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WP.No.19112/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.19112/2017

J.Gunasekaran

... Petitioner

Versus

1.The Government of Tamil Nadu
rep.by its Principal Secretary,
Law Department, Fort St. George
Chennai-9.

2.The Director of Legal Studies
Purasawalkam High Road
Kilpauk, Chennai 600 010.

... 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 relating to the 1st respondent herein in G.O[Ms] No.194, Law [LS] Department, dated 07.08.2008 insofar as ordering for regularization by bringing the Markers working in the Law Education Department into regular establishment from the date of the order alone is concerned and the order passed in Letter No.6944/LS/2017-2 dated 20.03.2017 rejecting the request for regularization from 04.12.1997 as done in the case of Markers working in Government Arts and Science Colleges and the consequential order passed in the reconsideration petition in Letter No.6944/LS/2017-3 dated 06.06.2017 and quash the same and consequently direct the 1st respondent to regularise the petitioner services with effect from 04.12.1997



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as done in the case of Markers working in Government Arts and Science Colleges as ordered in G.O.[Ms] No.602, Higher Education [C2] Department, dated 04.12.1997.

For Petitioner : Mr.R.S.Anandan

For R1 : Mr.S.Ravikumar, Spl.GP

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking interference with an order of the 1st respondent, Principal Secretary, Law Department, Government of Tamil Nadu, in G.O.[Ms].No.194, Law [LS] Department, dated 07.08.2008, insofar as it directed regularization by bringing the Markers working in the Law Department, into regular establishment from the date of the Government Order namely, 07.08.2008 and also the subsequent order in Letter No.6944/LS/2017-2 dated 20.03.2017 by which the date of regularization was affirmed and the representation given by the petitioner was rejected. The petitioner claimed that his services as a Marker in Dr.Ambedkar Government Law College, should be recognised and regularised in accordance with G.O.Ms.No.602, Higher Education [C2] Department, dated 04.12.1997 which in effect,



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implies that the petitioner's services should be regularised on and from 04.12.1997.

- (2) The petitioner, at the time of filing the writ petition, was working as Marker at Dr.Ambedkar Government Law College at Chennai. He had been so working from the year 1975, from the age of 12 years as a pick up boy. He was paid daily wages of Rs.30/-. In the year 1983, he was conferred with the post of Groundsman and was paid Rs.300/- per month. Thereafter, in the year 1989, he was conferred with the post of Marker at a salary of Rs.750/- per month from the Games Fund. Consequent to the directions of this Court in WP.No.6864/2006 dated 19.02.2008, the services of the petitioner were regularised with effect from 07.08.2008. The petitioner's grievance is that his services should have been regularised on and from the date of passing of the Government Order in G.O.Ms.No.602, Higher Education [G2] Department, which was passed on 04.12.1997.
- (3) The duties which the petitioner discharged as Marker, was common to similarly placed Markers who were employed or who were working in Schools and Colleges and in Professional Colleges. There



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cannot be any additional work or distinction in the nature of work which they discharged. Since their services were not regularised, they formed an Association and the Association approached the then Tamil Nadu Administrative Tribunal, seeking recognition of their services and consequent regularisation. It is stated that the said Tamil Nadu Administrative Tribunal passed an order in that regard in favour of the Association. The Government then filed a review before the Tribunal which was rejected. The Government then filed a Special Leave Petition which was also rejected. Thereafter, the Government passed G.O.Ms.No.602, Higher Education [G2] dated 04.12.1997. For reasons which are still unclear, the Government had segregated Colleges functioning as Colleges which come under the Education Department and Colleges which rendered professional courses. The Colleges which came under the Education Department, were categorised as Arts and Science Colleges. Markers who were in those Arts and Science Colleges alone were recognised under G.O.Ms.No.602 dated 04.12.1997 and their services were brought into regular service on and from 04.12.1997. The petitioner was left



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out of it since he was working in a Professional College, namely, Dr.Ambedkar Government Law College.

- (4) Those Markers who were working in Engineering Colleges then approached the Tribunal and sought recognition of their services. With respect to those who were working in Engineering Colleges, the Government passed a Government Order in G.O.Ms.No.314, Higher Education [G2] Department, dated 02.09.2005 and brought the Markers who were working in Engineering Colleges into regular services and stated that the said Government Order would be applicable on and from that particular date, i.e., 02.09.2005. The petitioner individually had earlier filed an application before the Tamil Nadu Administrative Tribunal in OA.No.826/2003, complaining about non-regularisation and the parallel regularisation of only those Markers who were working in Arts and Science Colleges. The Tribunal, by an order dated 10.03.2003, directed consideration of the representation which had been given by the petitioner and stated that orders should be passed on such representation within a period of two months from the date of that



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particular order.

