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WP.No.5161/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.5161/2017 & WMP.No.5450/2017

K.Kamraj

... Petitioner

Versus

1.The Secretary to the Government of Tamil Nadu
Personnel & Administrative Reforms Department
Secretariat, Chennai 600 009.

2.The Secretary
Tamilnadu Public Services Commission,
Frazier Bridge Road, Chennai 600 003.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records insofar as filling up the vacancy in the post of Sanitary Worker by the petitioner with the special time scale of pay of Rs.1300-3000+300 from 20.05.2014 in stead of 01.01.2009 in the impugned G.O.No.48, Personnel and Administrative [M] Department, dated 20.05.2014 issued by the 1st respondent and consequential proceedings No.4707/PD-E2/2010 dated 19.06.2014 issued by the 2nd respondent, quash the same and direct the respondents to bring in the petitioner into regular establishment on



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completion of 10 years of service as on 01.01.2009 in the light of the proposal already sent by the 2nd respondent on 29.04.2009.

For Petitioner	:	Mr.R.Ramachandran
For R1	:	Mr.R.Neethi Perumal, GA
For R2	:	Mr.R.Bharanidharan Standing Counsel

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking the records relating to filling up the vacancy in the post of Sanitary Worker with a special time scale of pay of Rs.1300-3000+300 from 20.05.2014 in stead of 01.01.2009 in the impugned G.O.No.48, Personnel and Administrative [M] Department, dated 20.05.2014 issued by the 1st respondent and the consequential proceedings dated 19.06.2014 issued by the 2nd respondent and to quash both the proceedings and to direct the respondents to bring in the petitioner into regular establishment on completion of 10 years of service as on 01.01.2009 in the light of the proposal already sent by the 2nd respondent on 09.11.2012.
- (2) The petitioner was appointed as Mazdoor on daily wages in the office



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of the 2nd respondent, Secretary, Tamil Nadu Public Service Commission, at Chennai, after his name had been sponsored by the District Employment Exchange on 17.09.1998. The petitioner had completed 10 years of service on 17.09.2008. The 2nd respondent had forwarded a proposal on 29.04.2009 in accordance with G.O.Ms.No.22, dated 28.02.2006 seeking regularisation of the services of the petitioner and another worker Mrs.V.Geetha. It had been stated that both of them had completed more than 10 years of service as on 01.01.2009. The matter was kept pending with the 1st respondent for considerable number of years and finally, the impugned Government Order in G.O.Ms.No.49 dated 20.05.2014 came to be passed by the 1st respondent, regularising not only the petitioner and the other individual by name V.Geetha, but nine others. The 1st respondent had stated that all of them were qualified having completed ten years of service. But, unfortunately, in the reference, the 1st respondent had referred to different communications dated 03.05.2011, 02.02.2012 and 09.01.2014. The specific communication of the 2nd respondent with respect to the petitioner



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herein was dated 09.11.2012. In the said communication dated 09.11.2012, drawing reference to an earlier communication dated 25.09.2009, the 2nd respondent had stated as follows:-

"I am to invite kind attention to the references cited and to say that the proposal regarding service regularisation of the two mazdoors viz., Thiru K.Kamaraj and Tmt.V.Geetha working in the Commission's Office on daily wages and who have completed more than ten years of service as on 01.01.2009 had been sent to Government in the Government Letter 2nd cited.

...

In this connection, I am to state that at present one post of Waterman and three post of Sanitary Workers are vacant in the Commission's Office if the services of the Mazdoors regularised they will be accommodated in the existing vacancies in the post of Sanitary Worker/Waterman in the Commission's Office.

...

I am to request you to look into this matter personally and necessary orders may kindly be issued



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as per G.O.1st cited so as to enable them to regular their service in the existing vacancy of Waterman and Sanitary Worker respectively."

- (3) In the counter affidavit filed by the 1st respondent, it had been stated that the 1st respondent is not the appointing authority and that the averments in the affidavit will have to be verified only by the 2nd respondent who is the competent authority. It had also been stated that the petitioner cannot claim regularisation as a matter of right and there is also a reference to the judgment of the Hon'ble Supreme Court reported in ***AIR 2006 SC 1806 [State of Karnataka and Others Vs. Uma Devi]***, wherein the Hon'ble Supreme Court had stated that there is no fundamental right for those who have been employed on daily wages or on temporary basis or on contractual basis to claim that they have a right to be absorbed into service.
- (4) Heard the learned counsels on either side.
- (5) It must be stated at the outset that the petitioner is not seeking regularisation as a matter of right. The petitioner is seeking that particular relief consequent to a proposal sent by the 2nd respondent. The 2nd respondent who is the appointing authority, had assessed the



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work of the petitioner herein, examined the qualifications which he had, examined the nature of work which had been done namely as Sanitary Worker and then examined the number of years for which the petitioner had worked as daily wages and then in accordance with G.O.Ms.No.22, dated 28.02.2006, had forwarded a proposal to the 1st respondent to regularise the petitioner herein. It had also been stated by the 2nd respondent that there was a post vacant and that the petitioner could be accommodated in that particular post on regular basis. It is therefore a considered proposal sent by the 2nd respondent. The said proposal had been forwarded after examining all possible aspects and without affecting the services of any other individual. However, the 1st respondent who had also affirmed the confirmation of services, had unfortunately not referred to the communication of the 2nd respondent insofar as the petitioner is concerned, but had referred to the other communications wherein probably the 2nd respondent had similarly proposed the names for regularisation of other individuals and had clubbed all the individuals into one group and had brought them into regular service with effect from the date of



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impugned communication dated 20.05.2014. As on that date, the petitioner had completed nearly more than 15 years of service and cannot be equated with those who had completed just ten years of service. The petitioner having completed his ten years of service in the year 2009, which had been acknowledged by the 2nd respondent, has a legitimate expectation that his services would be regularised particularly, as the 2nd respondent had put up a proposal for such regularisation.

- (6) In view of these facts, I hold that the impugned communication issued by the 1st respondent and the consequential communication of the 2nd respondent will both have to be interfered with by this Court and a direction is issued to the 1st respondent to regularise the services of the petitioner as stated by the 2nd respondent in their communication dated 09.11.2012 in D.O.Letter No.1852/PD-C2/2009 and the earlier proposals dated 27.11.2009, 15.09.2010 and a reminder Letter dated 02.04.2012 in Communication No.1852/PD-C2/2009. This would effectively mean placing the petitioner as having come into regularisation on and from 01.01.2009.



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(7) The writ petition stands **allowed** and the impugned G.O.No.48, Personnel and Administrative [M] Department, dated 20.05.2014 issued by the 1st respondent and the consequential proceedings of the 2nd respondent dated 19.06.2014 in No.4707/PD-E2/2010 are quashed. The respondents may issue consequential proceedings within a period of sixteen weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

26.07.2023

AP

Internet : Yes

To

1.The Secretary to the Government of Tamil Nadu
Personnel & Administrative Reforms Department
Secretariat, Chennai 600 009.

2.The Secretary
Tamilnadu Public Services Commission,
Frazier Bridge Road, Chennai 600 003.

C.V.KARTHIKEYAN, J.,



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