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W.P.No.9274 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM :

THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.9274 of 2021

M.Dhanaraj

... Petitioner

Versus

1.Government of Tamil Nadu,
Rep. by its Secretary,
Environment and Forests Department,
Fort St.George,
Chennai – 600 009.

2.The Principal Chief Conservator of Forest,
Head of the Forest Department,
Panagal Building,
Saidapet,
Chennai – 600015.

3.The Conservator of Forests,
Office of the Principal Chief Conservator of Forests,
Panagal Building,
Saidapet,
Chennai – 600015.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to order passed by the 1st respondent in G.O.(2D) No.39 Environment & Forests (FR.2.II) Department, dated 04.12.2020 and quash the same as illegal, incompetent and ultravires and consequently



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direct the 1st respondent to regularize the petitioner's service from the date of initial appointment that is from 01.02.2001 and pay all monetary and other service benefits.

For Petitioner : Mr. R. Jayaprakash
For Respondents : M/s. C. Meera Arumugam,
Additional Government Pleader

ORDER

This Writ Petition has been filed seeking a direction to call for the records pertaining to the order passed by the first respondent in G.O.(2D) No.39 Environment & Forests (FR.2.II) Department, dated 04.12.2020 and quash the same as illegal, incompetent and ultra-vires and consequently direct the first respondent to regularize the petitioner's service from the date of initial appointment that is from 01.02.2001 and to pay all monetary and other service benefits to him.

2.The case of the petitioner is that he had joined in service as a Jeep Driver on 01.02.2001 and from the date of his initial appointment, he was continuously serving in the said post as a daily wage driver. Till date, his service was not regularized. The petitioner was working in Jamunamarathur Forest Range, Aringar Anna Zoological Park and also in the Office of the



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Principal Chief Conservator of Forest, Saidapet, Chennai, and presently, he is working in Tamil Nadu Biodiversity Board. Since the petitioner's service regularization was rejected by the first respondent, the petitioner has come forward with the present Writ Petition before this Court.

3.The learned counsel appearing for the petitioner would submit that in the year 2006, the Government of Tamil Nadu had issued a G.O.No.22, Personnel & Administrative Reforms Department, dated 28.02.2006 to absorb the employees, who were already working in the department as temporarily more than 10 years. The Environment and Forest (FR2) Department, dated 07.08.2009 had also issued G.O.Ms.No.95, for regularizing the service of Plot Watchers/Village Social Forestry workers based on the completion of 10 years of service on daily wages in the supernumerary post and as per G.O.(Ms).No.64 of the Environment and Forest (FR2) Department, directed the respondents to prepare the seniority list by considering the request and to verify the Plot Watchers, Drivers from the records available for regularization of service in regular time scale of pay. Therefore, the petitioner made a representation to the respondents to absorb his service in a regular time scale of pay based on the completion of 10 years of service and the same was not considered. Thereafter, the immediate



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officers of the department have submitted the proposals for relaxing the rules, based on the representations, vide letter in Na.Ka.No.S2/35729/2010 dated 08.11.2011, recommending the regularization of 15 employees, including the petitioner.

4.Further, the learned counsel for the petitioner submitted that thereafter, the first respondent in Letter No.15393/FR.2/2012-9, Environment and Forest (FR2) Department, dated 09.05.2013 has informed that in G.O.Ms.No.22 Personnel & Administrative Reforms, Department dated 28.02.2006, the Government has taken a policy decision to regularize the services of those who had completed 10 years of service as of 01.01.2006 only and it cannot be extended to those who had completed 10 years of service every year thereafter. Since the petitioner has not completed 10 years of service as on 01.01.2006, the proposal sent for grant of relaxation of rules and to regularize the petitioner's service was not entertained by the respondents. The second respondent in his Ref.No.S2/35729/2010 dated 21.05.2013 communicated a copy of the Government Letter dated 09.05.2013 to the petitioner.



