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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.7969 of 2023

Mr.S.Balakrishnan
S/o.Mr.K.Sivalingam … Petitioner

Vs

1. The Secretary to the Government of Tamil Nadu
Revenue and Disastrous Management (DM) 4(1) Department
Secretariat, Chennai-600 009.

2. The Commissioner for Revenue Administration
Chepauk, Chennai-600 005.

3. The Secretary to the Government of Tamil Nadu
Rural Development and Panchayat Raj
Secretariat, Chennai-600 009.

4. The Director of Rural Development and Panchayat Raj
Tsunami Project Implementation
4th Floor, Panagal Maligai, Chennai-600 015.

5. The Officer on Special Duty
Tsunami Relief and Rehabilitation
Ezhilagam Annex Building
Chepauk, Chennai-600 005. … Respondents

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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus, directing the 2nd respondent the Commissioner of Revenue Administration, Chennai-600 005 and the 4th respondent, the Director of Rural Development and Panchayat Raj, Tsunami Project Implementation, to take appropriate action expeditiously for appointing the petitioner as Office Assistant in the existing vacancies.

For Petitioner	:	Mr.R.Ramachandran
For Respondents	:	Mr.M.Bindran Additional Government Pleader

O R D E R

This writ petition has been filed to seek a Writ of Mandamus, directing the 2nd respondent - the Commissioner of Revenue Administration, Chennai-600 005 and the 4th respondent - the Director of Rural Development and Panchayat Raj, Tsunami Project Implementation, to take appropriate action expeditiously for appointing the petitioner as Office Assistant in the existing vacancies.

2. The petitioner was initially absorbed as an Office Assistant on contractual basis in the Tsunami Project Implementation Unit on 02.04.2007 by the Project Director and he had accordingly, joined duty on 03.04.2007 as Office Assistant. He worked under the project till

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30.11.2013.

3. The Government, vide G.O.Ms.No.332, Revenue [EE-4(1)] Department dated 16.07.2010 had given instructions to the Principal Secretary / Commissioner of Revenue Administration to absorb the dismissed Tsunami temporary employees as Junior Assistant / Typist in the Department of Revenue or Rural Development.

4. The petitioner and others had filed a writ petition before this Court in W.P.No.27360 of 2010 seeking for permanent absorption or for alternative employment as per G.O.Ms.No.332 and this Court, by its order dated 01.12.2010, had granted liberty to the petitioner and others to submit a joint representation to the Secretary to the Government, Revenuue Department before 15.12.2010 with a consequential direction to consider the representation before the end of March 2011 in the light of G.O.Ms.No.332 dated 16.07.2010.

5. When the Government had passed orders in G.O.Ms.No.105, Revenue [DM4-(1)] Department dated 26.02.2016, absorbing 71

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contractual employees in the Tsunami Project Implementation Unit, the petitioner's name was left out.

6. After the petitioner's repeated request, the Government had ultimately, passed a Government Order in G.O.Ms.No.15 Revenue Department dated 06.01.2021, wherein, the Government had taken into account the services rendered by the petitioner for the period from 03.04.2007 to 30.11.2013 in the Tsunami Project and had ordered for granting employment in the Department of Revenue or Rural Development. In spite of specific orders of the Government, the respondents had not taken any further action, which had prompted the petitioner to file the present writ petition.

7. The learned counsel for petitioner submits that, in view of the petitioner's service on contract basis for the period from 03.04.2007 to 30.11.2013, he is entitled to have the benefit of G.O.Ms.No.332 and in the light of the orders passed by this Court in W.P.No.27360 of 2010 as well as the recommendation of the Government vide G.O.Ms.No.15 dated 06.01.2021, the inaction on the part of the respondents to provide an

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employment is illegal. The learned counsel for the petitioner placed reliance on a letter dated 17.05.2012 of the Principal Secretary / Commissioner of Revenue Administration, in which, instructions were given to the Project Director of Tsunami Project Implementation Unit to implement the orders passed in favour of the petitioner in W.P.No.27360 of 2010 for absorption in the Government Undertakings/ Board.

