



W.P.No.26731 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2023

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.26731 of 2018

1. E.Meerabai
2. A.Amulu
3. L.Mannichi
4. V.Kalaramani
5. P.Desan
6. V.Saroja
7. E.Jayaraman
8. R.Vimala
9. M.Natarajan
- 10.A.K.Adhilakshmi
- 11.V.Lakshmanan
- 12.A.Murugan

.. Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Backward Classes and Most Backward
Classes & Minorities Welfare Department,
Secretariat, Chennai – 09.



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2. The Director of Backward Classes and Minorities Welfare,
Chepauk, Chennai – 600 005.
3. Director of Most Backward Classes Welfare,
Chepauk, Chennai – 600 005.
4. District Backward Classes and Minorities Welfare Officer,
Kancheepuram, Kancheepuram District.
5. District Backward Classes and Minorities Welfare Officer,
Thiruvallur, Thiruvallur District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the second respondent in R.CB1/840/2016 dated 10.05.2016 and quash the same and direct the second respondent to forward the papers to Government, so as to enable the Government to pass such order giving regularisation retrospectively from the date of initial date of appointment.

For Petitioner : Mr.V.Sivalingam for
M/s.C.S.Associates

For Respondents : Mr.S.Ravikumar,
Special Government Pleader.



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ORDER

The writ petition has been filed in the nature of certiorarified mandamus seeking interference with an order of the second respondent Director of Backward Classes and Minorities Welfare, Chennai, dated 10.05.2016 in R.CB1/840/2016 and to consequently direct the said respondent to forward the records to the Government to enable the Government to pass orders granting regularization to the petitioners retrospectively from the date of their initial appointment.

2 The writ petition has been filed by 12 separate petitioners. In the affidavit filed, it is stated that they all have been appointed as Cooks in the Government Backward Class Welfare Girls Hostel at various places in Kancheepuram and Thiruvallur Districts. The respective dates of appointments were also different, but they ranged from the year 1997 to 2000. They had been appointed through Employment Exchange on consolidated pay and they also joined duty. It must also be mentioned that composite Chengalpet District underwent bifurcation and Thiruvallur and

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Kancheepuram districts were formed. There were similarly placed persons and their services have been regularised from their initial date of appointment in those Districts.

3 The petitioners herein had then given an application seeking to regularize their appointment and that representation was considered. Their services were regularized w.e.f.20.09.2007. This order was actually passed only consequent to an earlier direction of this Court dated 22.01.2016, whereby a mandamus was sought seeking regularization consequent to representation given by the petitioners herein. An order was passed granting regularization of service only from 20.09.2007 and not retrospectively from the date of their initial appointment. That order has been put to challenge in this writ petition.

4 The reason given by the respondents for regularization of their service only from 20.09.2007 is as follows.

“2. Due to the financial crises that aroused during the year 1990, the Government had taken a policy decision to appoint cooks/Assistant Cooks in



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BC/MBC/DNC hostels on consolidated basis. However, the Government, on humanitarian ground, had considered the representations of BC/MBC hostel employees' associations and further brought the services of all the Cooks/Assistant Cooks, who were working in BC/MBC/DNC welfare hostels, from consolidated pay into regular time scale vide G.O.85, BC, MBC and MW Department dated 20.09.2007 and too regularized their services from the date of issue of order.

3. Hence, it is hereby informed that your request of regularizing your service on retrospectively i.e. From date of your initial appointment could not be considered at this moment owing to the policy of the Government as well as other rules in force.”

5 It is thus seen that the only reason was financial crisis that had arisen in the year 1990, which forced the Government to take a policy decision to appoint Cooks/Assistant Cooks only on temporary basis on consolidated pay. It had also been stated in the aforementioned extract that regularization could not be considered at that particular moment. This order dated 10.05.2016 is impugned in this writ petition.



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6 On the side of the respondents, a counter affidavit has been filed, in which it had been stated that the representation given by the petitioners has been considered and their services had been regularized w.e.f.20.09.2007. It had also been stated that they have not been appointed on regular post and that the Court could not interfere and exercise power under Article 226 of Constitution of India to issue direction for regularization/absorption/permanent continuance. It had been stated that it must first be examined whether the employees had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process against the sanctioned vacant posts. In the instant case the petitioners were appointed through Employment Exchange.

7 Learned counsel however pointed out the proceedings of the fifth respondent District Backward Classes and Minorities Welfare Officer in Na.ka.No.W1/44863/2002 dated 20.10.2014, wherein services of similarly appointed Cooks/Assistant Cooks who had been appointed in the



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year 1988 have been regularised from the date of their initial appointment.

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8 The learned counsel also pointed out the order of the learned Single Judge in Madurai Bench of this Court *dated 09.12.2021 in W.P (MD).No.4208 of 2016* in the case of *V.Sonai and others vs. The District Backward Class, Most Backward Class Officer, Virudhunagar District*. In that particular case, the learned Single Judge had directed the respondent therein to consider the claim of the petitioners therein in the light of G.O.Ms.No.19 of Backward Class and Most Backward Class and Minorities Welfare (CNAP) Department, dated 07.03.2008. Consequent to the said direction, an order has been passed on 19.07.2022, wherein the petitioners therein were granted benefit of regularisation of services on completion of 5 years of service from their initial date of employment. The learned counsel stated that the petitioners herein should not be discriminated and the same benefits should also be given to these petitioners.



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9 In view of these facts, it would only be appropriate that the respondents herein are directed to re-examine the entire issue consequent to the order of the District Backward Classes and Minorities Welfare, Thiruvallur, dated 20.10.2004 and the order in W.P(MD).No.4208 of 2016 dated 09.12.2021 and the consequent proceedings of the first respondent, the Secretary to Government, Backward Classes and Most Backward Classes & Minorities Welfare Department, Secretariat, Chennai – 600 005, dated 19.07.2022 and pass appropriate orders. Such exercise should be completed within a period of 12 weeks from the date of receipt of a copy of this order.

10 This would effectively means that the impugned order is set aside and the matter is remitted back to the first respondent for fresh consideration in the manner known to law. Let the petitioners not be kept as separate class among a homogeneous group. They must be treated equally with Cooks/Assistant Cooks in other Districts. They cannot be separated and



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different orders could not be passed on the claim of regularisation.

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11 The writ petition stands allowed. The impugned order is set aside and the matter is remitted back to the first respondent for fresh consideration in the manner known to law. No costs.

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Index: Yes/No
Internet: Yes/No
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To

1. The Principal Secretary to Government,
Revenue Department, Secretariat, Fort St. George,
Chennai – 600 009.
2. The Director of Land Reforms,
Chepauk, Chennai – 600 005.
3. The Tahsildhar, Namakkal Taluk,
Namakkal District.



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C.V.KARTHIKEYAN, J.,

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