



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.1093 of 2023
and W.M.P No.1080 of 2023

G.Prabhu

Petitioner

VS.

1. Government of Tamil Nadu,
Represented by Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai – 600 009.
2. The Principal Chief Conservator of Forest,
Head of Forest Department,
Panagal Maligai,
Saidapet, Chennai – 600 015.
3. The Additional Principal Chief Conservator of Forest,
Coimbatore Circle, Kurinchi,
Mettupalayam Road,
Coimbatore – 641 043.
4. The District Forest Officer,
Coimbatore Division,
Avinasilingam House Science College Post,
Mettupalayam Road,
Coimbatore – 641 043.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for records culminating



in the impugned order vide proceedings bearing reference number in Proc.No. S2/46433/2019 dated 20/10/2022 passed by the second respondent and quash the same and direct the second respondent to regularize petitioner's service as a driver in the Tamil Nadu Forest Department from the date of initial appointment i.e. 21/03/2011 with all consequential service and monetary benefits.

For Petitioner : Mr.R.Alvin Manoj Raj

For Respondents : Mr.Stalin Abhimanyu
Additional Government Pleader

ORDER

On consent given by either side, the main writ petition itself has been taken up for final hearing.

2.The subject matter of challenge in the present writ petition pertains to the impugned proceedings of the 2nd respondent dated 20.10.2022, wherein, the request made by the petitioner for regularization to the post of Driver was rejected by placing reliance upon G.O.Ms.No.74, dated 27.06.2013.

3.The short facts of the case are as under:

The petitioner was engaged as temporary Driver by the Tamil Nadu Forest Department from 21.03.2011 onwards and his services were availed for more than ten years. The petitioner made a representation to regularize his services. Since the same was not considered, a writ petition was filed before this



Court in W.P.No.10652 of 2022 and this Court by an order dated 23.06.2022

directed the respondents to consider the representation and to pass orders, within a period of four months.

3.Pursuant to the above order, the 2nd respondent through proceedings dated 20.10.2022 has rejected the claim made by the petitioner for regularization by placing reliance upon G.O.Ms.No.74, dated 27.06.2013. Aggrieved by the same, the present writ petition has been filed before this Court.

4.Heard Mr.R.Alvin Manoj Raj, learned counsel appearing on behalf of the petitioner and Mr.Stalin Abhimanyu, learned Additional Government Pleader appearing on behalf of the respondents.

5.This Court under normal circumstances would not have taken up the main writ petition itself for final hearing. More particularly, when the impugned proceedings of the 2nd respondent has been put to challenge. However, this Court found that there is more than one reason as to why the impugned proceedings of the 2nd respondent dated 20.10.2022 is not sustainable on the face of it. Hence, the main writ petition itself has been taken up for final



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6.The 2nd respondent through impugned proceedings dated 20.10.2022 has rejected the claim made by the petitioner for regularization by placing reliance upon G.O.Ms.No.74, dated 27.06.2013, on the ground that the petitioner has not completed ten years of service as on 01.01.2006. This reasoning given by the 2nd respondent is unsustainable for the following reasons.

7.Firstly, this Court had an occasion to deal with the retrospective effect given to G.O.Ms.No.74, dated 27.06.2013, whereby, the cut-off date for the completion of ten years was fixed as on 01.01.2006. On considering the rival claims, this Court in the case of ***G.Sivagiganesan and others vs. The State of Tamil Nadu Rep. by its Secretary Public Works Department, Fort St. George, Chennai – 9 and others*** in W.P.No.29346 etc of 2014 dated 22.09.2017, held as follows:

20. Having heard the learned counsel appearing for the learned counsels for the petitioners and the learned Addl.Advocate General for the respondents and upon perusing the materials and pleadings placed on record, this Court is of the view that the offending portion of the G.O.Ms.No.74, dated 27.6.2013, namely, paragraph 6 which is extracted supra, is unconstitutional and it only seeks to introduce a naked



discrimination in the matter of treatment of identically placed employees. As rightly contended by the learned counsels appearing for the petitioners and in view of the various decisions rendered by this Court, the right which is accrued to the employees cannot stand negated by giving retrospective effect to the G.O. Ms.No.74, dated 27.6.2013. Moreover, in the several decisions rendered by this Court which have been confirmed in Writ Appeals and also in some other cases by the Hon'ble Supreme Court, it does not lie within the power of the Government to bring the impugned G.O. with retrospective effect. Such retrospectivity is blatant attempt by the Government to violate the principles of promissory and equitable estoppel and doctrine of legitimate expectation.