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(5) A right had then accrued to the petitioner for consideration of his representation. But, however, the matter was kept swinging here and there like a pendulum and was meandering around here and there. In the meanwhile, it is also seen that much earlier, soon after the Markers in the Arts and Science Colleges were brought into regular service, a communication was issued to the Principal of Dr.Ambedkar Government Law College, wherein the details of the Markers were sought. It was also replied and a proposal was also forwarded by the Principal of Dr.Ambedkar Government Law College. This was dated 31.03.1998. It is thus seen that the issue has been circulating around without any proper order being passed by the Government or with any commitment from the Government.

(6) Thereafter, the petitioner had filed WP.No.6864/2006, wherein, he had questioned a Letter in Letter No.10520/Sa.Ka/2003 dated 20.08.2003, whereby the representation given by him was rejected. The petitioner had claimed that he should be treated on par with the Markers who were working in Government Arts and Science



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Colleges. A learned Single Judge had elaborately considered that particular writ petition and had issued a certiorari, quashing the said Letter and observed as follows:-

"11.It is seen that the Director of Legal Education, in his letter No.4601/A1/97, dated 11.03.1998, has recommended to the Government that the benefits of G.O.Ms.No.602, Higher Education, dated 04.12.1977, issued orders in favour of the Markers working in Government/Aided Colleges, be extended to the Markers working in Law Colleges also. The counter affidavit is silent as to whether any decision is taken by the first respondent in this regard. Whereas, placing reliance on the G.O.Ms.No.49, P & AR Department, dated 14.05.2002, the first respondent has rejected the request of the petitioner. Reading of the above said Government Order, makes it clear that the Government Order has been issued taking into consideration of the recommendations of the Commission appointed to study the out-sourcing of certain employees in the Government Departments. The Government Order applies only to Group D categories like Sweeper, Scavenger, Cleaner and Gardener and there is no reference to the category of



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the Marker working in Law Colleges.

12. When the post of Marker is filled up as a necessary post in the Government Arts and Science Colleges, Engineering Colleges and Polytechnics and the Markers working in those colleges were brought under regular establishment with time scale of pay, there is no reason as to why the first respondent has applied a different yardstick discriminating the Markers working in the Law Colleges. G.O.Ms.No.49 is not applicable to the case of the Markers working in the Law Colleges. The impugned order is liable to be set aside on the ground of arbitrariness and violation of Article of 14 of the Constitution of India. Sports activity is prevalent in all colleges including Law Colleges in the State and there were persons representing the college at the University and higher levels. There is no dispute about the legality of the appointment.

13. As Markers working in Government Law Colleges discharge similar duties and responsibilities as that of others working in Arts and Science Colleges and Engineering Colleges, the first respondent is directed to consider the case of the petitioner, similar to that of others, working in the same capacity and



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pass appropriate orders. The Government shall also consider the length of service rendered by the petitioner and similarly placed persons in the Government law colleges and take appropriate decision within a period of eight weeks from the date of receipt of a copy of this order.

14.In the result, the impugned order is set aside and the Writ Petition is allowed as indicated above. No costs."

- (7) It is thus seen the learned Single Judge had examined the nature of work done by the petitioner herein and had stated that the petitioner was also discharging similar duties and responsibilities as that of others working in Arts and Science Colleges and in Engineering Colleges. A positive direction was given that the respondents therein should consider the case of the petitioner similar to that of others workings in the same capacity and must pass appropriate orders. This direction of this Court should have been followed in letter and spirit by the respondents. The purport behind the said direction was that the petitioner who was working as Marker in Dr.Ambedkar Government Law College should be treated equally with those who



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were working in Arts and Science Colleges and in Engineering Colleges. They had been brought into regular services. But, those who were working in Government Law Colleges, were not. The learned Judge had wondered 'why' and therefore, had issued the said directions.

- (8) Consequent to this particular direction issued, which was dated 19.02.2008, the respondents passed G.O.Ms.No.194, dated 07.08.2008. They acknowledged the order of the High Court and thereafter, they had stated that the order shall take effect from the date of the said Government Order only. They stated that Markers who were working in Government Law Colleges would be brought into service only from the date of that particular Government Order dated 07.08.2008. Complaining this was a discrimination and wondering why the services of the petitioner herein should be recognised only from 07.08.2008 when similarly placed Markers had been brought into regular service with effect from 1997 and those in the Engineering Colleges with effect from 2005, the present writ petition has been filed.



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(9) The representation given by the petitioner herein had been rejected and the said order had been confirmed and therefore, that is taken as a further ground questioning the date from which the petitioner would be brought into regular service.

