



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2022

WEB COPY

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.24499 of 2021

G.Manjula Devi

... Petitioner

vs

1. The Registrar General,
Hon'ble High Court, Chennai 104.
2. The Principal Judge,
City Civil Court, Chennai 104.
3. The Principal Judge,
Family Court, Chennai 104.
4. The Principal Secretary to Government,
Home (Cts.II Department),
Secretariat, Chennai 9.
5. The Principal Secretary to Government,
Law Department, Secretariat,
Chennai 9.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to regularize the petitioner service from the date of her temporary appointment order dated 10.03.2007 by absorbing her service to the Tamil Nadu Judicial Ministerial Service together with arrears of monetary benefits which is paid to the similar scale employees of this very same department by considering her representation dated 21.02.2012 and her reminder dated 27.01.2014 and the recommendations of the Honble 1st respondent in his proceedings in Roc. No. 725/ 2014/G2 dated 13.05.2014 in the light of G.O. Ms. No. 74 dated 27.06.2013.



WEB COPY

For the Petitioner : Mr.V.Neethidurai

For the Respondents: Mr.Vijay Shankar
for RR 1 to 3

: Mr.P.Muthukumar
State Govt. Pleader for RR 4 & 5

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The writ petition has been filed to seek a direction for regularisation of service of the petitioner from the date of temporary appointment on 10.03.2007.

2. The facts on record show that the respondents called for the names of candidates for appointment on daily wage basis and pursuant to the requisition sent by the second respondent, the employment exchange recommended the name of the petitioner and accordingly, the petitioner was given appointment into the service of the third respondent by order dated 10.03.2007. The petitioner is still continuing in service and she would be attending the age of superannuation in a period of year or so. The prayer was made to regularise the service in view of the fact that her appointment was made as per the Rules. The Rule provides for calling of names of candidates from the employment exchange as the post in question was not falling under the purview of the Public Service Commission. The petitioner's name was recommended by the employment exchange, yet, has not been regularised in service despite completion of a period of more than 15 years by now. The prayer, accordingly, is made to regularise the service of the petitioner.

3. The writ petition has been contested by the respondents. It is submitted that at the time of appointment of the petitioner, no sanctioned post was existing. In fact, sanction of the post was given somewhere in the year 2018, thus, the petitioner is not entitled to seek regularisation against a non-sanctioned post. It is more so when the petitioner is going to superannuate within a period of 1 to 2 years. At this juncture, an order for her regularisation may not be passed. The petitioner was otherwise appointed only on temporary basis. The prayer is, accordingly, to dismiss the writ petition.

4. The learned counsel appearing for the Court submits that the matter was referred to the Government initially for



sanction of posts in the Family Court in order to regularise the service of the petitioner. The Government refused to accept the proposal of the High Court mainly on the ground that the petitioner was appointed much prior to sanction of post, thus, she is not entitled to regularisation or any other benefit as a consequence of her appointment by order dated 10.03.2007. The prayer is, accordingly, to dismiss the writ petition, as otherwise it would be without following the rules to fill up the posts by way of direct recruitment.

5. We have considered the rival submissions of the parties and perused the records.

6. The facts which are not in dispute are regarding the appointment of the petitioner by order dated 10.03.2007, after sending a requisition to the employment exchange in view of the need of hands. The employment exchange recommended the name of the petitioner and accordingly, the petitioner was appointed on daily wage basis because no sanctioned post was available till then. She continued to work in the subordinate court without the benefit of regularisation of service.

7. The learned counsel for the Court could not clarify as to how the appointment was made, even if it is on temporary basis, without availability of sanctioned post. It is submitted that to carry out the work of the court smoothly, the appointment was necessary and accordingly, after calling the names of eligible candidates from employment exchange, the petitioner was given appointment on daily wage basis anticipating sanction of the post. The post was sanctioned in the year 2018 and it is also the fact that the case of the petitioner was recommended by the High Court for regularisation, but was not accepted by the Government on the ground that the petitioner was appointed at the stage when there was no sanctioned post of the cadre in which the petitioner is presently working. It is however not in dispute that even after the post was sanctioned, the petitioner's service has not been regularised despite continued work without interruption now for nearly 15 years.

8. In view of the above, the matter is required to be analysed taking into consideration that if an employee is engaged by sending a requisition to the employment exchange



knowing it well that there is no sanctioned post available but in anticipation thereupon so as to carry out the work of the court smoothly, then appointment of the incumbent followed by sanctioned post should not result in the denial of regularisation. An employee cannot continue on temporary basis for years together rather in view of catena of judgments of the Supreme Court, the post should be filled up by regular mode. In the instant case, the petitioner had not entered into service by back door entry rather her name was sponsored by the employment exchange and accordingly, she has already worked for 15 years, though the learned counsel appearing for the High Court submits that the petitioner was not attending duties since September, 2021, may be due to Covid-19 pandemic. In any case, that is not the issue before us because if somebody is not conducting himself/herself in the manner required, the competent authority can take action in the matter. In view of the above, we are not influenced by the fact that the petitioner is not attending her duties since September, 2021 due to Covid and asking for extension of leave. The aforesaid is not the subject matter before us. The only issue is regarding the direction on the respondents to regularise the service of the petitioner.

9. We find that the regularisation could not have been made in absence of sanctioned post, but now the sanctioned posts are available and therefore only the High Court recommended for regularisation of service of the petitioner. It is the State Government which denied the regularisation on the ground that at the time when the petitioner was appointed, there was no sanctioned post available. It is without realising that the court made the appointment of the petitioner by calling for names from the employment exchange, in anticipation of the sanctioned post because without adequate number of employees, the court cannot smoothly work. It is also in the knowledge of everyone that the sanction of post takes long time until then the court's work cannot be hampered and thereby, in anticipation of the sanctioned post, the appointments are given. It is also the fact that subsequently the post was sanctioned, thus, at least from the date of sanction of the post, the petitioner would be entitled to regularisation, but that has not been given despite the fact that as per Rule 10-A of the Tamil Nadu Subordinate Service Rules, any post not falling under the purview of the Public Service Commission, can be filled up by calling the name of candidates from the employment exchange, which per se was applied for appointment of the petitioner.



Looking to the facts aforesaid, we allow the writ petition with a direction to the respondents to regularise the service of the petitioner from the date of sanction of the post and it would be with all consequential benefits. There will be no order as to costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

sra
To:

1. The Registrar General,
Hon'ble High Court, Chennai 104.
2. The Principal Judge,
City Civil Court, Chennai 104.
3. The Principal Judge,
Family Court, Chennai 104.
4. The Principal Secretary to Government,
Home (Cts.II Department),
Secretariat, Chennai 9.
5. The Principal Secretary to Government,
Law Department, Secretariat,
Chennai 9.

Copy to

The Section Officer,
Legal Cell,
High Court, Madras-104.

+1cc to M/s.V.Vijayshankar, Advocate Sr.18843
+2cc to Mr.V.Neethidurai, Advocate Sr.18718
+1cc to the Government Pleader Sr.18603

W.P.No.24499 of 2021

spd[col]

srg 25/03/2022