



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.20757 of 2016

and

W.M.P (MD) .No.14826 of 2016

G.Ponnusamy

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Rural Development Department,
Secretariat,
Chennai - 600 009.
- 2.The Director of Rural Development,
Panagal Building,
Saidapet,
Chennai - 600 015.
- 3.The District Collector,
Virudhunagar District,
Virudhunagar.
- 4.The Commissioner,
Srivilliputhur Panchayat Union,
Srivilliputhur,
Virudhunagar District.
- 5.The Block Development Officer (Block Panchayat),
Srivilliputhur Panchayat Union,
Srivilliputhur,
Virudhunagar District.
- 6.The District Siddha Medical Officer,
Virudhunagar District,
Virudhunagar.



7.The Medical Officer,
The Government Primary Health Centre,
Maraneri - 626 124,
Virudhunagar District.

... Respondents

WEB COPY

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 fourth and fifth respondents in connection with the impugned orders of rejection passed by them in their Proceedings in Na.Ka.A7/3610/2009 and Na.Ka.A1/2687/2013 dated 02.02.2012 and 03.09.2014 respectively and quash the both as illegal and arbitrary and consequently direct the respondents to regularize the petitioner's service from the date of initial appointment i.e., 01.02.1988 with all service and monetary benefits as done in the case of one Mr.K.Ramasami in the light of Judgment pronounced by this Hon'ble Court in W.P.No.33236/2003 dated 11.05.2011 within the time limit that may be stipulated by this Court.

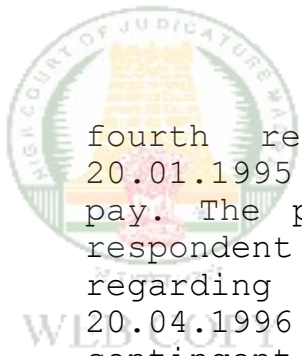
For Petitioner : Mr.G.Thalaimutharasu

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

ORDER

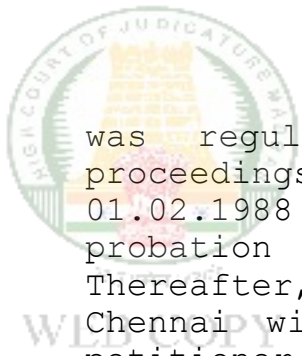
This Writ Petition has been filed to quash the impugned order dated 02.02.2012 and 03.09.2014 and consequently direct the respondents to regularize the petitioner's service from the date of initial appointment that is 01.02.1988 with all service and monetary benefits as done in the case of similarly placed persons namely K.Ramasami in the light of judgment in W.P.No.33236 of 2003 dated 11.05.2011.

2. The brief facts of the case are that the petitioner has passed SSLC and has registered in the District Employment Exchange, Virudhunagar in Seniority No.3048/82/79. Based on the request made by the fourth respondent, the petitioner's name was sponsored to him under the open category for the post of Medical Attender on 18.08.1987 and the petitioner had participated in the Selection process and in view of the Resolution passed by the Panchayat Union, he was appointed in the regular vacant place at Medical centre, Poolani Village vide proceedings dated 29.01.1988. The contention of the petitioner is that even though he was appointed in the regular vacancy, he has been paid under the Miscellaneous Head and the respondents are liable to pay under time scale of pay. The



fourth respondent vide proceedings in Na.Ka.A1/6212/94 dated 20.01.1995 request the second respondent to pay the time scale of pay. The petitioner has submitted a representation to the second respondent also. The District Collector has raised a certain query regarding the petitioner's appointment in proceedings dated 20.04.1996 for which the fourth respondent has replied that the contingent staff post was vacant from 14.11.1985 and they did not have the knowledge about the ban stated in G.O.Ms.No.107 P&AR Department dated 05.02.1987. Therefore, the fourth respondent has appointed the petitioner already. Later, the petitioner's service was already regularized with effect from the date of joining through proceedings of the fourth respondent dated 20.03.1997. Later on, the fourth respondent vide proceedings dated 04.06.1997 informed the second respondent that the Unions are not having the knowledge about the ban in appointment. Since the petitioner was made to run from pillar to post, the petitioner approached the Tamil Nadu Administrative Tribunal in O.A.No.6939/1999. After issuance of notice, the fourth respondent vide proceedings dated 12.03.1999 addressed to the second respondent that the Panchayat Union is not having knowledge and requested to grant ratification to the said appointee. In the meanwhile, the petitioner was threatened by the official respondents to withdraw the said application and they also assured to consider the petitioner's claim. Due to the abolition of Tribunal, the petition was renumbered W.P.No.43300/2006. The fourth respondent has regularized the similarly placed persons namely Sundarraaj and Ramamoorthy who have also filed the Writ Petition and later withdrew the same. However, the respondents have not considered the petitioner's claim. Aggrieved over the respondents attitude, the petitioner preferred this Writ Petition.

