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W.P.No. 21926 of 2019 & W.M.P. No.21154 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.21926 of 2019 & W.M.P. No. 21154 of 2019

G. Karthikeyan

... Petitioner

Vs.

1. Union of India through
The Governing Body represented by its
Chief Secretary to Govt. of Puducherry-cum-Chairman,
Pandit Jawaharlal Nehru College of Agriculture
(Karaikal) Society,
Chief Secretariat, Puducherry.
 2. The Secretary to Government / Agriculture
Government of Puducherry,
Chief Secretariat, Puducherry.
 3. The Dean,
Pandit Jawaharlal Nehru College of Agriculture &
Research Institute
Karaikal
 4. The Under Secretary to Government,
Finance Department,
Government of Puducherry,
Chief Secretariat, Puducherry.
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus directing the respondents to



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include the post of Technical Assistant Grade-II under Data Entry Operator Grade-II of Category-VI in the Finance Department G.O, Passed in G.O.Ms.No.46/F3/2010 dated 06.10.2010 and pay arrears of wages.

For Petitioner : Mr.P. Parthiban
For Respondents : Mr. Ramaswamy Meyyappan
Central Government Standing Counsel

ORDER

The petitioner G.Karthikeyan, a resident of Surakudi, Karaikal, who was engaged as full time casual labour in the 1st respondent college, has filed the present Writ Petition seeking directions to include his post of Technical Assistant Grade-II in the Finance Department Minutes of the 1st respondent dated 29.06.2010 and subsequent G.Os and pay him the arrears of wages.

2. The 1st respondent, Pandit Jawaharlal Nehru College of Agriculture (Karaikal) Society represented by its Governing body engaged the petitioner, who had a certificate of diploma in Electrical Engineering, as a Technical Assistant on 06.02.2002, as a full time casual labourer. According to the petitioner, he was one among the one hundred and thirty eight (138) casual labourers who working as Agricultural



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Mazdoors, Sanitary Assistants, etc., and one of the two technical assistants. They were paid daily wages based on Puducherry Scheduled Rates (PSR). The 1st respondent, Governing Body consisted of fourteen members out of which the 2nd respondent, namely, Secretary to Government (Agriculture), Government of Puducherry, and 4th respondent, Under Secretary to Government, Finance Department, Government of Puducherry were members and the 3rd respondent namely the Dean of the said college was the Member Secretary of the 1st respondent, the Governing Body. According to the petitioner, out of the one hundred and thirty eight (138) casual labourers, seventy one (71) of them were regularised in the years 2000 and 2005 based on their seniority. Sixty seven (67) of them were left out and were being paid daily wages. On 29.06.2010, the 1st respondent body had decided to absorb daily rated employees working for more than ten (10) years in the college by creation of posts as Agricultural Mazdoor, Mazdoor, Sanitary helper and caretaker. According to him the 3rd respondent omitted Agenda-19 which pertained to absorption of Technical Assistant as Work Assistant which pertained to two of them. It is also his contention that subsequently, the Executive Engineer of the Department, where he was working, had periodically from the year 2014, recommended his name for



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regularisation, but of no avail.

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3. In the meanwhile the Public Works Department, Puducherry kept revising the Puducherry Scheduled Rates (PSR) and last such revision was on 01.10.2013 by which he is being paid Rs.650/- per day. As on 01.10.2013, Rs.650/- per day was on par with Data Entry Operator Grade-II. The non revision of his daily wages subsequently coupled with non regularisation of his post have created a situation wherein even an agricultural labourer who was regularised, is earning more than him. He has therefore prayed for rectification of this pay anomaly by way of directions to the 1st respondent to include the post of Technical Assistant under the category of Data Entry Operator Grade-II.

4. Mr.P. Parthiban, learned counsel for the petitioner would contend that the post of Technical Assistant was omitted in the Minutes of the 1st respondent in the 38th Governing Body Meeting held on 23.02.2010 (submitted vide letter dated 29.06.2010). According to him Agenda No.19 was deliberately omitted while Agenda 30, 31, 32 & 33 found a place in the said Minutes. It is also his contention that despite many representation by the petitioner as well as recommendations by the



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department, there has been no positive development and unfortunately all the G.Os of the Finance Department, Government of Puducherry upto November 2023 have no mention about the increase in the daily wages of his post i.e., Technical Assistant. His further contention is that the petitioner's wages were last revised way back in 2013 thereby causing huge anomaly and he is being paid much lesser than most of the daily rated labourers.

