



WEB COPY



W.A.No.3364 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A.No.3364 of 2019
and C.M.P.No.21603 of 2019**

- 1 The District Collector
Erode District Erode
- 2 The Block Development Officer
Sathyamangalam Panchayat Union
Sathyamangalam Erode Dist. ... Appellants

-Vs-

- 1 A.K.Karuppannan
- 2 K.Ganesan
- 3 The President
Sadhumugal Village Panchayat Grade-I
Sathumugai Sathyamangalam Tk Erode Dist. ... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.10965 of 2009 dated 03.04.2019.

For Appellants	:	Mr.K.V.Sajeev Kumar Special Government Pleader
For Respondents	:	Mr.Ma.P.Thangavel - for R1 Mr.N.Chinnaraj - for R2 Mr.V.Jeeva Giridharan - for R3



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J U D G M E N T

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

This intra Court appeal has been directed against the order passed by the Writ Court dated 03.04.2019 dated W.P.No.10965 of 2009.

2. The respondents 1 and 2 herein were appointed or engaged as Watchman-cum-Motor Pump Operator on 28.10.1987 and 22.03.1996 respectively, which is an admitted fact as it has been admitted in the counter affidavit filed by the District Collector before the writ Court, which reads thus:

" 5. I admit the fact stated in Para 2 of the affidavit filed in support of the writ petition that the Ist Petitioner was joined as Watchman-cum-motor pump operator on 28.10.1987 and the 2nd respondent was joined on 22.03.1996 in the 3rd respondent Panchayat on daily wages basis."

Though it was claimed by these employees that the first employee Karuppannan was appointed on 19.05.1986, the District Collector says that he was appointed only on 28.10.1987. Insofar as the second employee viz., Ganesan is concerned, it was his claim that he was appointed on 22.03.1996. This has been accepted by the District Collector in the aforesaid counter.



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3. Therefore, the fact remains that admittedly both of them have been appointed and had been working on daily wages for all these years from 1986 or 1987 and 1996. The daily wage that was fixed at the time of their initial appointment was a very meagre amount of Rs.11 per day. That daily wage time and again had to be enhanced, but even that was not done. Therefore, a writ petition in W.P.No.19396 of 2000 was filed by Karuppannan, where an order was passed by this Court on 13.01.2003. Pursuant to the said order, by taking into account G.O.Ms.No.60, Rural Development Department dated 03.05.2005, enhanced salary has been fixed for them by way of daily wage and they had been continuing as daily wage employees for all these years. When that being so, the Government had come forward to issue G.O.Ms.No.22, P&AR Department dated 28.02.2006, under which the Government had taken a policy decision that those who had been working on daily wages basis or temporary basis for several years and completed 10 years of service as on 01.01.2006 in various Government Departments would be regularized.

4. In view of the said G.O.No.22, the employees herein viz., Karuppannan and Ganesan had requested the District Collector for regularisation of their services on completion of 10 years of service as per G.O.No.22 referred to above. The said request having been considered, was rejected by the District Collector by an order dated 15.04.2009, wherein the District Collector had taken a stand that, G.O.No.22, P.&A.R.Department dated 28.02.2006 would be applicable only to daily wage employees working in the Government Departments for regularization and the said



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Government Order cannot be extended to daily wage employees working in Panchayats or local bodies. That is how the plea of the employees was rejected by the District Collector by order dated 15.04.2009 which was under challenge in the writ petition filed by both these employees in W.P.No.10965 of 2009.

5. The said writ petition was heard and decided by the learned Judge through the impugned order dated 03.04.2019, wherein the learned Judge, insofar as the first respondent Karuppannan is concerned, had given a direction to regularize his services within the meaning of G.O.No.22. However, insofar as the other respondent Ganesan is concerned, the direction that was given was, since he has not completed 10 years of service as on 01.01.2006 ie., the cut-off date fixed by the said G.O.No.22, he should approach the competent authority under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred to as the 'Permanency Act').

6. Aggrieved over the said order passed by the writ court the present intra Court appeal has been directed by the District Collector and another. Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellant State would contend that, even though a specific plea was raised by the District Collector stating that G.O.No.22 dated 28.02.1996 to regularize the services of daily wage employees cannot be made applicable outside the Government Department like the local bodies, Panchayats etc., the said plea raised on behalf of the Government / District Collector



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was rejected by the learned Judge without any plausible reason. In this context, the learned Special Government Pleader invites the attention of this Court with regard to the import of G.O.No.22, which reads thus,

" 2. Based on the announcement made by the Hon'ble Chief Minister on 08.02.2006, the Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 01.01.2006 be regularized by appointing them in the time scale of pay for the post concerned, subject to their being otherwise qualified for the post.

