



W.P(MD)No.12634 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12634 of 2021

S.Britto

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Revenue Department, Secretariat,
Fort St George, Chennai.
- 2.The Commissioner of Revenue,
Administration Department,
Chepauk, Chennai.
- 3.The Director,
Directorate of Animal Husbandry Department,
DMS, Teynampettai,
Chennai - 600 006.
- 4.The District Collector,
Sivagangai,
Sivagangai District.
- 5.The Manager,
Tamilnadu Ex-Servicemen's Corporation
Limited (TEXCO),
No.2 West Mada Street,
Srinagar Colony, Saidapet,
Chennai - 600 015.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents herein regularize the service of writ petitioner as Driver w.e.f. 01.-12-2001 with all attended monetary and service benefits on par with similarly placed persons in the light of G.O.Ms.No.255, Personnel and Administrative Reforms (P) Department, dated 06-12-2007 and the orders dated 11-08-2008 passed by this Court in W.P.(MD).No.8912 of 2007 and etc by considering the representation dated 06-07-2021 given by writ petitioner, within a stipulated time fixed by this Court.

For Petitioner : Mr.V.R.Shanmuganathan

For Respondents : Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.J.K.Jayaseelan,
Govt. Advocate for R1 to R4.

ORDER

Heard the learned counsel for the writ petitioner and the learned Additional Advocate General assisted by the learned Government Advocate for the respondents 1 to 4.

2.The writ petitioner is an Ex-Army Man. He retired from Army in the year 1999. He registered himself with Tamilnadu Ex-Service Man Welfare Office, Sivagangai. His name was sponsored for the post of driver on daily



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wages basis vide communication dated 22.11.2001. The department of Animal Husbandry engaged the writ petitioner on such basis. Subsequently, he came to be discharged. Aggrieved by the same, the petitioner filed W.P.(MD)No.4043 of 2005 and the same was disposed of on 30.08.2006. Thereafter, he was sponsored by TEXCO and once again got engagement as Driver. Apprehending that he may be ousted, the writ petitioner sought reinstatement in service as a regular Driver and filed W.P.(MD)No.2770 of 2007. The said writ petition was dismissed on 30.11.2009. The petitioner is working as a Driver for the Animal Husbandry Department and his pay is said to be on a par with that of other Government Servants. The petitioner however wants regularization in the post of Driver with effect from 01.12.2001 with all attendant monetary and service benefits. With this prayer, the present writ petition has been filed.

3.The respondents 1 to 4 have filed counter affidavit controverting the averments of the writ petitioner and the learned Additional Advocate General contended that when such a issue arose in the past, the Hon'ble Division Bench had consistently taken a view that Ex-Service Men like the petitioner, who had been sponsored by TEXCO cannot claim the relief of regularization. As many as five decisions have been enclosed in the typed set of papers. The learned Additional Advocate General pressed for dismissal of the writ petition.



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4.I carefully considered the rival contentions and went through the materials on record. The learned counsel for the writ petitioner draws my attention to the decision of the Hon'ble Supreme Court reported in **2010 4 SCC 563 (Union of India and Another Vs. C.S.Sidhu)**, wherein the Hon'ble Supreme Court had observed that the manner in which the Army Personnel are treated can only be said to be extremely unfortunate. When the Army Personnel are bravely defending the country even at the cost of their lives, they should be treated in a better and more humane manner by the governmental authorities, particularly, in respect of their emoluments, pension and other benefits.

5.I certainly bear the above observations in my mind when I consider the petitioner's request for regularization.

6.When the petitioner was appointed on daily wages basis in the year 2001 and was subsequently discharged, he filed W.P.(MD)No.4043 of 2005. The said writ petition was disposed of on 30.08.2006 in the following terms:-

“Taking note of the said submission made and having regard to the letter of the District Collector dated 19.04.2004, addressed to the Special Commissioner, and the Communication



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of the fourth respondent dated 28.07.2004, having not become final, determining the right as it was passed, based on the ban order, the same need not be quashed. Therefore, the Writ of Mandamus, will lie. The District Collector, Sivagangai, is directed to consider the claim of the petitioner, on the basis of the lifting of ban by the Government, and pass necessary orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.”

It appears that the petitioner was not given any relief pursuant to the aforesaid direction. The petitioner also had not filed any contempt petition.

7.The petitioner subsequently filed W.P.(MD)No.2770 of 2007. The said writ petition was dismissed on 30.11.2009 in the following terms:-

“5.Learned counsel for the petitioner would bring to the notice of this Court that there are number vacancies in the Animal Husbandry Department for the post of driver and therefore the petitioner may be ordered to be reinstated as against any one such existing vacancy. In my considered opinion, the said course is not at all possible. All those vacancies are to be filled-up only by following the method provided in the relevant service rules and the question of appointing the petitioner does not arise. If he is appointed, because he worked for some time under the project, it



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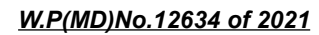
*would amount to allowing a person to have back-door entry, which would be against the principles laid down by the Supreme Court in the judgment in **Uma Rani's case** cited supra. Further, in the counter filed by the respondent, it has been very clearly stated that the petitioner was appointed temporary for the execution of a project on the terms and conditions of a foreign agency, which extended aid to the project.*

6.In view of all the above, I do not find any merit in the writ petition. The writ petition, therefore, fails and the same is accordingly dismissed. No order as costs. Connected M.P.(MD)No.1 of 2009 is closed.”

8. There is no dispute that the petitioner was sponsored by TEXCO and in the meanwhile he was also engaged as Driver from March 2007. As already noted, he is still working as Driver.

9. The only question that calls for consideration is whether there is any Master-Servant relationship between the petitioner and the Department of Animal Husbandry.

10. The learned Additional Advocate General drew my attention to the agreement entered into between the District Administration and the Tamil Nadu



“(i) W.A.(MD)Nos.569 and 570 of 2010, dated 30.11.2020
(The State of Tamil Nadu, Rep. by its Secretary, Department of
Rural Development and Others Vs. M.Jeyaraja and Another),



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(ii) *P.Thanaga Mani Vs. ESI Corporation and Others,*
reported in 2017 SCC Online Mad 6758,

(iii) *W.A.(MD)Nos.374 to 379 of 2020 etc (P.Prakasam Vs.*
Secretary to Government and Others) and

(iv) *W.A.(MD)Nos.383 to 406 of 2020 etc (R.Gnana*
Prakasam Vs. Secretary to Government and Others).”

11. Respectfully applying the ratio set out therein, I have to reluctantly hold that the petitioner is not entitled to any relief. The writ petition stands dismissed. No costs.

10.10.2022

Index : Yes / No
Internet : Yes/ No
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To:

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Chennai.

2. The Commissioner of Revenue,
Administration Department,
Chepauk, Chennai.



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3. The Director,
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4. The District Collector,
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