21. This Court also cannot lose sight of the fact that in several cases, in fact, few of them have cited above, the employees had obtained beneficial orders and those orders also came to be implemented by the Government on various dates even in the present year. In the said circumstances, this Court is unable to understand the situation as to how the petitioners alone can be singled out for discriminatory treatment by retrospectively applying the G.O.Ms.No.74, dated 27.6.2013. Any Governmental action is to be tested on the touchstone of Articles 14 and 16 of the Constitution of India. A State cannot be allowed to adopt the discriminatory practice while dealing with the citizens or Government servants.



22. *In the instant case, the attempt to implement the impugned G.O.Ms.No.74, dated 27.6.2013 with retrospective effect, is nothing but a clear case of colourable exercise of power. The fundamental rights guaranteed by our Constitution sought to be impinged by bringing in the impugned G.O. with retrospective effect. Exercise of such power, therefore, cannot be held to be constitutionally valid. This Court is also conscious of the fact that in policy matters, the Court should be little slow in interfering with the same, however, under the guise of public policy, the Government cannot arbitrarily and unjustly take away the rights of the employees which is against the scheme of the Constitution. In the instant case, the Government has preciously done the same.*

23. *In the light of the above narrative and discussion, this Court finds that retrospective implementation of the impugned G.O.Ms.No.74 dated 27.6.2013 and the other conditions enumerated in para 6 of the G.O., are liable to be struck down as being unconstitutional and interfering with the fundamental rights of the Government servants.*

24. *For the foregoing reasons, the impugned G.O.Ms.No.74 P.&AR. Department, dated 27.6.2013 is hereby set aside insofar as para 6 is concerned and the petitioners in all the Writ Petitions are entitled to regularization of their services on*



completion of 10 years of service by virtue of G.O.Ms.No.22 P.& AR. Department, dated 28.2.2006 and also in line with similar orders passed by this Court in various earlier writ petitions quoted supra. The respondents are directed to pass orders regularizing the services of the petitioners, within a period of three months from the date of receipt of a copy of this order.

8.It is clear from the above that the retrospective implementation of G.O.Ms.No.74, dated 27.06.2013 and particularly Paragraph No.6 of the Government Order has been struck down as unconstitutional. It is this paragraph, which fixed the cut-off date as 01.01.2006. Hence, the reasoning given by the 2nd respondent in the impugned proceedings dated 20.10.2022 cannot be sustained and the same runs contrary to the judgment referred *supra*.

9.Yet another reason that has to be put against the impugned proceedings of the 2nd respondent dated 20.10.2022 is that there were several orders passed by this Court wherein, the services were directed to be regularized even for those persons who have completed ten years of service beyond 01.01.2006. One such batch of writ petition considered G.O.Ms.No.131, dated 22.12.2021 wherein, the order passed by this Court for those Drivers, who had completed ten years in the year 2012, 2014 and 2015 respectively was complied with. On

carefully going through the Government Order, it is seen that the directions



given by this Court was confirmed till the Apex Court. In view of the same, the same yardstick must be applied to the petitioner also.

10. In the light of the above discussion, this Court has no hesitation to interfere with the impugned proceedings of the 2nd respondent dated 20.10.2022 and the same is hereby quashed. The matter is remanded back to the file of the 2nd respondent with a direction to the 2nd respondent to consider the representation made by the petitioner dated 18.07.2022 on its own merits and in accordance with law and in line with G.O.Ms.No.131, dated 22.12.2021, which in turn took into consideration subsequent Government Orders and regularized the services of the Drivers, who completed ten years of service beyond 01.01.2006. This exercise shall be completed by the 2nd respondent, within a period of six weeks from the date of receipt of copy of this order.

11. In the result, this writ petition stands allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

19.01.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No



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To
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N. ANAND VENKATESH, J.

SSR

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