3. The fourth respondent has filed a counter stating that the vacancy arose for the post of Attendar in Rural Dispensary, Poovani Village in Srivilliputhur Panchayat Union. With the permission of the Panchayat Union Council, a list of qualified persons was called for from the Employment Exchange. On receipt of the list of qualified persons, interview was conducted for 20 persons and on successful completion of interview, the petitioner was selected and appointed as Attendar in Rural Dispensary, Poovani as Contingent employee as per the proceedings No.R1/6582/85 dated 29.01.1988 and it was resolved in Panchayat Union Council's Resolution No.386 dated 11.12.1987. The appointment is purely temporary. Further it was indicated through the proceedings dated 29.01.1988 that he would be paid at the rates applicable to the full time contingency employees. The petitioner stated that he submitted his representation dated 23.11.1995 that he may be paid in the time scale of pay. As per G.O.Ms.No.88, R.D & L.A. Department dated 08.01.1971, the Panchayat Union Commissioner is the appointing authority for such last grade servants. The service of the petitioner in the cadre of last grade Government servant (Attendar)



was regularized by the then Panchayat Commissioner in the proceedings No.Roc.A1/3345/96 dated 20.03.1997 with effect from 01.02.1988 besides declaring satisfactory completion of his probation period of one year from 01.02.1988 to 31.01.1989. Thereafter, the petitioner's proposal was submitted to the DRD., Chennai with a detailed report covering the appointment of the petitioner in the Office Letter dated 01.12.1997 and 31.12.1997. The petitioner's appointment would be regularized as soon the orders are received from DRD, Chennai for regularizing his service.

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

5. Admittedly, there was a procedure prevailing before 1987 that the contingent employee shall be appointed in the regular vacancy. The Government after issuing G.O.Ms.No.107 P&AR Department dated 05.02.1987 thereby banned the appointment order for contingent employees in the permanent vacancy. The contention of the fourth respondent is that the G.O.Ms.No.107 was not available and the respondents have no knowledge of it. The relevant portion is extracted hereunder:

“மேற்படி ஆணை பணி நியமனம் செய்யும் போது தகவலுக்கு வரப் பெறாத காரணத்தால் சில்லரைச் செலவினம் பணியாளராக திரு.கு.பொன்னுச் சாமி என்பவரை உடனாளாக நியமனம் செய்யப் பட்டுள்ளது”

6. It is seen from the records that the said Government Order was not available to the fourth respondent and the fourth respondent was not aware of it. It is seen that the petitioner has put in service from the year 1988 onwards. The petitioner is 56 years old at the time of filing the writ petition and he has attained superannuation as on date. Therefore, this Court is of the considered opinion that the proposal submitted by the fourth respondent ought to be considered by the first respondent. The first respondent cannot rely the G.O.Ms.No.107 and deny the regularization to the petitioner. Therefore, the first respondent is directed to regularize the service of the petitioner based on the proposal submitted by the fourth respondent in his proceedings dated 31.12.1997 in the light of the Panchayat Council Resolution No.386 dated 11.12.1987 and regularize the service of the petitioner and pay all attendant and monetary benefits that is applicable to the post. However, it is made clear that the petitioner is not entitled to any interest. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

7. It is made clear that this order is passed based on the facts and circumstances of the case and this order shall not be



shown as precedent. With the above observation and direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

WEB COPY

// 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 Secretary to Government,
The State of Tamil Nadu,
Rural Development Department,
Secretariat,
Chennai - 600 009.
- 2.The Director of Rural Development,
Panagal Building,
Saidapet,
Chennai - 600 015.
- 3.The District Collector,
Virudhunagar District,
Virudhunagar.
- 4.The Commissioner,
Srivilliputhur Panchayat Union,
Srivilliputhur,
Virudhunagar District.
- 5.The Block Development Officer (Block Panchayat),
Srivilliputhur Panchayat Union,
Srivilliputhur,
Virudhunagar District.
- 6.The District Siddha Medical Officer,
Virudhunagar District,
Virudhunagar.



7.The Medical Officer,
The Government Primary Health Centre,
Maraneri - 626 124, Virudhunagar District.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-16008[F] dated
01/04/2022)

+1 CC to M/s.SPL GP (SR-16050[F] dated 01/04/2022)

W.P. (MD) .No.20757 of 2016
31.03.2022

MGJ(20.04.2022) 6P 10C