8. Per contra, the learned Additional Government Pleader placed reliance on the averments made in the counter affidavit and submitted that the benefits of G.O.Ms.No.332 would be made applicable only to the contractual employees, who had continued their service under the Tsunami Project Implementation Unit till the closure of the project. Since the petitioner herein had not served under the project till its closure, but was engaged only from 03.04.2007 to 30.11.2013, he is not entitled for the employment. He further submitted that for the period from 03.04.2007 to 30.11.2013 also, there were break in service of the petitioner and therefore, G.O.Ms.No.332 will not be applicable to him. The learned Additional Government Pleader further produced a copy of letter of Director of Rural Development and Panchayat Raj dated 24.11.2021, wherein the petitioner's

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request for absorption has been rejected on the same ground that he did not continue in the project till its closure.

9. I have carefully considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

10. It is not in dispute that the petitioner was engaged in the Tsunami Project Implementation Unit on contractual basis from 03.04.2007 to 30.11.2023. G.O.Ms.No.332 was passed for the purpose of extending the benefit of absorption to the dismissed Tsunami Temporary employees, who had served on contractual basis in the project. When the petitioner had earlier approached this Court seeking for extension of the benefit of G.O.Ms.No.332, in his favour, this Court had passed an order dated 01.12.2010 in W.P.No.27360 of 2010 in the following manner:

> *'The prayer in the writ petition is to issue a writ of mandamus directing the respondent either to absorb the petitioners for permanent work under the Tsunami Project or give alternative employment as given to the similarly situated candidates employed in Revenue Department as per*

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G.O.Ms.No.332, Revenue (EE4-1) Department, dated 16.07.2010.

2. For claiming the said benefits, some of the petitioners have already submitted a representation and the same is pending with the first respondent.

3. The learned counsel for the petitioners submits that the petitioners will submit a joint representation before the first respondent and the first respondent may be directed to consider the said representation and pass orders extending the benefit as given to Tsunami Project workers absorbed in Revenue Department.

4. In view of the said submission, the learned Government Advocate was directed to take notice, who in turn submits that if the petitioners are jointly making representation to the first respondent within two weeks, the first respondent will consider the same and pass orders within a period of three months.

5. Hence, the writ petition is disposed of giving liberty to the petitioners to submit a joint representation to the first respondent before 15.12.2010 and the first respondent is directed to pass orders on merits and in accordance with law, taking note of the G.O.Ms.No.332, Revenue (EE4.1) Department, dated 16.07.210 before the end of March 2011. No costs. Connected M.P. is closed.'

11. The aforesaid extract is self explanatory. It is also not in dispute that similarly placed contractual employees, as that of the petitioner herein

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were granted the benefit of G.O.Ms.No.332 dated 16.07.2010 and have also been absorbed for the services. When this Court had specifically directed the respondents to consider the petitioner's claim for an employment by taking note of G.O.Ms.No.332 before the end of March 2011, there was a duty cast on the respondents to comply with the order or in the alternative to challenge the same. Having failed to challenge the order passed by the learned single Judge, the only option available is to comply with this order. In this regard, learned counsel for the petitioner also produced a letter of Principal Secretary / Commissioner of Revenue Administration, dated 17.05.2012, in which, specific directions have been given to the Project Director of Tsunami Project Implementation Unit, that orders for absorption have also been passed to the temporary employees, who are ousted from Tsunami Project Implementation Unit in the Revenue Department and therefore, similar orders may be passed in the case of the petitioner herein. In the said letter, earlier orders of this Court passed in W.P.No.27360 of 2010, insofar as it has fixed a time limit for complying with the order, was also taken note of, the said letter dated 17.05.2012 is as follows:

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K. GNANADESIKAN, I.A.S.
Principal Secretary /
Commissioner of Revenue
Administration

Revenue Administration
Disaster Management and
Mitigation Department,
Chepauk, Chennai-5.

