



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.15572 of 2017

A.Malaichamy

... Petitioner

Vs.

1.The Secretary,
Higher Education Department,
The Government of Tamil Nadu,
Secretariat,
Chennai.

2.The Commissioner,
Technical Education Department,
Chennai.

... 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 of the first respondent in his proceedings Letter(D)No.83, dated, 27.03.2017 and quash and consequently direct the respondents to regularize the services of the petitioner as HELPER from the date of his initial appointment from 1995 with consequential service and monetary benefits and to absorb him in regular establishment.

For Petitioner : Mr.P.T.Thiraviam

For Respondents : Mr.V.Om Prakash

Government Advocate(Civil Side)

ORDER

This present writ petition has been filed to quash the impugned order, dated, 27.03.2017 and consequentially direct the respondents to regularize the services of the petitioner as Helper from the date of his initial appointment from 1995.

2. The contention of the petitioner is that the petitioner was appointed in the year 1995 as Helper on daily wage at Technical Educational Division, in Tamil Nadu Polytechnic, Madurai. The contention of the petitioner is that the Government has issued G.O. Ms. No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006, thereby directed all the temporary employees, who have put in continuous service of 10 years to regularize their



employment. The petitioner filed W.P. (MD) No.7503 of 2007, claiming to regularize and this Court, vide order, dated, 17.08.2012 directed the respondents to consider the claim of the petitioner. Pursuant to the order the Chief Engineer, Technical Education has sent proposal, recommending to regularize the service of the petitioner. The first respondent Secretary, Higher Education Department is a competent authority to pass an order. The petitioner has already given a representation to the first respondent on 12.02.2016 and the first respondent has replied through Right to Information Act that his regularization is under consideration. The contention of the petitioner is that the first respondent has passed similar order to similar employees, regularizing their service through G.O.(2D)No.29, dated, 09.02.2016. Hence, again the petitioner filed W.P. (MD) No. 2251 of 2016, directing to consider the petitioner's case to regularize the petitioner. The first respondent has passed order, dated, 21.12.2012, without even considering G.O.Ms.No.445 Higher Education (P1) Department dated, 31.10.2008 and also has not considered the Chief Engineer's recommendation letter, dated, 21.12.2012. The rejection is based on the fact that the petitioner was not appointed in any sanctioned post. The contention of the petitioner is that the respondents have not considered the fact that by a letter No. IER / AE(E) 2013, dated, 25.10.2013, the petitioner was serving in the second respondent department and the petitioner is holding 'C' License attached to HTC (High Tension Campus) and the Chief Engineer, PWD, Technical Education Circle, Chennai has directed all the Executive Engineer to regularize the temporary electrical staff in the attached institutions. The contention of the petitioner is that the respondent is continuously utilizing his service and also his 'C' Certificate, which is shown for getting High Tension connection to the Polytechnic Institutions. The same is also certified by an Assistant Executive Engineer, PWD, by letter dated, 17.02.2016. Without considering all these merits of the petitioner, the present impugned order has been passed. Aggrieved over the same, the petitioner has filed this writ petition.

3. The respondents have filed a counter stating that G.O.Ms.No.22 is applicable only for the persons, who have rendered temporary employment in their department. The petitioner is not a temporary employee. G.O.Ms.No.22 was further clarified in G.O.Ms.No.74 Personnel and Administrative Reforms (F) Department, dated 28.02.2013 where it has been stated that the full time daily wage employees, who have completed 10 years of service after 01.01.2006 shall not be regularized. In the present case, the petitioner has rendered service only for 8 years of as on 01.01.2006. Since he has not completed 10 years of service, he was not considered.

4. Heard Mr.P.T.Thiraviam, learned counsel appearing for the petitioner and Mr.V.Om Prakash, learned Government Advocate(Civil Side) appearing for the respondents.



5. It is seen from the records that the petitioner was appointed as Helper in the year 1995. The contention of the respondents is that the petitioner has completed only 8 years of service as on 01.01.2006 and the petitioner was initially appointed as temporary Helper on daily wages in the year 1995 and he was not in continuous service on daily wages but he was employed as per the need and nature of work required. The respondents also contended that there is no sanctioned post when the petitioner was appointed. However, the learned counsel for the petitioner submitted that an announcement was made by the Hon'ble Chief Minister under Rule 110 to create new posts. Based on the announcement through G.O.Ms.No.180 Higher Education (P1) Department dated 09.12.2020, 61 additional posts were created. The petitioner is working as High Tension Operator as on date and he is eligible for the said post. Therefore, the respondents are directed to regularize the petitioner in the light of G.O.Ms.No.180 dated 09.12.2020.

6. Since the operation of High Tension electrical post needs a special qualification, the respondents shall also consider the petitioner's candidature for regularization from the date of 01.01.2006.

7. With the above said directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /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,
Higher Education Department,
The Government of Tamil Nadu,
Secretariat,
Chennai.

2.The Commissioner,
Technical Education Department,
Chennai.

<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to M/s.F.DEEPAK, Advocate (SR-15411[F] dated 30/03/2022)

+1 CC to M/s.SPL GP (SR-15708[F] dated 31/03/2022)

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KB (21.04.2022) 4P 5C