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W.P.No.30236 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.30236 of 2023
and
W.M.P.No.29830 of 2023

M.Dillibabu

...Petitioner

Vs

- 1.The Secretary to Government,
Department of Adi Dravidar and
Tribal Welfare,
Fort St.George, Chennai – 600 009.
- 2.The Director of Adi Dravidar Welfare,
Chepauk, Chennai – 600 005.
- 3.The District Adi Dravidar Welfare Officer,
Collectorate Campus,
Thiruvallur – 602 001.
- 4.The Headmistress,
Government Adi Dravidar Girls Higher
Secondary School,
Sevvapet, Thiruvallur District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the



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records in pursuant to the 1st impugned order issued by the 2nd respondent in proceedings Na.Ka.No.03/27059/15 dated 20.11.2015 and the 2nd impugned order issued by the 2nd respondent in proceedings Na.Ka.No. 03/23804/2013 dated 11.09.2023 and to quash these orders and to consequently direct the respondents to regularise the services of the petitioner in the post of Night Watchman with effect from the date of completion of 10 years of service from the date of his initial appointment on 01.10.1988 with all consequential monetary and service benefits.

For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.P.Ganesan,
Government Advocate

ORDER

With the consent of both the parties, this Writ Petition is taken up for final disposal.

2. The petitioner herein was originally appointed as a Night Watchman in the Government Adi Dravidar Welfare Girls Higher Secondary School, Sevvapettai on 01.10.1988. After about 20 years, the second respondent herein had sent a proposal to the first respondent on 02.02.2011 for regularization of the services of the petitioner, along with



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43 other persons, who were also appointed on consolidated pay basis in the posts of Scavenger and Night Watchman. Since the proposal was not acted upon within a reasonable time, the petitioner had filed a Writ Petition before this Court in W.P.No.23254 of 2013, in which he had placed reliance on a judgment of the Hon'ble Division Bench of this Court passed in W.A.No.1258 of 2018, dated 13.09.2019, wherein the services of similarly placed persons were regularized and such an order of the learned Single Judge came to be confirmed therein. This Court, by an order dated 14.07.2023, had disposed of the aforesaid Writ Petition, with a direction to the respondents to pass orders, in line with the judgments rendered in the same order, within a period of six weeks. In this background, the present impugned order dated 11.09.2023 has been passed, rejecting the petitioner's request.

3. The learned counsel for the petitioner submitted that in the proposal sent by the second respondent, the cases of similarly placed persons have been accepted and their services have also been regularized, whereas the case of the petitioner alone has been discriminated.



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4. Per contra, the learned Government Advocate placed reliance on the averments in the counter affidavit and submitted that the petitioner was originally appointed as a part-time Night Watchman on temporary basis on consolidated pay from the contingency fund allotted to the school. Since the post itself has been abolished, they are not in a position to regularize the petitioner's services.

5. It is not in dispute that in the proposal sent by the second respondent dated 02.02.2011, the services of V.Amulu and M.Devi found in Serial Nos.4 and 6, who have also joined the services of the respondents, were regularized. The only reason assigned by the respondents is that the post of Night Watchman is a temporary post and that the payment is also being made from the contingency fund.

6. The Hon'ble Supreme Court, in the case of ***Raman Kumar and others vs. Union of India and others*** passed in ***SLP(C) No.7898 of 2020 dated 03.07.2023***, had an occasion to deal with similar set of facts, wherein it was held that the services of employees deserve to be



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regularized on the ground of discrimination, in view of the ground raised by the Group-D employees whose posts were abolished and who raised a ground that the action of the authorities in regularizing the services of similarly placed persons is discriminatory. The relevant portion of the order reads as follows:-

“8. Indisputably, the appellants herein have completed service of more than ten years. Even this Court in the case of Ravi Verma and Others v. Union of India and Others (Civil Appeal No(s).2795-2796 of 2018) decided on 13.03.2018 found that the act of regularizing the services of some employees and not regularizing the services of the others is discriminatory and violative of Article 14 of the Constitution of India.

9. Mrs. Aishwarya Bhati, learned Additional Solicitor General of India appearing on behalf of the respondents, has vehemently opposed the petition. She submits that since posts were not available, and, thereafter, Group ‘D’ posts have been abolished, the appellants could not have been regularized.



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10. We are not inclined to accept the submission on behalf of the respondents. When the Chief Commissioner of Income Tax has himself found that 65 persons were entitled to be regularized, the act of regularizing the services of only 35 employees and not regularizing the services of other employees, including the appellants, is patently discriminatory and violative of Article 14 of the Constitution of India.”

7. The aforesaid extract is self explanatory and it covers the objections raised by the respondents herein also. The learned Government Advocate had pointed out that the post of Night Watchman has been abolished and that the petitioner was initially engaged only on part-time basis. When the services of part-time Group-D employees have been regularized based on a proposal, in which the petitioner's name also found place, the refusal to consider regularization would be discriminatory and violative of Article 14 of the Constitution of India.

8. Insofar as the abolition of the post is concerned, the ground raised in this regard also cannot be substantiated, in view of the decision



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of the Hon'ble Supreme Court in ***Raman Kumar's case***, which has been extracted above, wherein the temporary post was also abolished, the Hon'ble Supreme Court had ordered for regularization of services of the Group-D employees, on the ground of discrimination. As such, the objection raised by the learned Government Advocate in this regard stands rejected.

9. In the light of the above observations, the impugned orders dated 20.11.2015 and 11.09.2023 passed by the second respondent are quashed. Consequently, there shall be a direction to the first and second respondents to pass appropriate orders, regularizing the services of the petitioner in the post of Night Watchman, notionally with effect from the date on which he had completed 10 years of service from 01.10.1988, together with the service benefits. However, the petitioner shall not be entitled for the arrears of pay till the date of passing of such orders of regularization. Such order of regularization shall be passed by the respondents, atleast within a period of four weeks from the date of receipt of a copy of this order.



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M.S.RAMESH,J.

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10. Accordingly, the Writ Petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

22.11.2023

Index:Yes

Neutral Citation:Yes

Speaking order

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To

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Tribal Welfare,
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