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W.P. No.11316 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.11316 of 2012

K. Krishnaveni

... Petitioner

Versus

1.The Government of Tamil Nadu,
Rep.by its Secretary to Government,
Home (Transport) Department, Fort St.George,
Chennai – 600 009.

2.The Transport Commissioner,
Chepauk, Chennai – 600 005.

3.The Joint Transport Commissioner,
Chennai Zone, Chennai – 600 023.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 1st respondent issued in G.O.Ms.No. 439, Home Transport IV Department, dated 06.05.2010 and quash the same in so far as regularization of the petitioners services in the post of Sweeper with effect from the date of issue of the order, namely, 06.05.2010 is concerned and direct the respondents to regularize the petitioners services in the post of Sweeper with effect from the date of her initial appointment, namely, 17.8.1983 and grant all consequential benefits to the petitioner.

For Petitioner : Mr. P. Mohanraj
For Respondents : Mr. K. Surendran,
Additional Government Pleader.



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ORDER

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This Writ Petition has been filed aggrieved by the order issued by the first respondent, vide in G.O.Ms.No.439, Home Transport IV Department, dated 06.05.2010, insofar as regularising the services of the petitioner in the post of Sweeper only with effect from 06.05.2010, instead of regularising her services with effect from the date of initial appointment dated 17.08.1983.

2. The admitted facts that are relevant for disposal of the Writ Petition are that, the petitioner was working as part time Sweeper through Employment Exchange from 17.08.1983 appointed by the Deputy Transport Commissioner, Chennai zone, on consolidated pay basis and she has been requesting for regularising her services in the post of sweeper. It is also an admitted fact that there is an existing sanctioned post of sweeper available in the Office of the Transport Commissioner, now re-designated as Joint Commissioner of Transport, the third respondent herein. However, the request of the petitioner was rejected on number of occasions, resulting in, the petitioner filing a writ petition of W.P.No.1836 of 2008 and the same was disposed of by this Court by an order dated 26.10.2009,



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directing the respondents therein to consider the case of the petitioner duly taking into consideration the Government Orders issued in G.O.Ms.Nos.377 & 398 respectively.

3. From the perusal of the said order passed by this Court, it is evident that the case of the petitioner was directed to be considered. Accordingly, the impugned Government Order was passed regularising the services of the petitioner only from the date 06.05.2010 onwards. Aggrieved by the said order prospectively regularising the services, the petitioner has approached this Court by filing the present writ petition.

4. The learned counsel for the petitioner submitted that the petitioner was appointed as part time employee through the Employment Exchange in accordance with law, in an existing sanctioned post of sweeper available in the Office of the third respondent. The first respondent regularised the services of the petitioner from the date of initial appointment. After regularisation of the services of the petitioner, the petitioner submitted such proposals which were not rejected by the first respondent on the ground that the petitioner was over-aged. However, on



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repeated requests made by the petitioner, the respondents considered the case of the petitioner by duly perusing the petition in W.P.No.1836 of 2008 and passed the impugned order regularizing her services prospectively instead of regularizing the same from the date of initial appointment.

5. In support of his contentions, the learned counsel for the petitioner placed reliance on the various orders passed by this Court in W.P.No.49613 of 2006 and 14364 of 2007, dated 09.11.2011, in which, this Court referred to W.P.No.39780 of 2006, dated 24.03.2009 and W.A.No.1329 of 2007, dated 29.03.2007 and W.P.No.30564 of 2006, dated 14.03.2009.

6. This Court have gone through the above orders relied upon by the learned counsel of the petitioner. On a perusal of the said orders, it discloses that under similar circumstances when the cases of the petitioners' services therein considered for regularising with the prospective effect and requesting certain rules, this Court has declared that the petitioner therein is entitled to the regularising of the service from the



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date of initial appointment instead of from the date of issuance of such Government Orders issued for regularizing such rules.

7. In W.P.No.39780 of 2006, dated 24.03.2009, this Court held as under :

"4.The grievance of the petitioner is that his service was regularised by relaxing the rules from the date of issuance of the Government Order as stated supra and not from the date of initial appointment.

5.The petitioner, who was appointment without qualification and not in accordance with the rules, was granted relaxation of the rules by the Government. Similar issue as to whether the regularisation can be restricted from the date of issuance of the relaxation order or from the date of initial appointment, came up for consideration before this Court in the decision of mine reported in (2006) 2 MLJ 339, Perumal V. vs. Commissioner and Secretary to the Government, Health and Family Welfare Department, Chennai, wherein relaxation was given for not possessing required qualification from the date of issue of the order and not from the date of initial appointment, was set aside by me with a further direction to given effect of relaxation from the date of appointment and not from the date of issuance of the relaxation order. The fact in the above case is similar to the fact in this case. The Division Bench of this Court also in the judgment in Indian Council of Medical Research v. K.Rajalakshmi reported in 2005(1) CTC 488 has also taken a similar view.



