A.No.2688 of 2019

clearly point out that the petitioner was not considered for regularization in 1999 because his case was pending before the Tribunal. A person cannot be penalized for approaching the Tribunal or this Court. The Tribunal in 2002 had directed regularization. The 1st respondent in 2003 had recommended regularization. However, only after this Court passed orders in W.P.No.12536 of 2006, the Authorities chose to wake up and issue an order of regularization with effect from 30.09.2010.

11. We are alive to the fact that the regularization cannot be claimed as a matter of right, but, once the services of the other temporary employees are regularized, a senior cannot be prejudiced for approaching this Court. The Government had taken conscious decision to regularize the daily wages employees who were employed in the 1st respondent zoological park. The appellant should also be regularized from the date on which his junior's services were regularized.

12. The proceedings of the 2nd respondent dated 18.08.2016 have not been shown to have been communicated to the appellant. However, the said rejection order being passed on unreasonable and highly technical classification, we invoke the plenary powers under Article 226 of the



W.A.No.2688 of 2019

Constitution of India and set aside the said proceeding. We direct the services of the petitioner to be regularized with effect from 01.02.1999 on par with his junior Thanganila.

13. The writ appeal is **allowed** and the order of the writ court is set aside with the above directions. No costs.

14. The exercise of regularization shall be completed within eight (8) weeks from the date of receipt of a copy of the order. Needless to point out that the petitioner would be entitled to all monetary benefits upon regularization. It is stated that the appellant has already retired. Since he had worked for all these period throughout, he will be entitled to monetary benefits.

(R.S.M., J.) (S.S.K., J.)

22.12.2022

dsa
Index :No
Speaking order
To

1.Additional Principal Chief Conservator of Forests & Director,

7/9



W.A.No.2688 of 2019

Arignar Anna Zoological Park,
Vandalur, Chennai – 600 048.

WEB COPY

2.The Principal Chief Conservator of Forests (HOD),
Panagal Building, Saidapet,
Chennai – 600 015.



WEB COPY



W.A.No.2688 of 2019

R.SUBRAMANIAN, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

dsa

W.A.No.2688 of 2019

22.12.2022