



Writ Appeal No.197 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated:23.08.2023

CORAM

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

**Writ Appeal No.197 of 2017
and C.M.P.No.3159 of 2017**

T.Ramadoss

... Appellant

Vs

1.The Director of Rural Development,
Panagal Building,Saidapet,Chennai-15.

2.The District Collector,Kanyakumari District
Kanyakumari

3.The Commissioner,Melpuram Panchayat Union,
Melpuram,Kanyakumari District,

4.The President,Malayadi Village Panchayat,
Malayadi.Melpuram Taluk,
Kanyakumar District

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order in W.P.No.31870/2014 dated 08-09-2016 and allow the said Writ Petition.



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For Appellant : Mr.P.Rajendran

For Respondents : Mr.K.V.Sanjeev Kumar
Special Government Pleader [R1 & R2]

Mr.M.Murali,
Government Advocate [R3]

No Appearance [R4]

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This appeal had been directed against the order passed by the Writ Court dated 08.09.2016 made in W.P.No.31870 of 2014.

2. The appellant herein was appointed on 12.08.1985 as Pump Operator at the third respondent Panchayat Union on daily wage basis.

3. He had been working in that capacity continuously from the date of initial appointment for several years.



4. When that being so, insofar as the enhancement of daily wage that was paid to the appellant, since similarly persons had been given enhanced daily wage as per the market rate, the appellant also seeking such relief, had approached the respondents and since the said plea was not considered, he had filed writ petition in W.P. No.4983 of 2005 which was disposed of by the Writ Court by an Order dated 16.06.2005, where a direction was given to consider the plea of the appellant that was considered and the market rate i.e., enhanced pay was also paid to the appellant. However, the status of the appellant as a daily wage employee was continued still.

5. While that being so, some of the similarly placed persons, in order to seek regularisation of their service filed writ petitions in ***W.P. Nos. 41207 to 41210 of 2005*** in the matter of ***T. Selvamony and others vs. Government of Tamil Nadu represented by the Secretary of the Rural Development and others***. Those Writ Petitions were allowed by the order of the learned Single Judge dated 25.11.2009, as against which the State preferred an appeal in ***W.A.Nos.1013 to 1016 of 2012*** in the matter of ***Government of Tamil Nadu rep. By the Secretary, Rural Development Department Vs. T.Selvamony and others*** and those writ



appeals also by judgment dated 11.08.2016 of the Division Bench were dismissed and therefore, that issue has become final and the service of the similarly placed persons like the appellant has got regularized.

6. Only in this context in the year 2014, the appellant filed writ petition in W.P. No.31870 of 2014 seeking for a Writ of Mandamus directing the fourth respondent Panchayat to absorb the appellant in regular establishment on permanent basis with time scale of pay with effect from the date of appointment i.e., from 12.08.1985.

7. The said writ petition was dismissed by an order dated 08.09.2016 by the Writ Court, which is the order impugned herein.

8. Assailing the said order, Mr.P.Rajendran, learned counsel appearing for the appellant would contend that, the issue raised in this appeal arising out of the writ petition has already been raised in the number of cases as mentioned herein above, where the courts have taken the consistent view that the post of Waterman or Pump Operator in local bodies are not part time job as it is a full time job even though it was on the basis of daily wage, hence, they are entitled to get absorbed after a



considerable length of service, therefore, such an issue whenever raised, the Courts have taken the view to give direction to the employers concerned to absorb on permanent basis with time scale of pay of those persons like the appellant.

9. The afore-stated judgments in support of his contention were cited by the by the learned counsel appearing for the appellant.

10. We have heard Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondents who would submit that, even though it was claimed by them that it is a full time job, actually it is not a full time job, as the very appointment order dated 12.08.1985 itself states that morning between 5.00 A.M to 8.00 A.M, evening between 3.00 P.M. to 6.00 P.M. alone these employees are to be pressed into service. Therefore, it can only be treated as part time employment and not full time employment, therefore, the said part time employees are not entitled to seek for any benefit of regularisation.

11. We have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.



12. As has been rightly pointed out by the learned counsel appearing for the appellant the issue raised in this appeal is no more *res-integra* as in similarly placed cases consistent view has been taken by this Court i.e., both by the Writ Court as well as by the Division Bench, who heard the intra-court appeal filed by the State. As pointed out, the first round of litigation concluded in the Division Bench judgment dated 11.08.2016 in the matter of ***Government of Tamil Nadu rep. By the Secretary, Rural Development Department Vs. T.Selvamony and others*** as stated supra. In fact, on 26.11.2009 another set of writ petitions with similar prayers were allowed by the Writ Court and as against which, intra-court appeals have been filed in W.A.Nos.514 to 521 of 2014 in the matter of ***Government of Tamil Nadu rep. By the Secretary to the Government, Rural Development Department Vs. A.Lukose and Ors.*** Those writ appeals came up for consideration before this Bench recently i.e., on 02.08.2023, where having considered all these aspects, we have passed the following order:

“3. With similar prayers, in fact another set of writ petitions were filed in W.P.Nos.41207 of 2005 etc., batch in the matter of T.Selvamony and others -Vs- Government of Tamil Nadu and Others and that batch of writ petitions were heard by the learned Judge, who allowed those writ



petitions by a detailed order dated 25.11.2009.