000829

D.O. letter No.Top-2/776/2010, dated:17.05.2012

Dear Thiru. Rameshram Mishra,

Sub: W.P. No.27360/2010 – Tsunami Rural Development and Panchayat Raj Department temporary staff appoint on contract basis requested for regularization filed W.P.No.1/2010 – Hon'ble High Court pronounced judgment – Time bound reference implementation part – Report sent – reminded – regarding.

Ref:
1. Judgment pronounced in W.P.No.27360/2010 and M.P.No.1/2010, dated 01.12.2010
2. Government Lr.No.DM-4-1, 7364/2010-11, Revenue Department, dated 26.07.2011
3. This office report sent in No.Top-2/776/2010, dated 19.10.2011.

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I invite your kind attention to the references cited.

2) In the reference 1st cited, Hon'ble High Court pronounced judgment in W.P.No.27360/2010 & M.P.No.1/2010 on the prayer of TVL. R. Sankar Ganesh and 26 petitioners impleading Secretary to Government, Revenue Department, Secretary to Government, Rural Development and Panchayat Raj Department, Principal Secretary and Commissioner of Revenue Administration and Director of Rural Development and Officer on Special Duty (R&R) as 1 to 5 respondents respectively.

3) The petitioners have filed above writ petition requesting with the prayer to the respondents either to observe the petitioners for the permanent work under the tsunami work project or to give alternative employment as given to the similarly situated candidates employee in Revenue Department as per G.O.Ms.No.332, Revenue (NC4.1) Department, dated 16.07.2010.

4) The Hon'ble High Court after hearing the petitioners' prayer pronounced judgment as in the reference 1st cited, stating that if the petitioners are jointly making representation to the 1st respondent within two weeks, the 1st respondent will consider the same and pass orders within a period of 3 months. The writ petition was disposed of leaving liberty to the petitioners to submitting joint representations to the 1st respondent before 15.12.2010 and the 1st respondent is directed to pass orders on merits in accordance with law taking note of the G.O.Ms.No.332, Revenue (NC-IV-1) Department, dated 16.07.2010 before the end of March 2011.

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(2)

5) As it is a time bound reference, we have requested the Additional Government Pleader, High Court, Chennai for getting extension of time for complying with the orders of the Hon'ble High Court as it is a policy matter. The Additional Government Pleader, High Court, Chennai has also opined that in case of getting time extension and if orders are passed against the prayer of the petitioner then it leads to contempt of the Hon'ble High Court. Hence, the Additional Government Pleader has opined to take immediate action on the orders of the Hon'ble High Court. According, to G.O.Ms.No.352, Revenue (NC.IV.1) Department, dated 15.09.2010, Government ordered that the ousted temporary Junior Assistant / Typist who worked in the District Revenue Unit, Tsunami Project Implementation Unit and also lost the seniority in employment and crossed the age limit and also suffering for livelihood be absorbed in the State Government Undertakings / Boards. Accordingly, action is being taken to absorb them in Government Undertakings / Boards. So far, 18 (Revenue Department, Tsunami Project) ousted employees have been absorbed in Government Undertakings / Boards.

6) Under these circumstances, as per the stand taken by the Government for absorption of temporary employees vide Government Lr.No.564, dated 31.08.2006, considering the order of the Hon'ble High Court and in conformity with the Government order G.O.Ms.No.332, Revenue (NC.IV.1) Department, dated 26.07.2010, similar orders may be passed for the petitioners in the writ petition as was done to the temporary employees ousted from Revenue Department, Tsunami Unit. A detailed report and recommendation in this regard is sent to Government as in the reference 3rd cited, requesting for early orders.

7) I request that as per orders of the High Court, the stipulated time is already over, early orders of the Government may kindly be obtained.

Yours sincerely,

(K. Gnanadesikan)

To
Thiru. Rajeshram Mishra, I.A.S.,
Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai – 9.

Copy to:
The Project Director,
Tsunami Project Implementation Unit,
Rural Development and Panchayat Raj Department,
No.100, Anna Salai,
Guindy, Chennai – 32.

12. This apart, 71 similarly placed contractual employees, who were ousted from the project were later, absorbed in various posts in the

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Department of Revenue / Rural Development through G.O.Ms.No.105 dated 26.02.2016, in which, the petitioner's name has been omitted.

