



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.18670 of 2016

N.Idayathullah

... Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Block Development Officer (VP),
Tiruppattur Panchayat Union,
Thiruppattur,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in connection with the impugned order passed by him in his proceedings Na.Ka.Pi5/8577/2014 dated 10.06.2015 and quash the same as arbitrary and colourable exercise of powers and consequently direct the first respondent to regularize the petitioner's service in the post of Night Watchman or Office Assistant or any other suitable post in the light of the Government Order passed in G.O.Ms.No.55, Rural Development and Panchayat Raj Department, dated 15.06.2006 and the order passed by the Hon'ble Division Bench in W.A.No.1698 to 1701 of 2012 dated 17.09.2012 within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.P.Thambidurai,
Government Advocate (Civil Side).

ORDER

This Writ Petition has been filed to quash the impugned order dated 10.06.2015 and consequently direct the first respondent to regularize the petitioner's service in the post of Night Watchman or Office Assistant or any other suitable post in the light of the Government Order passed in G.O.Ms.No.55, Rural Development and Panchayat Raj Department, dated 15.06.2006 and the order passed by



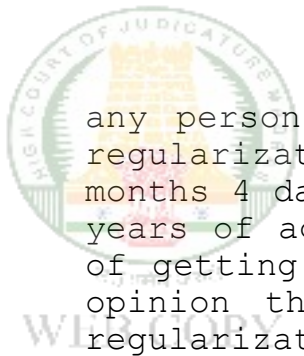
the Hon'ble Division Bench in W.A.No.1698 to 1701 of 2012 dated 17.09.2012.

2. The brief facts of the case are that the petitioner is Backward Class Muslim Community. The petitioner was appointed as Pump Operator Assistant in the second respondent Panchayat Union on 01.01.1996 on daily wages basis from Panchayat fund and has rendered 19 years of service. The Government has issued G.O.Ms.No.55 Rural Development and Panchayat Raj Department dated 15.06.2006, wherein the daily wages employees in the second respondent Department were brought under regular employment by regularizing the service in the post of Night Watchman or Office Assistant. However, the said Government Order is applicable only to those who were appointed as Pump Operator Assistant between 1982 to 01.04.1997. The second respondent vide proceedings in Na.Ka.No.A2/3579/2005 dated 26.09.2006 forwarded the proposal of the first respondent to regularize the petitioner's service in view of completion of 10 years. In the said proceedings, the period from 01.02.2004 to 31.10.2004 that is 8 months break in service was not taken into account, since the petitioner is under medical leave with loss of pay by submitting a Medical Certificate. If that period is calculated, then the petitioner would be entitled to regularization otherwise the petitioner's service is counted as 8 years 5 months 27 days. Hence, the petitioner is seeking the respondents to consider the said period. The petitioner also relied on a similar case where the break in service was considered and regularization was granted by the Namakkal District Collector vide order dated 25.01.2008. Therefore, relying on the said communication, the petitioner has filed this Writ Petition.

3. The second respondent has filed a counter stating that the petitioner was in service from 01.01.1996 to 28.02.2004 and was paid under Union General Funds. The petitioner was under medical leave on loss of pay by producing Medical Certificate from 01.03.2004 to 31.10.2004. The petitioner is paid salary upto 01.01.2005 from the Union General Funds and then from 01.01.2005 onwards from the Panchayat fund.

4. Heard Mr.G.Thalaimutharasu, learned counsel for the petitioner and Mr.P.Thambidurai, learned Government Advocate (Civil Side) for the respondents.

5. It is seen from the records that the petitioner has put in service from 01.01.1996 to 28.02.2004 i.e. 8 years and 1 month 27 days. The petitioner has absented himself from 01.03.2004 to 31.10.2004 on production of Medical Certificate on loss of pay. Then he has served from 01.11.2004 to 31.08.2005. Thus, the petitioner has served for 8 years 11 months 27 days (01.01.1996 to 28.02.2004 + 01.11.2004 to 31.08.2005). The medical leave period was not approved and if the said period is approved, then the period of service would be 9 years 7 months 27 days, wherein it falls short of 4 months 4 days. According to the Government Order in G.O.Ms.No.55,



any person who has completed 10 years of service is eligible for regularization, but for the petitioner there is a short fall of 4 months 4 days. It is seen from the records that the petitioner is 48 years of age as of now and at this age he may not be in a position of getting another job. Therefore, this Court is of the considered opinion that the petitioner ought to be granted the benefit of regularization.

6. Therefore, this Court set aside the impugned order and is directing the respondents to approve the medical leave and also to regularize the petitioner's service. The said exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Block Development Officer (VP),
Tiruppattur Panchayat Union,
Thiruppattur,
Sivagangai District.

+1 CC to M/s.SPL.GP. (SR-19712[F] dated 20/04/2022)

+1 CC to M/s.G. THALAIMUTHARASU, Advocate (SR-20013[F] dated 21/04/2022)

**W.P. (MD) .No.18670 of 2016
19.04.2022**