3. The Departments of Secretariat may, therefore, be directed to pursue action to regularize the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 01.01.2006 as ordered in para 2 above, in consultation with the respective Heads of Departments wherever necessary. In special cases wherein relaxation of rules is required, proposal shall be sent to Government."

7. Relying upon G.O.No.22 the learned Special Government Pleader would contend that the words *"the Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 01.01.2006 be regularized"* and the words *" The Departments of Secretariat may, therefore, be directed to pursue action to regularize the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 01.01.2006"* makes it very clear that the benefit of regularization on completion of ten years of service as daily wager as on



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01.01.2006 would be made applicable to those who had been working on daily wage basis only in various Government Departments.

8. Therefore, the learned Special Government Pleader would contend that, first of all the import of G.O.No.22 ought not to have been applied to these two employees, as they have been admittedly engaged only in Village Panchayat and therefore it does not come within the purview of G.O.No.22. That apart, the learned Special Government Pleader would contend that, if these employees are not entitled to seek for the benefit of regularization within the meaning of G.O.No.22, they are not otherwise entitled to seek regularization. Therefore, the direction given in respect of the first employee viz., Karuppannan to regularize his services within the meaning of G.O.No.22 is erroneous. Hence, the learned Special Government Pleader would seek the indulgence of this Court to interfere with the order passed by the learned Judge which is impugned herein.

9. On the other hand, the learned counsel appearing for the respondents 1 and 2 ie., the employees would contend that G.O.No.22 even though has used the words "Government Departments", local bodies also come under the purview of the Government for the purpose of Article 12 of the Constitution. Therefore, in all probability, the import of G.O.No.22 can be extended to the employees engaged in local bodies also including Village Panchayats. He would also submit that, insofar as the employees who had been engaged on daily wage basis in Village Panchayats



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and Town Panchayats are concerned, the Government has come forward to issue the Government Order ie., G.O.No.242 dated 10.12.2009, Municipal Administration and Water Supply Department. Under the said Government Order, the daily wage employees who had been engaged at various local bodies and had completed 10 years of service as on 31.10.2008 can be considered for regularization. According to the said decision taken by the Government, after getting the report from the Directorate of Town Panchayats, 189 such employees were listed out. Out of the said list, some of them left the services or died and therefore 174 employees who were working as on the date of issuance of the Government Order ie., 10.12.2009 were directed to be regularized from the date of the Government Order.

10. Therefore, relying upon G.O.No.242, the learned counsel for the employees has submitted that, both the employees can be considered under G.O.No.22 as has been directed by the learned Judge. Assuming that G.O.No.22 cannot be made applicable to these employees, G.O.No.242 can be made applicable and such benefit that has been extended to the 189 people (174 in actual) can be extended to these two employees also, as they are similarly placed. Therefore, in any event the direction given by the learned Judge to regularize the services of the first employee viz., Karuppannan is justifiable and insofar as the second employee viz., Ganesan is concerned, he need not be driven to go before the authority under the Permanency Act, instead, his case also can be considered within the purview of G.O.No.242, as the cut off date fixed in the said G.O., is 31.10.2008. Therefore, as



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on 31.10.2008, since the second respondent Ganesan also completed 10 years of service, he can also be considered for extending the benefit of regularization.

Therefore, both of them are eligible to get regularization and hence the learned counsel for the employees want to sustain the impugned order passed by the writ Court, they contended.

11. We have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

12. The first controversy that has to be resolved is as to whether, the import of G.O.No.22 can be made applicable to the two employees viz., the respondents 1 and 2 herein or not. In this context, the learned Special Government Pleader has contended by relying upon the import of the very Government Order itself by relying upon the words used in Paragraphs 2 and 3 of the Government Order, which we have quoted herein above.

13. If we peruse the said Government Order No.22 in Paragraphs 2 and 3, as has been rightly pointed out by the learned Special Government Pleader appearing for the appellant, the language used is " *services of the daily wage employees working in all Government Departments*" and the language used that " *Department of Secretariat may therefore be directed to pursue action to regularize the services of the daily wage employees working in various Government Departments*" and



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makes it clear that G.O.No.22 was issued mainly intended to give such benefit of regularization on completion of 10 years of service by the daily wage employees who had been engaged in various Government Departments. The import of the Government Order is not extended to the local bodies also as nowhere it has been stated in the said Government Order.

