



Writ Appeal Nos.1308 & 1309 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 03.07.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal Nos.1308 & 1309 of 2019
and C.M.P.Nos.13816 & 13817 of 2021**

S.Usharani ... Appellant in W.A.No.1308/2019

K.M.Wilson ... Appellant in W.A.No.1309/2019

Vs

1. The Union of India,
Rep. By its Secretary to Government of India,
The Ministry of Corporate Affairs,
5th Floor, Shastri Bhavan, 'A' Block,
Dr.Rajendra Prasad Road,
New Delhi – 110 001.
2. The Ministry of Corporate Affairs,
Rep. By the Regional Director,
5th Floor, Shastri Bhavan,
No.26, Haddows Road,
Chennai – 600 006.
3. The Official Liquidator,
Department of Corporate Affairs,
Corporate Bhavan, II Floor,
No.29, Rajaji Salai,
Chennnai – 600 001. ... Respondents in both W.As.

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters
Patent to set aside the orders dated 19.02.2019 and 25.02.2019 made in



Writ Appeal Nos.1308 & 1309 of 2019

W.P.Nos.15054 of 2018 and 15053 of 2018 respectively and allow these writ appeals.

For Appellants : Ms.P.V.Rajeswari
[in both W.As.]

For Respondents : Mr.M.Karthikeyan
[in both W.As.]

COMMON JUDGMENT

(Judgement of the Court was made by Mr.R.SURESH KUMAR.,J.)

Since the issue raised in both the writ appeals are common, with the consent of learned counsel appearing for both sides, these writ appeals were heard together and are disposed of by this common order.

2. These appellants were before the Writ Court as Writ Petitioners. They had been appointed in the respondent Department on 11.05.1983 in respect of Tmt.S.Usharani and on 01.12.1988 in respect of K.MWilson. Though had been appointed and working for long years their services had not been regularized. In order to get regularisation, they approached the Writ Court by filing their respective writ petitions i.e., W.P.Nos15054 of 2018 and W.P.No.15053 of 2018 respectively. These writ petitions were



heard and by separate order dated 19.02.2019 and 25.02.2019

respectively were disposed of, of-course on the basis of the concent given by the respondent Department before the Writ Court.

3. In order to appreciate the same, the relevant portion of the order passed by the learned single Judge, which is impugned herein, are extracted hereunder:

“4. As far as the present writ petition is concerned, the learned Counsel made a submission that pursuant to the orders of the Hon'ble Supreme Court of India dated 04.11.2008, the scheme was framed akin to that of the scheme framed during the year 1978. Accordingly, many number of persons were absorbed in the regular vacancies and all those employees are now working as permanent employees in the time scale of pay. However, the case of the writ petitioner was not considered on account of the fact that the vacancies are not available in the department.

5. The learned counsel for the writ petitioner states that during the relevant point of time, when the other employees were regularized, the educational qualification prescribed was pass in 8th standard. The subsequent amendment made in the service rules shall not affect the interest of the employees who had already been appointed



in the services and further the benefit of regularization had already been extended to all other similarly placed employees. Thus, the amended service rules shall not have any application with reference to the present writ petitioner's service which is yet to be regularized by the respondents in accord with the judgement of the Hon'ble Supreme Court of India and the scheme formulated by the respondents for absorption/regularization.

6. The learned Counsel fairly made a submission that, in the event of availability of vacancies in the department, the case of the writ petitioner will be considered for grant of regularization. In view of the said submission, this Court is inclined to pass the following orders.

1. The respondents are directed to regularize the service of the writ petitioner soon after the availability of vacancy in Group D services.

2. The service benefits as per the rules are to be extended to the writ petitioner whose service is yet to be regularized in the event of their regularization in the permanent vacancies.

3. It is made clear that the respondents shall not insist the amended educational qualification of SSLC in respect of the writ petitioner whose service is yet to be regularized based on the judgement of the Hon'ble



Supreme Court of India and as per the scheme formulated.

7. With these directions, the writ petition stands disposed of. No Costs."

4. Though the learned single Judge in the impugned order had given three directions, insofar as the direction to regularize the service of these appellants only after the availability of the vacancies in Group - D services is concerned the appellants aggrieved and preferred these writ appeals because very soon they were about to retire because of superannuation age.

5. However during the pendency of these writ appeals, the respondent Department had come forward to implement the order passed by the learned single Judge and they issued office order in F.No.1(48)/2020 dated 17.06.2020, where the respondent Department has passed the following order:

"In pursuance of the orders under reference and Ministry's instructions, the undersigned being the Competent Authority hereby regularizes the services of the following Estate Clerks(Company Paid Staff) within the jurisdiction of Southern Region under the Administrative control of this Directorate, who were applicants in



WA.Nos.1308/2019 and 1309/2019 filed before the Hon'ble High Court, Madras as regular Multi Tasking Staff with effect from their respective dates of appointments as Estate Clerks as mentioned against their names.