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5.Further, the learned counsel for the petitioner submits that in respect of the very same issue, a Writ Petition in W.P.No.22740 of 2010 was filed before this Hon'ble Court sought to quash the order passed by the second respondent and to regularize the service of the petitioner from the date of initial appointment and the same was ordered on 15.12.2017 by quoting the covered order passed in W.P.(MD).No.11106 of 2013, dated 01.12.2016, for better appreciation, it is extracted hereunder :-

“10. In view of issue being covered in the above said orders, this Court cannot take a different view in the instant case and therefore, this Court has no hesitation in allowing the writ petition and the impugned order Pro.C.No.52469 of 2008 S2, dated .03.2009 (Signed on 16.04.2009) is set aside, with a consequential direction to the respondents to regularize the service of the petitioner as driver from the date of petitioner's initial appointment with all attendant benefits.

11.It is also made clear that on such regularization, the petitioner is not entitled to arrears of differential wages, however he is entitled to other service benefits on such regularization. The said direction shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.”

Thereafter, aggrieved by the order dated 15.12.2017 in W.P.No.22740 of 2010, the Government of Tamil Nadu had preferred an appeal in



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W.A.No.2796 of 2018 and the same was dismissed by the Hon'ble Division Bench of this Court on 02.01.2019. Even after that, the Government of Tamil Nadu filed a Review, by order dated 14.06.2019, which was also dismissed by this Court.

6.The learned counsel for the petitioner again stressed the contention with regard to the service of the petitioner that he has been working in the said post for the past 19 years without any blemish on records. Further, he stated that the petitioner's request for regularizing his service from the date of initial appointment i.e., 01.02.2001, was not considered and even after several representations made by him, the respondents kept silent. Without giving up his efforts, the petitioner again sent a detailed representation dated 19.04.2019 to regularize him, but, the respondents did not initiate any action to regularize the services of the petitioner. Hence, the petitioner approached this Court by way of filing a Writ Petition in W.P.No.16942 of 2019 and the same was ordered on 04.09.2019, wherein, this Court directed the respondents to consider the petitioner's representation dated 19.04.2019 and to pass order on merits and in accordance with the law, within a period of eight weeks from the date of receipt of a copy of that order. Even though there were various Judgments passed by this Court, the petitioner's



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regularization was not considered.

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7.The core contention of the learned counsel for the petitioner is that the persons who suffered the very same issue, were regularized by the first respondent as per G.O.(Ms).No.3 and G.O.(Ms).No.48 Environment and Forest (FR2-II) Department, dated 11.01.2019 and 27.05.2019 and enjoyed the fruits of the said G.Os., and the same benefits ought to have been extended to the petitioner, but, the respondents have failed to consider the regularization of the petitioner. While being so, similarly placed persons approached this Court by way of batch of Writ Petitions in W.P.Nos.6632, 6635 & 6638 of 2020, challenging the G.O.(2D).No.3, 4 & 5 of the Environment and Forest (FR-II) Department, dated 09.01.2020, and by order dated 16.09.2020, this Court has held as follows:-

“ 9. In view of the above circumstances, all the writ petitions are allowed and G.O.(2D).No.3, 4, 5, Environment & Forests (FR.2.II) Department, dated 09.01.2020 are hereby quashed. The first respondent is directed to regularize the services of the petitioners on completion of 10 years of service from the date of initial appointment on daily wages by extending the benefit conferred in G.O.(Ms).No.3, Environment and Forests (FR.2.II) Department, dated 11.01.2019 & G.O.Ms.No.48, Environment & Forests (FR.2.II), Department, dated 27.05.2019 with all consequential service and monetary benefits and the first respondent shall



pass appropriate orders accordingly, within a period of eight weeks from the date of receipt of a copy of this order.....”

8.The learned counsel for the petitioner would further submit that the regularization was against the sanctioned post, hence, rejecting the claim of the petitioner on fragile grounds is a serious miscarriage of justice and it is liable to be quashed. Moreover, the first respondent ought to have considered the petitioner's service for regularization with a par to G.O.(Ms).No.3 & 48, Environment and Forests (FR.2.II) Department, dated 11.01.2019 & 27.05.2019 respectively, wherein the said benefits had been extended to the similarly placed persons too. Therefore, the order passed by the first respondent is against the dictum laid down by the Hon'ble Apex Court and this Court and the act of the first respondent is violation of Article 14, 16 & 21 of the Constitution of India.

