



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2022

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.23786 of 2016

R.Tamilvasagan

... Petitioner

Vs.

1.The Secretary to Government of Tamil Nadu,
Education Department, Secretariat,
Chennai-600 009.

2.The Director of School Education,
D.P.I. Campus, College Road,
Chennai-6.

3.The District Educational Officer,
Devakottai, Sivagangai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the third respondent in O.Mu.No.-8743/A1/2016 dated 17.11.2016 and quash the same and consequently direct the respondents to regularize the service of the petitioner from his initial date of appointment and to treat the period of his Non-Employment for the period from 13.04.2001 to 09.05.2006 as duty with continuity of service in view of the interim stay and setting aside the order of reversion passed by the third respondent in W.P.No.32446 of 2005 and to pay all monetary and other attendant service benefits.

For Petitioner : Mr.S.Govindan

For Respondents : M/s.D.Farjana Ghoushia

Special Government Pleader

O R D E R

The petitioner has joined service through Employment Exchange and appointed as part time sweeper and joined on 27.10.1994 in the sanctioned post. After seven years of service, then the petitioner was appointed as a full time Watchman on 13.10.2000 in the existing vacancy in terms of G.O.Ms.No.528 P & AR, dated 10.10.1988 without further reference to the District Employment Exchange before fill up the existing vacancy in the sanctioned post. Unfortunately, after six months vide proceedings, dated 12.04.2001, the petitioner was reverted back to the post of part time sweeper.



2. Aggrieved over the said order, the petitioner challenged the same in O.A.No.2900 of 2021 and has obtained an order of stay vide order, dated 24.04.2001 and the said O.A. was transferred to the Court in W.P.No.32446 of 2005. On 01.02.2006, this Court has set aside the reversion order on the ground that the benefits of G.O.528 can be extended even to the part time workers and directed the respondents to accommodate the petitioner as Watchman in the available vacancy within six months.

3. The grievance of the petitioner is that inspite of interim stay, the petitioner was not reinstated in the fulltime watchman post. Therefore, the petitioner was not allotted to work from 13.04.2001 to 09.05.2006. The claim of the petitioner is subsequently in two writ petitions following the order of this Court passed in W.P.No.32446 of 2005 is allowed in W.P.Nos.6423, 6424, 6425 of 2009 and the state Government has implemented the order vide G.O.No.76 Education Department, dated 10.06.2014. The grievance of the petitioner is that the issue of regularisation to the part time worker in the Sivagangai District, was initially initiated by the writ petitioner, but others have gained by this effort but the petitioner alone was left out.

4. The respondents have filed a counter stating the said G.O. is not applicable to the petitioner since the petitioner name is not in the said G.O. The respondents have also stated that the regular vacancy have not been filled up by following the reservation.

5. Heard the counsel for the petitioner and the counsel for the respondent.

6. The respondents have stated the said G.O. is not applicable to the petitioner and the regular vacancy have not been filled up by following the reservation rules. However the petitioner submitted that in the said G.O.Ms.No.76, the Government has granted the relief to seven persons by relaxing age and education by invoking Rule 23a (ii) of Tamil Nadu State and Subordinate Service Rules and by relaxing the reservation rules by invoking in 3(A) of the Tamil Nadu Basic Service Rules as far as the said seven persons. Since for the other seven persons the government has relaxed the rules and thereafter granted the regularisation, then the petitioner alone cannot be singled out. As rightly pointed out by the petitioner, while appointing the other seven persons also the respondents have not followed the reservation policy. On perusing the said G.O. there is a mention that the roster system was not followed to the said seven persons and the Government has taken that into consideration, thereafter has granted the orders of regularization by relaxing. Therefore the said contention of the respondents is rejected.



7. The second point the respondent submitted that the appointment of the petitioner is in part time and are not entitled to any relief as stated in the **Umadevi's case**. In **Umadevi's case**, there is specific mention that part time employers are not entitled to seek regularization as they are not working against any sanctioned post. In the present case, when the vacancy arose in the sanctioned post, the petitioner was appointed in regular post. Since the respondents have appointed the petitioner in regular post and allowed to work for six months, now the respondents cannot deny the same by relying on **Umadevi's case**. Therefore, the contention of the respondents relying on **Umadevi's case** is rejected.

8. The petitioner's case is that the petitioner ought to be regularized from the period 13.04.2001 to 09.05.2006, which is the period where the petitioner has neither worked as part time nor worked as full time and the reason is that the respondents have not allowed the petitioner to work. If the petitioner was allowed to work he would have continued to work for the period 2001-2006. Therefore, it is the fault of the respondents and not the fault of the petitioner. The petitioner was appointed in the sanctioned vacancy and only ground is that respondents have not followed reservation. Since for similarly placed persons relaxation was granted in G.O.Ms.No.76 as stated above, this Court is of the opinion when it has pass G.O. regularizing the persons said in the G.O. the petitioner alone cannot be denied such relief. Since during the interregnum period, the respondents have not allowed to work and it is not the fault of the petitioner. But under no work no pay the petitioner is not entitled to claim salary. Since it is fault of the respondents this Court is inclined to grant 50% of the wages covering those interregnum period.

9. For the above reasons and discussion, this Court passes the following order:

i. The third respondent is directed to submit a proposal to the second respondent within two weeks from the date of receipt of a copy of this order

ii. Thereafter second respondent in turn recommend and submit the proposal to the first respondent within two weeks thereafter

iii. The 1st respondent shall pass orders of regularisation in the light of G.O.MS.No.76 within a period of six weeks thereafter.

iv. The respondents shall pay 50% of the wages for the period from 18.04.2001 to 11.05.2006.



10.with the above direction, the Writ Petition is disposed of.
No costs.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar

/ /2022

Sub Assistant Registrar(CS)

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 of Tamil Nadu,
Education Department, Secretariat,
Chennai-600 009.

2.The Director of School Education,
D.P.I. Campus, College Road,
Chennai-6.

3.The District Educational Officer,
Devakottai,
Sivagangai District.

+1 CC to M/s.SPL.GP (SR-4303[F] dated 04/02/2022)

W.P (MD) No.23786 of 2016
02.02.2022

SS/02.03.2022 : 4P/5C