(10) The learned counsel for the petitioner, after narrating the facts, stated that there is no justification for bringing the petitioner into regular service on and from 07.08.2008 when similarly placed Markers had been recognised with effect from the date on which the first Government Order was passed, namely, G.O.Ms.No.602, dated 04.12.1997. It had been stated that the petitioner herein was actually the Treasurer of the Markers' Association which had originally approached the Tamil Nadu Administrative Tribunal and had obtained orders consequent to which G.O.Ms.No.602, was finally issued after the Government had gone over to the Hon'ble Supreme Court over this issue. It is therefore contended by the learned counsel that the petitioner stood discriminated on this particular ground and if the nature of work is the same and if others who are discharging similar nature of work in other Colleges were brought into regular



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services, there is no justification in rejecting or not granting that particular benefit to the petitioner herein. An alternate is that the petitioner can be brought into regular service from the date of the order of the Tamil Nadu Administrative Tribunal, i.e., 10.03.2003, which directed consideration of representation within a period of two months from that particular date.

- (11) One factor which probably impinges the mind of the learned counsel is the cut off date of 01.04.2003, from which date the pension scheme was totally altered and the earlier General Provident Fund Scheme was stopped and the Contributory Pension Scheme was introduced. The learned counsel therefore, insisted that the petitioner should be brought into regular service with effect from the year 1997. It should be kept in mind that Markers working in Engineering Colleges, had been brought into regular service only from 2005 when the Government Order with respect to them had been passed.
- (12) Learned Special Government Pleader, however, justified the order which had been passed by stating that any Government Order which brings about any financial implication, will have only prospective



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effect and not retrospective effect unless specifically stated or unless it relates to dues which were existing and pending on the date of the Government Order. It is contended that by passing of the Government Order, a new right had accrued and when such new right accrues, that right can accrue only from the date of passing of the Government Order and not before that. It is also stated by the learned Special Government Pleader that though there are seven Law Colleges, there are only 5 sanctioned post of Markers and it is termed as 'Vanishing category' which means that once a person retires from the post of Marker, there would not be any other person employed in his place and the post is simultaneously abolished and the post of Marker would be no longer recognised for any purpose whatsoever. This fact would imply that the financial burden on the Government would not be a continuous one but, rather individual specific. It would commence and end with the date of retirement on superannuation of that particular Marker. This opens up a new avenue for the petitioner herein as this order is not going to bring about further claims for recognition as the post of Marker had



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vanished on retirement of the particular individual who held the post.

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The present petitioner herein had retired on attaining the age of superannuation on 31.12.2022 which would indicate that on and from that particular date, the post of Marker would no longer survive in Dr.Ambedkar Government Law College at Chennai. This is a vital factor in taking a decision as to the applicability of the date of regularisation of the petitioner herein.

- (13) The two possibilities are, either from 1997 or from 2003. The first order with respect to the petitioner was issued by the Tamil Nadu Administrative Tribunal in the year 2003, i.e., on 10.03.2003. However, as correctly contended by the learned counsel for the petitioner, the petitioner was agitating in his capacity as Treasurer of the Association and therefore, he should have been equated along with those who had been regularised in the year 1997. There was no justification in not recognising his services when those who were discharging similar work in Arts and Science Colleges, were regularised. The Government should have taken a decision and must have put an end to all litigations. If the post of Markers is termed as



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"Vanishing Category", then the Government should have extended that particular benefit to everybody who had been functioning as Markers and should not have distinguished Markers working in Government Arts and Science Colleges, Markers working in Engineering Colleges and Markers working in Government Law Colleges.

- (14) It is common knowledge that none of the Law Colleges have ground facilities to the extent which normally a Government Arts and Science College has or even an Engineering College has. Therefore, the burden of the Government so far as extending the benefit to Markers in Government Law Colleges would have been comparatively much much less. But denying even that, defies every logical reasoning.
- (15) I therefore, direct that the writ petitioner should be entitled to be recognised as being in regular service as Marker on and from the date of G.O.Ms.No.602, dated 04.12.1997, which Government Order had been issued by the Higher Education Department and by no stretch of imagination, can it be termed that Law Colleges do not come under



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the Higher Education Department. It did, at that particular point of time, come under the Education Department. Therefore, the reasoning of the Government does not withstand the scrutiny of the Court.

- (16) In the result, the writ petition stands **allowed**. The orders impugned in this writ petition are set aside. A direction is given to the respondents to bring the petitioner into regular service on and from the date of G.O.Ms.No.602, Higher Education Department, dated 04.12.1997. Necessary proceedings in this regard must be issued within a period of sixteen weeks from the date of receipt of a copy of this order. No costs.

28.07.2023

AP
Internet : Yes



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- 1.The Principal Secretary,
Government of Tamil Nadu
Law Department, Fort St. George
Chennai-9.
- 2.The Director of Legal Studies
Purasawalkam High Road
Kilpauk, Chennai 600 010.



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