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W.P.(MD)No.17513 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2022

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.17513 of 2017

and

W.M.P.(MD)Nos.14040 of 2017

K.Arulprakasam

... Petitioner

vs.

1.The Principal Secretary to Government,
Rural Development and Panchayat,
Raj Department, Secretariat,
Chennai-600 009.

2.The Director of Rural Development and
Panchayat Raj,
Panagal Buildings,
Saidapet, Chennai-15.

3.The Principal,
Regional Institute of Rural Development Department,
T.Kalupatti, Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for
issuance of Writ of Declaration, to declare the oral termination order passed by



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the 3rd respondent on 19.06.2016 terminating the petitioner from service during the pendency of the writ petition filed in W.P.No.4990 of 2014 pending on the file of the Principal Seat of this Court as illegal and consequently, to direct the 3rd respondent to reinstate the petitioner in 3rd respondent's institute as Sweeper.

For Petitioner : Mr.R.Aravindan

For Respondents : Mr.P.Thambi Durai
Government Advocate

ORDER

This writ petition is filed for issuance of writ of Declaration, to declare the oral termination order passed by the 3rd respondent on 19.06.2016 terminating the petitioner from service during the pendency of the writ petition filed in W.P.No. 4990 of 2014 pending on the file of the Principal Seat of this Court as illegal and consequently, to direct the 3rd respondent to reinstate the petitioner in 3rd respondent's institute as Sweeper.

2. The brief facts of the case are that the petitioner was appointed as Sweeper on August 1998 and has rendered 16 years of service. On 02.01.2012,



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the Joint Director, Regional Institute of Rural Development, T.Kallupatti, Madurai District had recommended the petitioner's name for regularization of service and to appoint as Office Assistant or Night Watchman on regular basis. In this proposal, it was pointed out that the petitioner has completed 10 years of continuous service and also pointed out that the petitioner is educationally qualified by passing SSLC and can be regularly appointed. On 01.10.2012 further clarification was sought by the 2nd respondent and on 23.05.2013, the Joint Director, Madurai District sent additional particulars pointing out that there are six vacancies of Office Assistants in T.Kallupatti and the petitioner can be regularized in one such post. In the meanwhile, the Government issued G.O.Ms.No.22, (P&AR) Department, dated 28.02.2006, directing to regularize the temporary employees who have put in 10 years of service. Based on the said G.O., the Government issued G.O.Ms.No.505, Finance Department, dated 14.10.2009, and regularized the services of Part Time Masalgis in Treasuries and Accounts Department in Cuddalore District who have put in more than 10 years of service. There are other Government orders where they have regularized



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several persons.

3. Without considering the fact that there were several persons who were regularized, the Government, vide letter, dated 09.07.2013, had rejected the proposal. Aggrieved over the same, the petitioner filed W.P.No.4990 of 2014, before the Principal Seat of this Court. During the pendency of the said writ petition, the 3rd respondent has orally terminated the petitioner's service from 19.06.2016. The 3rd respondent has not chosen to assign any reason and also failed to issue any written order to that effect. Hence, the petitioner has filed this writ petition.

4. The 1st and 2nd respondents have filed a counter affidavit stating that the petitioner was engaged as a casual daily wage employee on August 1998. Thereafter, the petitioner was engaged as full time casual daily wage employee from October 1998. The petitioner had filed a writ petition in W.P.No.4990 of 2014 in Principle Bench to regularize his service from the date of appointment as



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Office Assistant and the case is pending. The petitioner has requested to regularize as Office Assistant which comes under the purview of Tamil Nadu Basic Service, after regularizing his services in Daily Wages in the cadre of Sweeper, though he has not completed 10 years of service in the cadre of sweeper. One of the conditions in G.O.Ms.No.22 Personnel and Administrative Reforms Department dated 28.02.2006 to regularize the service is the employee ought to have completed 10 years of service. Moreover, the petitioner was not employed through employment exchange. There was ban for new recruitment between 1991 to 1996 and several appointments have been made at that time on daily wages for requirement and circumstances. Hence the government sympathetically regularized daily wage employees with a condition that the individual should have completed 10 years as on 01.01.2006. After that the ban was revoked and appointments were made as per rules and regulations. The petitioner was appointed subsequently i.e. in the year 1998 and the petitioner has not completed 10 years as on 01.01.2006 and hence the claim of the petitioner is violative of G.O.Ms.No.22 Personnel and Administrative Reforms Department dated



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28.02.2006 and G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated 27.06.2013. Hence, the petitioner is not entitled to claim regularization of service. The appointment of the petitioner is after 01.01.1996 as such the petitioner is not entitled to claim the concession stipulated in G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006. Hence, the Government has informed to the petitioner that he is not eligible to claim to regularize his services as per aforesaid G.O.s, since the petitioner is coming within the purview of any of the Government orders, the petitioner is not entitled to.

5.The 3rd respondent has also filed a counter affidavit separately reiterating the counter affidavit filed by the 1st and 2nd respondents.

6.Pending writ petition, the writ petition filed by the petitioner in the Principal Seat of this Court in W.P.No.4990 of 2014 was taken up for hearing on 22.09.2017, wherein this Court has struck down the condition of 10 years



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enumerated in paragraph No.6 of G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated 27.06.2013, since it is violating the fundamental rights of the Government servants. Aggrieved over the said order, the State of Tamil Nadu has preferred a writ appeal in W.A.No.2875 of 2018 and batch and the Honourable Division Bench of this Court, vide order, dated 16.08.2019, set aside the order of the Learned Single Judge. Thereafter, the writ petitions were remitted back to the writ Court for fresh consideration to decide as to whether each of the employees are eligible for regularization in accordance with G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated 27.06.2013 or any other relevant G.O.s governing the order. The Honourable Division Bench after remitting back, further directed that the individual cases must be decided on merits on taking into account of the period of service. The Learned Single Judge considered the case of the petitioners again and the present writ petition is one among them. The writ petition was allowed and directed the respondents to grant the benefit of regularization to the petitioners. Therefore, the learned Counsel for the petitioner submitted that since already this Court has



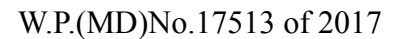
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granted regularization, the petitioner is entitled to regularization. Therefore, the learned Counsel for the petitioner prayed to allow the present writ petition.

7. The learned Government Advocate for the respondents submitted that the petitioner is not entitled to regularization as per G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006 as well as G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated 27.06.2013. The petitioner was not appointed through employment exchange and the petitioner has not put in 10 years of service as on 01.01.2006.

8. On perusal of the records, it is seen that the petitioner was recruited neither through employment exchange nor through any selection process. The 3rd respondent being the member of the institute has appointed the petitioner as daily wage employee from August 1998. Thereafter, engaged the petitioner as full time casual daily wage employee from October 1998. Even according to the respondents, the petitioner was engaged as full-time employee from 1998. If the



9. For this reason, this Court is of the considered opinion that the petitioner is entitled to be considered for regularization. The government shall consider the case of the petitioner and pass orders of regularization. This case cannot be cited as precedent by any other claimants. This order is passed only for the writ petitioner, since the petitioner has put in more than 18 years of service.



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10. With the above said observation, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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Internet : Yes

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