9.The learned counsel also drew the attention of this Court to the proceedings of the Principal Chief Conservator of Forest, the second respondent vide Na.Ka.No.2/39864/2019, dated 09.06.2023 and based on the same, the first respondent had issued G.O.(2D).No.130, dated 08.06.2023, for regularizing the services of one B. Rathinasabapathy, a daily



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wage driver as regular driver from the date of completion of 10 years of service excluding the break in service periods. Thereafter, as per the order that the said B. Rathinasabapathy was allotted to the Office of the Principal Chief Conservator of Forest at Kolapakkam, from daily wage driver to regular driver by relaxing **Section 58** of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and relaxing rule 2 (mode of appointment), rule 4 (regarding age) of the Tamil Nadu Forest Subordinate Service Special Rules (Rule 12) as a special case. Further, he submitted that prior to that also the first respondent had issued G.O.(2D).No.141, dated 02.09.2022 for regularizing the service of one G. Rajendran and G.O.(2D).No.154, dated 26.09.2022 for regularizing the services of one B. Rajan and one K. Chinnapayan, were regularized from daily wages driver to regular driver by relaxing **Section 18(1) & 27** of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and relaxing rule 2 (mode of appointment), rule 4 (regarding age) of the Tamil Nadu Forest Subordinate Service Special Rules (Rule 12) as a special case. There is one another G.O.(Ms.).No.44, dated 03.03.2023, for regularizing the service of one B.Prakash and 8 others, who were also daily wage drivers and were engaged on a daily basis on completion of 10 years of services, by relaxing **Section 27** of the Tamil Nadu Government Servants (Conditions of Service)



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Act, 2016 (Reservation in appointment) and relaxing rule 2 (mode of appointment), rule 4 (regarding age) of the Tamil Nadu Forest Subordinate Service Special Rules (Rule 12) as a special case.

10.The learned counsel also relied on the orders passed by this Court in similar cases in W.P.No.9969 of 2021, dated 03.12.2021, and W.P.No.10652 of 2022, dated 23.06.2022, by which, the respondents were directed to regularize the services of the petitioners' as regular drivers from the date of initial appointment of their respective Writ Petitions, with all consequential and attendant benefits, and also directed the respondents that the directions shall be complied with by either the first respondent or the competent authority, within a period of eight weeks. Without adhering the above said G.O's and the orders passed by this Court, rejecting to regularize the petitioner's service from the date of initial appointment and passed G.O.(2D) No.39 Environment & Forests (FR.2.II) Department, dated 04.12.2020, by the first respondent is totally unsustainable. Aggrieved by the order passed by the first respondent, rejecting the regularization of the petitioner, he has come forwarded with the present writ petition.



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11.A counter affidavit was filed by the second respondent on 04.01.2022. In reply to the submissions made by the learned counsel for the petitioner, the learned Additional Government Pleader appearing for the respondents would submit that the G.O copies submitted by the petitioner are G.O.(2D).No.141, dated 02.09.2022, G.O.(2D).No.154, dated 26.09.2022, G.O.(Ms).No.44, dated 03.03.2023 and G.O.(2D).No.130, dated 08.06.2023, by which, 12 similarly placed persons like this petitioner, who were daily wage drivers were regularized as regular Drivers by the first respondent. But, according to the petitioner, as per G.O.(Ms).No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006, in paragraph No.5 clause (ii) states that *“(ii) the services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and completed 10 years of service as on 01.01.2006, shall be regularized.”* Further, in which, it is also clearly stated that:

(i) The part-time / causal employees are not entitled to the concession referred to the above quoted Clause (ii) in the said G.O.(Ms).No.22;

(ii) The services of the full time daily wage employees who have completed 10 years of services after 01.01.2006 shall not be regularized;



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12. In the case of the petitioner, he has completed only 4 years 8 months and 11 days of service as of 01.01.2006, therefore, he has not completed 10 years of service in daily wage capacity as of the cut-off date 01.01.2006, to claim the regularization of the services as per the condition mentioned in the paragraph No.6(vii) of G.O.(Ms).No.74, Personnel and Administrative Reforms Department, dated 27.06.2013. Therefore, the petitioner is not entitled to claim the prayer in the present Writ Petition.