*4. When that being so, the present batch of writ petitions ie., W.P.Nos.40558 of 2005 etc., batch in the matter of **A.Lukose -vs- The Government of Tamil Nadu and Others** came up before the very same learned Judge on the next day ie., 26.11.2009.*

5. Since the earlier batch of writ petitions on the similar issue were heard and allowed by the learned Judge on the previous day ie., 25.11.2009, this batch of writ petitions were allowed, following the earlier order and the impugned order reads thus,

"The petitioners in W.P.Nos.40558, 40559, 40560 and 40561 of 2005 and W.P.Nos.151, 152, 153 and 154 of 2006 seek a writ of mandamus to direct the respondents to absorb them in the regular establishment in a permanent post with effect from the date of their appointment, namely, 29.1.1993, 29.5.1982, 29.5.1982, 29.1.1991, 12.03.1997, 11.11.1987, 10.4.1984 and 20.2.1995 respectively and grant all consequential benefits to them.

2. Considering the order passed by this Court dated 25.11.2009 in W.P.Nos.41207, 41208, 41209 and 41210 of 2005 (T.Selvamony and Others -vs- Government of Tamil Nadu and Others) as regards



the regularisation of the services of the petitioner who were paid daily wages at the market fixed by the Collector, these writ petitions are allowed. No costs. Connected W.P.M.P.Nos.34 and 125 of 2007 are closed."

*6. As against the order passed by the learned Judge dated 25.11.2009 in **T.Selvamony and Others -vs- Government of Tamil Nadu and Others** cited supra, the State preferred a batch of writ appeals in W.A.Nos.1013 of 2012 etc., batch in the matter of **Government of Tamil Nadu and Others -vs- T.Selvamony and Others** and this batch of writ appeals was decided by a Division Bench of this Court by a common judgment dated 11.08.2016, where the Division Bench has passed the following order:*

"11. Considering the decision rendered in W.A.(MD) No.147 of 2013, and also considering the fact that the first respondent/petitioners have been appointed as full time Water Supply Assistants on daily wages basis and also working in the same capacity, the order passed by the learned Single Judge is perfectly correct and the same does not call for any interference, and therefore, these Writ Appeals are liable to be dismissed.

In fine, these Writ Appeals are dismissed without cost. The Common Order dated 25.11.2009 passed in Writ Petition Nos.41207 to 41210 of 2005



by the learned Single Judge of this Court is confirmed. Consequently, the connected miscellaneous petitions are closed."

*7. Like that, as against the orders passed by the learned Judge on 26.11.2009 in **A.Lukose -vs- The Government of Tamil Nadu and Others** ie., the order impugned, present set of writ appeals have been filed by the Government of Tamil Nadu.*

*8. Since the order dated 25.11.2009 in W.P.Nos.41207, 41208, 41209 and 41210 of 2005 (**T.Selvamony and Others -vs- Government of Tamil Nadu and Others**) has been followed in the present impugned order and the set of appeals filed in W.A.Nos.1013 of 2012 etc., batch as cited supra since were dismissed, by thus confirming the order passed by the learned Single Judge dated 25.11.2009 and the said order has been followed in the present impugned order dated 26.11.2009, the same fate has to be faced by the present appeals also.*

9. In the result, all these writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed."

13. Therefore, it is not the first time this issue came up for consideration, but the issue raised herein by similarly placed persons like the appellant, have already approached this Court in a number of writ petitions, where ultimate orders have been passed by the Writ Court as



well as by the Division Benches in the intra-court appeals as stated supra, where the entitlement of the employees like the appellant, who had been appointed as Pump Operator since have been considered as full time employment. That is the reason why, the collector from time to time had fixed the salary for them in the market rate and therefore, since such benefit also had been given to the persons like the appellant, it cannot be stated that they are only part time employees as has been submitted by learned Special Government Pleader.

14. Since they are full time employees, because of their long service they made in the respective employers/department/office they are entitled to get regularisation.

15. When such a regularisation was ordered by this Court, though intra-court appeals have been filed, which become unsuccessful, based on which those orders seems to have been implemented, therefore the issue has been given a quietus.

16. Despite this chain of orders have been passed by this Court, the learned single Judge in the Writ Court having not considered those



aspects in proper perspective dismissed the writ petition through the impugned order. Hence, we are inclined to interfere with the said order and accordingly, this appeal is disposed of with the following orders:

- ◆ That the impugned order is set aside. As a sequel, there shall be a direction to the respondents to take the long service rendered by the appellant and regularise his service by bringing him under regular time scale of pay from the date of appointment or any other date based on the Government orders, which are in vogue but before 01.04.2003 enabling the appellant to get pensionary benefits on his superannuation.
- ◆ In this case, he has already attained superannuation, the only benefit that he would be entitled to is to get such regularisation from the notional date either from the date of appointment or on completion of 10 years from the date of appointment even according to the Government Orders which are subsequently issued in the year 2006 and accordingly his service be regularized, based on which, the pensionary benefits also be calculated and paid to the appellant within a period of twelve (12) weeks from the date of receipt of a copy of this order.



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WEB COPY With all these directions, this writ appeal is disposed of. No costs.

Connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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