5. Per contra, Mr. Ramaswamy Meyyappan, learned Central Government Standing Counsel for the respondents, contended that the Institute/College is an Autonomous Society registered under Societies Registration Act, 1965 and since inception in 1987 the non teaching staff were not sponsored by the Employment Exchange nor were recruited in a transparent manner. According to him, no post of Technical Assistant is available in the Institute and as such absorption of Technical Assistant in the permanent post of Work Assistant is not feasible. His further contention is that the Institute is being funded by the Government of Puducherry and the Governing Body has limited powers in the matter of absorption and in 2015, the Lieutenant Governor of Puducherry approved the revised tentative seniority of fifty nine (59) full time casual labourers



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and the name of the petitioner is placed in serial No.64 and therefore, he cannot claim any regularisation by way of absorption as a matter of right.

6. On a careful scrutiny of the documents presented before this Court by the petitioner, it is clear that there is no evidence whatsoever to substantiate the allegation of the petitioner that Agenda-19 pertaining to the post of Technical Assistant was intentionally omitted by Governing Body and the 3rd respondent. It is true that the petitioner is one among the sixty seven (67) full time casual labourers awaiting their turn for regularisation. It cannot be said that there has been a discrimination amongst them. It can also be easily seen that all these daily rated labourers entered the service not through the Employment Exchange and therefore cannot claim regularisation as a matter of right. However this Court is convinced that there has been no wage revision for the petitioner since 2013 while all other categories of full time casual labourers have had the benefit of higher daily wages. Such a discrimination in the quantum of wages paid to the full time casual labourer does not augur well for the respondent institute. In fact it is also seen even from the counter filed by the respondents that there is no acknowledgment or



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action taken report on the various recommendations of the Electrical Department of the Institute where the petitioner is working. The minimum expected of any respondent is a reply and it is puzzling as to why the respondent Institute has kept silent on the various representations submitted by the petitioner. According to the petitioner he along with another Kumaraguru are the only two technical assistants for whom the daily wages had remained stagnant for long. However, the petitioner has not approached this Court with clean hands and instead attempted to portray a picture as if only he and another Kumaraguru have been left out of the regularisation process while all other full time casual labourer have been absorbed which is untrue. In this context it is pertinent to extract the relevant portions of the minutes of the Governing Body Meeting held on 23.02.2010.

"Since there is ban on creation of posts under Plan and Non Plan Heads vide Office Memorandum No.7(1) E-Coord) 2009 dated 07.09.2009 of the Ministry of Finance, Department of Expenditures, New Delhi which is also applicable to PAJANCOA & RI Society Karaikal, this file may be submitted through proper channel to obtain the order of relaxation of ban as a special case nature"

Thus it is clear that this Governing Body of the petitioner institute is not



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the sole authority to decide on regularisation and can only recommend for such regularisation. In this context it is also relevant to reproduce Clause XIV of Puducherry Casual Labour (Engagement and Regularisation) Scheme 2009 which reads as follows:

"Depending upon the recruitment, not more than 75% of vacancies arising in the appropriate erstwhile Group "D" posts (initial category) may be filled up by absorption of full time casual labourers available in the list and not less than 25% of vacancies shall be filled by direct recruitment. The full time casual labourers shall also be eligible for competing for direct recruitment along with open candidates provided they possess required educational qualification. They will be entitled for necessary age relaxation if selected. In case of non availability of sufficient number of daily rated engagement for filling up 75% by absorption, then the Department may resort to fill up the said shortfall also through direct recruitment".

This also clarifies on the possibility of regularisation. However, this Court also acknowledges the reality that an educated person with more than ten years experience is earning a lesser daily wage when compared to other uneducated and unskilled casual labourers which is something that needs to be corrected. Therefore, this Court is inclined to partly



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allow the Writ Petition by directing the second and fourth respondents to consider the representation of the petitioner and accordingly do the needful for enhancing the daily wages payable to him at par with the present wage structure atleast with prospective effect. All other reliefs sought for by the petitioner are dismissed. No costs. Consequently connected Writ Miscellaneous Petition is closed.

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Index : yes/no

Speaking /Non speaking Order

To

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(Karaikal) Society,
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R.HEMALATHA, J.



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