13.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the material records of the case.

14.On perusal of the records, it can be seen that the similarly placed persons like the petitioner have been regularized by the first respondent based on the orders passed by this Court in various Writ Petitions and Writ Appeals as mentioned supra.

15.One of the contentions raised by the respondents is that the petitioner was not appointed on the consultation basis through the



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Employment Exchange, but, in G.O.(2D).No.141, dated 02.09.2022 issued by the first respondent for one G. Rajendran, daily wage driver was regularized as regular Driver, and he was also not sponsored by the Employment Exchange and the rules were also relaxed in exercising the power conferred under Section 58 of the Tamil Nadu Services (Condition of Services) Act, 2016, the Governor of Tamil Nadu hereby relaxes Rule 2 & 4 of the Tamil Nadu Forest Subordinate Services Special Rules, in favour of the individual person like regularizing the services of the said G. Rajendran, and was ordered accordingly.

16.As rightly contended by the learned counsel for the petitioner, as per G.O.(2D).No.154, dated 26.09.2022, Thiru. B. Rajan and K.Chinnapaiyan, for regularizing the services of daily wage drivers as Drivers and in this case also, no one was recruited through Employment Exchange, and were regularized by the first respondent, in exercising the power conferred under Sections 58 of the Government Servants (Conditions of Service) Act, 2016 (Reservation in appointment) and relaxing the rule 2 (mode of appointment) rule 4 (regarding age) of the Tamil Nadu Forest Subordinate Service (Special Rules) Rule 12 as a special case; as per G.O.(2D).No.130, dated 08.06.2023, one



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Rathinasabapathi; and as per G.O.(Ms).No.44, dated 03.03.2023, one B.Prakash and nine others, were also regularized, from the date of completion of 10 years of service excluding the break in service periods by relaxing Section 27 of the Government Servants (Conditions of Service) Act, 2016 (Reservation in appointment) and relaxing the rule 2 (mode of appointment) rule 4 (regarding age) of the Tamil Nadu Forest Subordinate Service (Special Rules) Rule 12, as a special case. Therefore, the Government had decided to accord permission from the Principal Chief Conservator of Forests, to regularize the services of the individuals, who have already working as daily wage drivers as regular Drivers from the date of completion of 10 years of service as a special case and to allow them to utilize all the monetary benefits from the date of completion of 10 years.

17.From the above facts, it is crystal clear and evident that the Government has regularized the many similar persons like the petitioner herein, who worked as daily wage drivers as drivers after the completion of 10 years of service by relaxing the age and other qualifications, by exercising the power under Section 27 and Section 58 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.



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But, in the case of the petitioner, his request for regularization was rejected, from which, it shows that **this is a clear case of discrimination and the same is in violation of Article 14 & 21 of the Constitution of India. In the case of regularization, some of the similarly placed persons were also not sponsored by the Employment Exchange, but, however, they were all regularized by relaxing the rules mentioned supra. The same principle and yardstick has to be applied to the petitioner in the instant case.** Hence, this Court is of the considered view that the order passed by the first respondent dated 04.12.2010 is liable to be quashed and the same is hereby quashed.

18.In the result, the Writ Petition stands allowed and the first respondent is directed to regularize the petitioner's service from the date of his initial appointment i.e., from 01.02.2001 and to pay all monetary and other service benefits, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

20.09.2023

Index : Yes/No
Speaking / Non-Speaking order
Neutral Citation : Yes/No

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To:

- 1.The Secretary,
Government of Tamil Nadu,
Environment and Forests Department,
Fort St.George, Chennai – 600 009.
- 2.The Principal Chief Conservator of Forest,
Head of the Forest Department,
Panagal Building, Saidapet,
Chennai – 600015.
- 3.The Conservator of Forests,
Office of the Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
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J.SATHYA NARAYANA PRASAD,J.

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