



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-06-2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.1560 OF 2014

R.Ashok Kumar

... Petitioner

vs.

1. The Government of Tamil Nadu,
Represented by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
3. The District Collector (PD Section),
Tiruvannamalai District,
Tiruvannamalai.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to G.O.Ms.No.130, Rural Development and Panchayat Raj (E5) Department, dated 19.07.2007 of the first respondent and the consequential order passed by the third respondent vide proceedings bearing Na.Ka.No.12030/2009/Pa E1-1 dated 25.05.2011 and quash the same in so far it relates to regularisation of the service of the petitioner in the cadre of Night Watchman after completion of 10 years of service in the cadre of Night Watchman and further direct the respondents to regularise the service of the petitioner in the cadre of Night Watchman from the date of his initial appointment viz., 20.03.1990 with all consequential benefits.



For Petitioner

: Mr.K.S.Viswanathan

For Respondents-1 to 3

: Mr.S.Prabhakaran,
Government Advocate.

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O R D E R

The writ on hand has been instituted questioning the validity of the order passed by the first respondent-Government in G.O.Ms.No.130, Rural Development and Panchayat Raj (E5) Department, dated 19.07.2007 and the consequential order passed by the third respondent implementing G.O.Ms.No.130 in proceedings dated 25.05.2011, are under challenge in the present writ petition.

2. The writ petitioner was initially appointed as Part Time Panchayat Clerk on 28.06.1989. Subsequently on 19.03.1990, the petitioner was appointed as Night Watchman in Tiruvannamalai Panchayat Union and joined the service on 20.03.1990 on consolidated pay. Admittedly, the writ petitioner was not appointed through District Employment Exchange. Thus, his services were sought to be terminated on 17.06.1992.

3. The petitioner filed O.A.No.8056 of 1992 before the Tamil Nadu Administrative Tribunal and obtained interim orders and accordingly continued in service. The said Original Application was allowed on 24.08.1999. Thereafter, the writ petitioner was appointed as Office Assistant in Tiruvannamalai Panchayat Union on 01.08.2006.

4. The learned counsel for the petitioner mainly contended that the similarly placed persons like the petitioner who were not appointed through the District Employment Exchange had approached the Tamil Nadu Administrative Tribunal and obtained orders were granted the benefit of retrospective regularisation from the date of their initial appointment. However, the case of the writ petitioner was not considered on par with those similarly placed persons. The case of the writ petitioner was independently considered subsequently and the Government issued the impugned G.O.Ms.No.130, Rural Development and Panchayat Raj (E5) Department, dated 19.07.2007 and the benefit of regularisation was granted with effect from the date of passing of the Government Order on 19.07.2007. Therefore, the petitioner lost the benefit of his services from the year 1990.

5. The learned counsel for the petitioner further contended that when similarly placed persons were granted with the benefit of retrospective regularisation, the same benefit cannot be



denied to the writ petitioner as it resulted in discrimination. When the petitioner was admittedly appointed as Part Time employee and thereafter on consolidated pay and subsequently absorbed in the regular establishment, the benefit of regularisation is to be extended from the date of appointment on par with the other similarly placed persons.

6. The learned Government Advocate appearing on behalf of the respondents objected the said contention of the learned counsel for the petitioner relying on the counter-affidavit filed by the respondents. Accordingly, the respondents distinguished the case of Mr.K.Mayilvaganan with that of the case of the writ petitioner. It is contended that the case of Mr.K.Mayilvaganan is not identical and it is different. Further the judgment in both the cases are also not identical. In the case of the writ petitioner, this Court in its judgment dated 24.08.1999 passed in WP No.8056 of 1992 quashed the order of termination dated 17.06.1992 on the ground that the order was passed without issuing prior notice to the writ petitioner and giving liberty to the Commissioner, Panchayat Union, Tiruvannamalai to proceed afresh in the matter as per law. Though the petitioner is liable for removal as per the above judgment, the Government have shown mercy on him and allowed him to continue in service by regularising his services from the date on which he completed 10 years as was done in G.O.Ms.No.267, Rural Development (E7) Department, dated 22.12.1999, in respect of 218 numbers of employees similar to the case of the writ petitioner.

