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W.P.Nos.23809 & 23810 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.23809 & 23810 of 2008

and

M.P.Nos. 2 & 2 of 2009

G.Ekambaram		Petitioner in W.P.No.23809 of 2008
V.Mani		Petitioner in W.P.No.23810 of 2008

Vs

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Tourism & Culture Department,
Chennai – 9.

2. The Commissioner of Art and Culture,
Chennai – 28.

3. The Principal,
Government College of Architecture and
Sculpture, Mahabalipuram,
Kanchipuram District.

4. The Secretary to Government,
Tamil Development and Culture Department
Chennai – 9.

(R4 impleaded as per order dated 28.04.2011
by KKSJ in M.P.No.1 & 1 of 2009 in
W.P.Nos.23809 & 23810 of 2008)

.... Respondents in
both W.Ps



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Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records connected with G.O.(Ms) No.5, Tamil Development Culture (Pan 2.1) Department, dated 09.01.1998 of the 4th respondent and quash the same in so far as the petitioners are concerned and directing the respondents. **(Prayer amended as per order dated 28.04.2011 by KKSJ in M.P.No.3 of 2009 in W.P.Nos.23809 & 23810 of 2008)**

In both W.Ps

For Petitioners : Mr.A.R.Suresh
for Mr.K.Sannjay
For R1, R2 & R4 : Mr.T.M.Rajangam
Government Advocate

COMMON ORDER

Pending Writ Petitions, the prayer was amended, thereby challenging the order of regularization of their service.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents and perused the materials available on record.

3. The case of the petitioners is that they were appointed as unskilled Attender through Employment Exchange on daily wages basis.



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The petitioners service were regularised by the Government order, the respondent did not take any steps to regularise their service as per various orders to regularise the service of the daily wage employees on completion of five years of service. Therefore, the petitioners submitted several representations by citing various regularisation. However, the request of the petitioners were not considered and as such, they were constrained to approach the Tribunal in O.A.Nos.2309 & 2304 of 1995. The Tribunal directed the respondents to consider their request within the stipulated time. Thereafter, their request was considered by G.O.Ms.No.5, Tamil Development Culture Department, dated 09.01.1998 and thereby their service were regularised in the post of unskilled Attender. However, the Government failed to regularise their service on completion of five years of their service as per earlier Government orders. The said G.O. was challenged after a period of 10 years.

4. A perusal of the counter filed by the respondents revealed that the Directorate of Art and Culture was only formed in the year 1991. Therefore, their services were regularised in the year 1998 itself based on the order passed by the Tribunal. Further, as per



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G.O.Ms.No.437, Finance Department, dated 23.06.1998, it has been ordered that half of the service paid from contingencies shall be allowed to count towards pension along with regular service. Further the posts of the petitioners were not sanctioned post, but they allowed to work on daily wages basis.

5. The learned counsel for the petitioner relied upon the Judgment reported in *(2009) 5 MLJ 756* in the case of ***R.Elumalai Vs. State of Tamil Nadu and others***, in which this Court held that when posts carrying identical scale of pay are interchangeable, the question whether petitioner worked as typist of Junior Assistant or Steno-Typist prior to date of appointment is immaterial. It is evident from records that similarly placed persons were regularised from date of initial appointment. Denial of extending same benefit to the petitioner is arbitrary and violative of Articles 14 and 16.

6. He also relied upon the Judgment report in *(2005) 1 CTC 488* in the case of ***Indian Council of Medical Research and others Vs. K.Rajalakshmi***, in which the Hon'ble Division Bench of this Court held that the post being held for certain limited period without any break,



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same cannot be treated as temporary and it automatically takes away character of temporary and takes character of permanent.

7. Whereas, in the case on hand, the petitioners were engaged on daily wages basis. Considering the continuous employment, their services were regularised by G.O.Ms.No.5, dated 09.01.1998. As stated supra, their services were regularised rightly from the date of Government order in G.O.Ms.No.5, dated 09.01.1998. Therefore, the Judgements relied upon by the petitioners are not helpful to the case on hand. Hence, these writ petitions are devoid of merits and are liable to be dismissed. Accordingly, these Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

16.08.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN, J.

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To

1. The Secretary to Government,
Tourism & Culture Department,
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Chennai – 28.
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