13. Thus, it is seen that the petitioner was all along entitled for the benefit of G.O.Ms.No.332 as well as through orders passed by this Court, which has been ratified and recommendations have been made by the Principal Secretary / Commissioner of Revenue Administration, in his letter dated 17.05.2012 as well as the last Government order in G.O.Ms.No.15 dated 16.01.2021. In spite of these favourable recommendations and directions of this Court, the respondents have now come out with an indigenous reason for rejecting the petitioner's request by quoting that he did not continue in the project till its closure. Such a reason assigned by the respondents in the counter affidavit and as projected by the learned Additional Government Pleader cannot be sustained in view of earlier Government order passed in G.O.Ms.No.15 dated 06.01.2021, wherein the Government had taken the consideration of engagement of the petitioner on contractual service for the period from 03.04.2007 to 30.11.2013 only and consequently, recommended for absorption.

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14. While the Government had ordered thus, the same cannot be superseded by the Director of Rural Development and Panchayat Raj, in his rejection order dated 24.11.2021, by assigning and introducing a new reason.

15. This apart, the learned Additional Government Pleader also submitted that the petitioner was not in continuous service between 03.04.2007 and 30.11.2013 and that there were breaks in the service during this period.

16. In the counter affidavit filed by the respondents, it is stated that the petitioner was temporarily appointed as Office Assistant on 02.04.2007 and he joined his duty on 03.04.2007 as Office Assistant, thereafter, his services were terminated in the Unit on 16.06.2008. Later, they had themselves appointed him in the same post on the very next day i.e., on 17.06.2008. Likewise, the respondents had once again terminated his service in the afternoon of 16.06.2009 and appointed in the forenoon of 17.06.2009. These breaks were not owing to the fault on the petitioner, but are artificial breaks introduced by the respondents themselves. There is no

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reason assigned as to why the petitioner was terminated for one day and engaged on the next day itself.

17. In this backdrop, this Court is of the view that these breaks could be termed as 'artificial breaks' and will not stand in the way of counting the service of the petitioner from 03.04.2007 to 30.11.2013 as continuous service. Thus, when there were specific directions of this Court to consider the petitioner's representation in the light of G.O.Ms.No.332, the benefits of which was applicable to the petitioner and on consideration of the same, would amount to the disobedience of the orders of this Court and consequently, he would be entitled for an absorption in the relevant post, when similarly placed persons were appointed.

18. If that be so, the petitioner would be entitled for the benefit of G.O.Ms.No.332 and ought to have been extended with an employment in the concerned Department, when similarly placed persons were absorbed through G.O.Ms.No.105 dated 26.02.2016. It is rather unfortunate that though G.O.Ms.No.332 was passed way back on 16.07.2010 and this Court had also directed the respondents to consider the petitioner's

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candidature on 01.12.2010, 13 years have passed and respondents have not extended the benefit to the petitioner. Thus, the petitioner would now be entitled to the employment without reference to his upper age limit.

19. In the light of the above findings, there shall be a direction to the first respondent herein to pass appropriate orders, for absorption of the petitioner in a suitable post in the Department of Revenue or Rural Development and give effect to such appointment from the date on which 71 persons were appointed vide G.O.Ms.No.105 dated 26.02.2016, together with all service benefits. However, since the petitioner had not physically exercised his duties for the period from which the appointment given effect to, he shall be entitled to any arrears of salary. Such orders shall be passed at least, within a period of eight weeks from the date of receipt of a copy of this order.

The Writ Petition stands allowed. There shall be no order as to costs.

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Index:Yes
Speaking order
Neutral Citation : Yes

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To

1. The Secretary to the Government of Tamil Nadu
Revenue and Disastrous Management (DM) 4(1) Department
Secretariat, Chennai-600 009.

2. The Commissioner for Revenue Administration
Chepauk, Chennai-600 005.

3. The Secretary to the Government of Tamil Nadu
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M.S.RAMESH,J.

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