7. On the other hand, the Tamil Nadu Administrative Tribunal in its judgment dated 08.11.1991 in R.A.No.111 of 1991 in O.A.No.700 of 1991 was pleased to direct the respondents to allow Mr.K.Mayilvaganan to continue in service as it was done in the case of Mr.K.Pari, who was also appointed without consulting the Employment Exchange and promoted as Jeep Driver. Therefore, the Government in G.O.(2D) No.46, Rural Development and Panchayat Raj (E5) Department, dated 27.07.2010, ordered to regularise the services of Mr.K.Mayilvaganan from the date of his initial appointment by following the orders issued in G.O.Ms.No.106, Rural Development Department, dated 15.05.1992, according to which the services of Mr.K.Pari were regularised with effect from the date of his first appointment. Therefore, the case of Mr.K.Mayilvaganan was considered pursuant to the orders passed by the Tamil Nadu Administrative Tribunal and the petitioner cannot claim any right on par with the said Mr.K.Mayilvaganan.

8. It is contended that the services of Mr.K.Pari was regularised as per the G.O.Ms.No.106, Rural Development



Department, dated 15.05.1992. Thereafter, the Government have taken a policy decision that the services of 218 employees appointed similar to the petitioner are to be regularised from the date on which they completed 10 years and issued necessary orders in G.O.Ms.No.267, Rural Development (E7) Department, dated 22.12.1999. On the same analogy, the Government issued orders to regularise the services of the writ petitioner from the date on which he completed 10 years of service.

9. Regularisation or permanent absorption can never be claimed as a matter of an absolute right. All appointments are to be made strictly in accordance with the Recruitment Rules in force. Irregular or illegal appointments cannot be regularised. Equal opportunity in public employment is the constitutional mandate. All eligible candidates who all are aspiring to secure public employment must be provided with an opportunity to participate in the process of selection through Open Competitive Process. Thus, the Supreme Court laid down the principles that regularisation or permanent absorption cannot be granted in respect of irregular or illegal appointments.

10. In the present case, the appointment of the writ petitioner admittedly was irregular and not in accordance with the Recruitment Rules in force. Thus, the benefit of regularisation already granted to the writ petitioner itself was a concession extended. No doubt, the Courts have granted the relief of regularisation on some occasions. Some years back such benefit of regularisation granted through Court orders cannot be now extended after several years for the purpose of granting retrospective regularisation. In other words, certain orders passed by the Tamil Nadu Administrative Tribunals for several years back, cannot be cited as a precedent for the purpose of granting retrospective regularisation now after many years. Regularisation as of now is to be considered strictly in accordance with the Rules and by following the principles settled by the Constitution Bench of the Hon'ble Supreme Court in the case of State of Karnataka vs. Uma Devi [2006 (4) SCC 1]. The Courts have repeatedly held that the irregularity or illegality in appointments cannot be cured and more-so, in the present case, the benefit of regularisation has already been granted by the Government. The Government also substantiated by stating that the policy decision was taken during the relevant point of time to grant regularisation from the date of completion of 10 years of temporary services. Thus, the concession granted to the writ petitioner cannot be extended any further and further, the writ petition itself has been filed after a lapse of 7 years from the date of passing of the impugned orders of regularisation by the first respondent in G.O.Ms.No.130, dated 19.07.2007 as the consequential order is



nothing but the implementation of the Government Order passed in G.O.Ms.No.130. Even the consequential order was passed in the year 2011, but the writ petition has been filed in the year 2014.

11. For all these reasons, this Court is not inclined to consider the relief as such sought for by the petitioner and accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
3. The District Collector (PD Section),
Tiruvannamalai District,
Tiruvannamalai.

+1cc to the Government Pleader, S.R.No.33037

W.P.NO.1560 OF 2014

SSN(CO)
RLP(13/06/2022)