14. Therefore, insofar as the objection that has been raised on behalf of the Department ie., the District Collector which has been recorded in paragraph 8 of the impugned order of the learned Judge ought to have been accepted by the writ Court. However, the learned Judge has rejected such plea and when we peruse the reasons for rejecting such plea, we do not find any plausible reason. Therefore, to that extent, the view taken by the learned Judge can very well be construed as erroneous view. Therefore, that aspect has to be interfered with.

15. But at the same time, the direction given in respect of the second respondent Ganesan by the learned Judge to approach the authority under the Permanency Act is concerned, that direction need not have been given because, the Government considered the issue as to whether the benefit of regularization of temporary employees ie., daily wage employees who had been engaged by various local bodies like Panchayats etc., and who have completed 10 years of service, and has come forward to issue G.O.No.242 dated 10.12.2009.



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16. In the said Government Order, based on the report submitted by the Directorate of Town Panchayats, only 189 such people have been taken into account as stated in the annexure, where though the names of the respondents have not been mentioned, that would not *ipso facto* make these employees dis-entitled to get such benefit because, it is the admitted case on the part of the District Collector as we have quoted herein above, in paragraph 5 of the counter affidavit filed before the writ Court that, the first respondent was engaged from 28.10.1987 and the second respondent was engaged from 22.03.1996. Even though the date in respect of the first employee Karuppannan was disputed by the learned counsel for the employee stating that he was engaged on 19.05.1986, be that as it may, assuming that he has been engaged on 28.10.1987, insofar as the ten years service required within the cut off date as per G.O.No.242 since is only 31.10.1998, both the employees have completed ten years of service.

17. They have not completed the ten years of service is not the case of the District Collector or any official respondents. However, their only objection was such a regularization may not be possible within the meaning of G.O.No.22. Assuming that it is not possible under G.O.No.22, this kind of regularization can very well be extended to these employees within the meaning of G.O.No.242 dated 10.12.2009. The Government may take an objection stating that, as on the issuance of the G.O., ie., 10.12.2009 even as per the report of the Directorate of Town and Country Planning only 189 employees have been found eligible as they were working on



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daily wage basis and therefore beyond the 189 employees no other employees claimed to have been working in various local bodies can be considered for the purpose of extending the benefit under G.O.No.242. Such an objection cannot be countenanced for the simple reason that, insofar as these two employees are concerned, it is the admitted case that they were engaged in the year 1987 and 1996 respectively. Therefore, as on 31.10.2008 they had very well completed 10 years of service and the benefit that has been indicated in G.O.No.242 as stated supra can very well be extended to these employees also.

18. In view of this legal and factual position, we are of the view that the impugned order insofar as it rejected the plea of the Government / District Collector with regard to the application of G.O.No.22 is concerned, can be interfered with and as a sequel, we are inclined to dispose of this writ appeal with the following directions.

- (a) The impugned order insofar as it rejected the plea of the District Collector that the import of G.O.No.22 P & AR Department dated 28.02.2006 shall not be made applicable to the respondents 1 and 2 are concerned. That finding is liable to be set aside and accordingly it is set aside.
- (b) However these employees, for the reason stated herein above, are entitled to seek the benefit of regularization within the meaning of G.O.No.242, Municipal Administration and Water Supply Department dated 10.12.2009.



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- (c) Therefore, there shall be a direction to the appellant District Collector to take steps to regularize the services of these two employees who had admittedly completed 10 years of service well before the cut off date viz., 31.10.2008 as per G.O.No.242 and such regularization shall be made from the date of the Government Order No.242 dated 10.12.2009 as the other similarly placed persons have been given the benefit of regularization from the date of the Government Order.
- (d) The needful as indicated above shall be undertaken by the District Collector within a period of three months from the date of receipt of a copy of this order.
- (e) It is needless to mention that, once the regularization process is complete, it takes effect from 10.12.2009, and the respondents 1 and 2 are entitled to get the service and financial benefits which shall be calculated and be paid to them within the said period of three months.
- (f) It is brought to our notice that the first respondent Karuppannan retired from service on 31.03.2017. Therefore, the service benefits and other financial benefits till his superannuation can be calculated and be paid to him. Consequently, his pension be revised and accordingly his pensionary benefits also be extended to him.
- (g) The Government may say that these employees may not be entitled to get the pension insofar as that aspect is concerned. It is also made clear 50% of the past service rendered by them from



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the date of their initial engagement shall be taken into account for the purpose of calculating pension and accordingly their pension be calculated and paid to them.

19. With the above directions, the above writ appeal is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

(R.S.K.,J..) (G.A.M.,J.)
08.12.2023

Index : Yes
Internet : Yes
KST

To

The President
Sadhumugal Village Panchayat Grade-I
Sathumugai Sathyamangalam Tk Erode Dist.



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and
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