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W.P.No.23476 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.08.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.23476 of 2019

J.Tamilarasan

... Petitioner

Vs.

1.The Director of Adidravidar Welfare
Ezhilagam, Chepauk, Chennai – 600 005.

2.The District Adidravida & Tribal Welfare Officer,
Perambalur.

.... Respondents

Prayer: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the 2nd respondent to regularize the service of the petitioner herein as Cook in Adi Dravidar Welfare Students Hostel, Sooaduthurai, on the time scale of pay from the petitioner's initial entry into service i.e, on June 1992 with all consequential services and monetary benefits in terms of the order of this Court in w.P.Nos.31248 and 31249 of 2013 dated 07.01.2014.

For Petitioner : Ms.Usha Ramman

For Respondent : Mr.U.Baranidharan

Additional Government Pleader



ORDER

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This Writ Petition has been filed in the nature of a mandamus directing the second respondent District Adi Dravida and Tribal Welfare Officer, Perambalur to regularise the services of the petitioner as Cook in Adi Dravidar Welfare Students Hostel, S.Aduthudari on time scale of pay, according to the petitioner, from the initial entry into service, i.e., June, 1992 together with all consequential and monetary benefits.

2. The petitioner places reliance upon an order passed in W.P.Nos.31248 and 31249 of 2013 dated 07.01.2014 which was passed with respect to two different other individuals. In the affidavit filed in support of this Writ Petition, the petitioner claimed that he had registered his name in the District Employment Exchange on 03.09.1992 and was appointed as Cook in June, 1992 on daily wages in Adi Dravidar Students Welfare Hostel, Pennakonam. The details of the period during which he had so worked on daily wages have been given in the affidavit.

3. Subsequently, he had attended an interview consequent to having been sponsored by the District Employment Exchange at Perambalur in the year 2011 and the interview was conducted by the District Adi Dravidar and Tribal Welfare Officer, Perambalur on 18.02.2011. The petitioner had attended the interview, but did not receive any posting orders. Therefore, the



petitioner has filed W.P.No.5502 of 2011 seeking a Writ of Mandamus directing the respondent therein, viz., The District Adidraavidar and Tribal Welfare Officer, Perambalur to issue an order of appointment based on the interview held on 18.02.2011.

4. A learned single Judge of this Court vide order dated 20.01.2017, after examining the stand of the respondent, though the petitioner did not satisfy the conditions on the eligibility criteria, had however held as follows:

'7. In the counter affidavit, the respondent has stated that the petitioner has not satisfied the conditions on the eligibility criteria laid down for the said post. Hence, the petitioner was not selected. But in the detailed counter filed by the respondent, they have not even spelt any reasons for non-selection of the petitioner. The only reason stated in the counter affidavit is that the petitioner has not submitted any proof for his age and community and therefore, he was not eligible for appointment for the post of 'Cook'. Further, the other contention is that the decision taken by the appointing selection authority/respondent is final and therefore the petitioner cannot claim as a matter of right over the decision taken by the Authority concerned. There is no proper explanation for the reasons for non-selection of the petitioner is stated in the counter affidavit. The only reason stated in the counter affidavit is that the petitioner has not produced the Age and Community Certificate before the authority concerned. It is also noted that, at the time of admission, by an order dated 26.04.2011, this Court has granted an interim direction to the respondent to keep one post vacant in each of the Writ Petition till further orders passed by this Court.

8. Considering the facts and circumstances of the case and submissions made by the counsel for the parties, an opportunity shall be given to the petitioner even though the petitioner has submitted that he has produced the age and community certificate to the respondent. However, another



opportunity shall be given to the petitioner to produce the age and community certificate before the respondent within a period of two weeks from the date of receipt of copy of the order. The said application shall then be placed before the Selection Authority/Respondent within a period of eight weeks and thereafter, the Respondent shall pass appropriate orders within a period of eight weeks.

9. With the above observation, the Writ Petition is allowed. No Costs.'

5. As directed by this Court in the aforementioned order, the respondents had once again considered the eligibility criteria of the petitioner herein and the first respondent, viz., The Director of Adidraavidar Welfare at Chennai had granted permission to the second respondent, viz., the District Adidraavidar & Tribal Welfare Officer, Perambalur to appoint the petitioner in the existing vacancy of Cook in Perambalur District.

6. The second respondent, after getting legal opinion, since the eligibility criteria of the petitioner will have be regularised, had finally appointed the petitioner as Cook in Adi Draavidar Students Welfare Hostel, S.Aduthurai in the time scale pay of 4800-10000 with grade pay of 1300.

7. The petitioner has also joined on 02.11.2017 in the forenoon. Probation was also declared on 02.11.2018. Thereafter, the petitioner has now filed the present Writ Petition seeking that the earlier services during which he was on daily wages between 1992 and 2011, to be counted as regular service.



8. The relief sought for by the petitioner was never brought before the learned single Judge who had passed orders in W.P.No.5502 of 2011. The only issue that was raised was that the petitioner had attended the interview and though he had not produced proof of age and also his community certificate and therefore, though he was not eligible for appointment as Cook, to take into consideration his plight. The learned single Judge had directed that his case must be examined and, if it is otherwise possible, to appoint him as a Cook.

9. The petitioner should be satisfied with that order. Taking advantage of that particular direction given and having been appointed even though he was strictly not eligible for such appointment, the petitioner is now going back claiming regularisation from the year 1992.

10. In the counter affidavit, it had been very specifically stated that even from 1992, he was not in continuous employment. It is seen that he was appointed by the respective Headmaster of that school or the wardens of the hostels. He had worked only for two months in 1997, i.e., September and December, 1997, 3 months in 1998, i.e., October, November and December, 1998 and 4 months in 1999, i.e., August, September, October and November, 1999 and for 6 months in 2000, i.e., February, March, April, June, September and October in 2000.



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11. Thus, the petitioner had not put in continuous service to seek regularisation. There had been break in service. Even otherwise such service was only on daily wages. Therefore, that period of service can never be counted for regularisation. The Writ Petition filed earlier in W.P.No.5502 of 2011 was not on the basis that the petitioner had put in earlier service and therefore should have been appointed as a Cook consequent to the interview conducted. It was only on the basis that the interview had been conducted and results have not been published and therefore the petitioner should be considered upon declaration of results.

12. Now the writ petitioner seeks regularisation from the year 1992 onwards, when as a matter of fact the age and production of community certificate had been relaxed by the respondents.

13. Learned counsel for the petitioner places reliance on the judgment of a learned single Judge of this Court in the case of *S.Chittibabu V. The Secretary to Government and others* (W.P.No.21724 of 2014 dated 09.07.2018) on the ground of competency of the appointment by the Headmaster/warden.

14. But that is not the issue in the present Writ Petition. Since the entire previous years of service prior to 2011 was only for a few months in a particular year, the said service can never be taken into consideration.



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15. Accordingly, the relief sought by the petitioner cannot be granted
and hence this Writ Petition stands dismissed. No costs.

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Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No

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To

- 1.The Director of Adidraavidar Welfare
Ezhilagam, Chepauk, Chennai – 600 005.
- 2.The District Adidraavida & Tribal Welfare Officer,
Perambalur.



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