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6. In the above referred judgments, this Court held that relaxation of rules granted is only for appointments already made and therefore, the benefits has to be given from the date of appointment and not from the date of issuance of the relaxation order. The said judgment is followed by the Honourable Mr. Justice P. Jyothmani in W.P.No.20797 of 2008, dated 21.10.2008 and by the Honourable Mr. Justice P.P.S. Janarthana Raja, in W.P.No.28263/2006, dated 18.01.2007 and W.P.No.20146/2006 dated 29.03.2007 passed by the Honourable Mr. Justice V. Ramasubramanian.

7. The only difference in this case is that the Government ordered regularisation to all the contingent staff only after completion of 5 years of contingent service and as such, the petitioner will get the right of regularisation after their completion of 5 tears of contingent service. Hence, regularisation granted to the petitioner in G.O.Ms.No.107, Revenue Department dated 23.01.1989 should be made available on his completion of 5 years of service in the contingent establishment.

8. The impugned order dated 03.09.1998 is set aside and the writ petition is allowed on the above terms. Necessary order is directed to be passed by the respondents within a period of three months from the date of receipt of a copy of this order, granting regularisation of the petitioner's service on his completion of 5 years of contingent service and not fro the date of grant of relaxation."

8. Similarly, in W.P.No.30564 of 2006, dated 14.03.2009, this

Court has held as under :



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"3.It is seen from the records that the petitioner was sponsored by the Employment Exchange and was appointed as a Watchman on 15.02.1982 on a consolidated pay. Subsequently, he was appointed as Masalchi on 20.10.1984 and promoted as an Office Assistant on 31.08.1980 and he has been working as Office Assistant continuously from 31.08.1990. When his services sought to be regularised it was found that he required the relaxation from the Rule relating to reservation and also the upper age limit for entering into the Government Services. Therefore, necessary proposals were sent to the Government. The government issued the impugned Government Order in G.O.Ms.No.478, Revenue Department dated 31.05.1996, granting exemption under Rules 3(a) and 5(1) of the Special Rules for the Tamilnadu Basic Services. Even though the power was exercised under Rule 48, it was unfortunate that the Government did not grant retrospective regularisation inspite of the fact that the petitioner had been working continuously from 31.08.1990. In fact, the petitioner joined the initial service when he was only 24 years and was well within the age for joining the Government Services. Though normally the Court cannot interfere in the matter of exemption, in the present case, it is admitted case that the petitioner was working from 31.08.1990. He should have been exempted retrospectively with effect from viz., 31.08.1990 for holding the post of the Office Assistant. It must be stated that it is not a case where he was lacking the minimum qualification for holding the post.

4.In the light of the same, the writ petition stands allowed that the petitioner by the impugned Government Order in G.O.Ms.No.478, Revenue Department, dated 31.05.1996 granting exemption



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prospectively is set aside and the respondents are directed to grant exemption and it is declared that the petitioner has been regularised from the date when he was appointed as Office Assistant 31.08.1990. No costs."

9. The learned Division Bench of this Court, in W.A.No.1329 of 2007, dated 29.03.2007, a similar order was passed confirming the order of the learned Single Judge in W.P.No.20146 of 2006 holding as under :

"3.By virtue of regularisation from 11.11.1991, the petitioner has last 10 years of service. As submitted by the learned Additional Government Pleader the order passed in the above Writ Petition-W.P.No.28263/2006 has become final.

4.Though it is contended that the facts are different, we are not able to agree with the said contention on the ground that it is within the hands of the appellants to regularise the services of the petitioner. After satisfactory completion of probation, the petitioner cannot continue for years together without regularisation when the post is available. More over, it is not the contention of the Government that there are no vacancies. The Government itself has agreed that based on the G.O., relaxation from the compliance of sponsorship by the employment exchange is given. Therefore, the petitioner's services should have been regularised from the date of his initial appointment. Hence, we see no reason to entertain the present Writ Appeal."

Thus, the aforesaid Judgments of this Court are squarely applicable to this case."



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10. In the light of the above series of the orders passed by this Court in the similar circumstances, this Court is convinced that the above referred cases are similar to that of the petitioner herein and she is also entitled for the similar relief as has been granted in the above said decisions of this Court.

11. In the said circumstances, the Writ Petition is allowed, declaring that the petitioner is entitled for regularising her services with effect from the date of initial appointment on 17.08.1983 instead of 06.05.1980 and the impugned order of the Government shall stand modified and the respondents are directed to take steps to regularise the services of the petitioner with effect from 17.08.1983 and extend all the other benefits arising therefrom.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Case Citation : Yes/No

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