Sl.No.	Name	Date of appointment as Estate Clerks (CPS)
1	Smt Usharani	11.05.1983
2	Shri K M Wilson	01.12.1988

The above officials have already retired and hence no posting orders are issued. As per the orders of the Hon'ble Supreme Court dated 13.01.2020, it is reiterated that Smt.S.Usharani and Shri K.M.Wilson shall not be entitled for any differential salary on the basis of the fixation of pay and they shall be paid the pensionary benefits to which they are entitled to pursuant to the regularisation of their services.

The Office Order is issued in compliance of the order dated 13.01.2020 passed by the Hon'ble Supreme Court in SLP(C) Nos.025025-025026/2019 filed by UOI & Others against the order dated 10.07.2019 passed by the Hon'ble High Court of Madras in W.A.Nos.1308 & 1309 of 2019 filed by Smt.Usharani and Shri K M Wilson. The aforesaid orders of the Hon'ble Supreme Court shall not be treated as a precedent."

6. Therefore these two appellants are concerned, their services have been regularized with effect from the date originally they have been



appointed i.e., on 11.05.1983 and on 01.02.1988 respectively.

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7. In the said order, it has further been stated or reiterated that these appellants shall not be entitled for any differential salary on the basis of the fixation of pay. However, they shall be paid with the pensionary benefits to which they are entitled to pursuant to the regularisation of their services.

8. That means, because of these regularisation whatever the salary may be a lesser salary or consolidated pay that they have received all along till their superannuation, they should satisfy with that salary, therefore the regular salary if at all is fixed, the differential between the salary they already received and the regular salary to be fixed in this regard on regularisation, for which these appellants would not be entitled to. For this arrangement, the learned counsel appearing for the appellants has also expressed their willingness of the appellants to accept.

9. However insofar as the pensionary benefits for the service rendered by these appellants from 1983 onwards or from 1988 onwards as the case may be till their superannuation in the year 2019 is concerned,



such service shall be taken as notional service for all service benefits like pensionary benefits and this has also been specifically indicated in the order dated 17.06.2020 passed by the respondent Department.

10. Therefore, the only grievance now for the appellants according to the learned counsel is that the pensionary benefits based on the regularisation order dated 17.06.2020 shall be calculated and be paid within a time frame. If this is complied with, absolutely there has been no grievance whatsoever on the part of the appellants, she contended.

11. We have heard Mr.M.Karthikeyan, learned counsel for respondent, who would submit that, though the service of the appellants have been regularized with effect from their original date of appointment i.e., in the year 1983 and 1988 respectively they are not entitled to full pension and only from one year prior to the date of such regularisation alone would be taken into account and accordingly, if they are entitled to get the pension that alone will be calculated and paid, otherwise, if they are not eligible to get any pension that would be denied.



12. We are shocked to hear such a proposition that has been projected by the learned counsel for respondent. The reason being that, in the very order dated 17.06.2020, of-course in compliance of the order passed by the learned Judge, the service of the appellants have been regularized from the original date of appointment i.e., from 11.05.1983 and from 01.12.1988 respectively and it has further been reiterated that they shall be paid with the pensionary benefits to which they are entitled to pursuant to regularisation of their services.

13. The regularization of service is not from any particular date as projected by the learned counsel for the respondent, but only from the date where originally they were appointed, therefore, all along the service rendered by them from 1983 or from 1988 onwards as the case may be till they reach the superannuation in the year 2019 that service notionally shall be taken into account for the purpose of calculating the pension and accordingly, the pension shall be calculated and be paid to these appellants including the arrears that has been accrued already. Therefore, denial of such benefits would not be accepted and moreover such kind of denial is not noticed by this Court in the order of regularisation dated 17.06.2020. Therefore, against such order no plea now can be made by



the respondent as projected by the learned counsel for the respondent.

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14. For all these reasons stated above and having taken note of the aforesaid development, this Court is inclined to dispose of these writ appeals with the following orders:

- ◆ Insofar as the learned single Judge order since has been accepted and complied with by order dated 17.06.2020, no further orders are required to be passed by this Court over and above the order already been given by the learned single Judge.
- ◆ Since the regularisation has been made by the respondent with effect from the original date of appointment of these employees, they are entitled to get pensionary benefits and that has also been indicated in the order dated 17.06.2020. Hence, there shall be a direction to the respondent Department to calculate the pension including the retirement benefits like gratuity etc., payable to these employees from 1983 and from 1988 respectively till their date of superannuation as per the last drawn wages and accordingly the pension shall be paid along with arrears that has been accrued on these two employees.
- ◆ The needful as indicated above shall be undertaken by the



Writ Appeal Nos.1308 & 1309 of 2019

respondent Department within a period of twelve (12) weeks from the date of receipt of a copy of this order.

Accordingly, these writ appeals are disposed of. No costs.

Connected miscellaneous petitions are closed.

(R.S.K.,J.) (K.B., J.)
03.07.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
mp

To

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The Ministry of Corporate Affairs,
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3. The Official Liquidator,
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