



W.P(MD)No.8107 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8107 of 2023
and
W.M.P.(MD)No.7475 of 2023

V.Thiraviam Pillai

... Petitioner

Vs.

1.The Secretary to the Government,
Department of Agriculture,
Secretariat,
Chennai – 600 009.

2.The Director of Agriculture,
Chepauk,
Chennai – 600 009.

3.The Joint Director of Agriculture,
(Training & Visit),
Nagercoil – 629 001.

4.The Assistant Director of Agriculture (SC),
Kanyakumari District,
At Nagercoil – 629 001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus,



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calling for the records of the impugned order passed by the 2nd Respondent / The Director of Agriculture, Chennai in his order in A.Vu.Pa.2.91236/2012 dated 21.08.2014 and quash the same as illegal and further directing to 1st respondent to regularize the petitioners service taking in to considerations of the directions issued by the Tamilnadu Administrative Tribunal in T.A.Nos.482 of 1992 and 4 of 1993 dated 19.04.2002 and not to consider the G.O. issued on 27.06.2013 which has been issued after the petitioner's retirement and not applicable to the petitioner in the light of the orders issued by this Court.

For Petitioner : Mr.S.Vashik Ali

For Respondents : Mr.K.Balasubramani,
Spl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.Even before commencing his arguments, the learned counsel for the petitioner on instructions submitted that the petitioner will not make any monetary claim for the period from the date of passing of the impugned order till the date of filing this writ petition. This undertaking given by the petitioner through his counsel is recorded.

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3.The petitioner was appointed as daily rated Night Watchman on 08.10.1982 by the fourth respondent. The petitioner and others filed writ petitions seeking regularization. The writ petitions were transferred to the Hon'ble Administrative Tribunal and they were taken in T.A.No.482 of 1992. The petitioner is shown as the third applicant. The T.A. was allowed on 19.04.2002 in the following terms:-

“3.The learned counsel for the applicant has produced proceedings of the Joint Director of Agriculture, Nagercoil dated 6.2.1990 as per which the applicants 1 & 4 in T.A.No.482/92 viz., Bhathar Saman and Lingappan have been regularized and they have been regularized from 18.4.1998. Chempulignam, the second applicant T.A.No.482 of 1992 filed an application before this Tribunal (O.A.No.1218 of 1995) and got a direction as a result of which his services also has been regularized with effect from 1995. The question of Chempulingam's regularization is now settled with regard to other two persons proposals have been obtained from the Joint Director of Agriculture, Nagercoil by the Director of Agriculture, Chennai.

“In the letter dated 16.12.1990, the Joint Director has been asked to furnish certain particulars with reference to the other applicants for the purpose of regularizing them. All these



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clarifications have been given by the Joint Director, Nagercoil and now the Government has to only pass order regularizing them. Therefore all these applications are to be order in terms of the order earlier passed by the Joint Director and as per his proceedings dated 6.2.1990. There is no difficulty in regularizing the services of the applicants and they will be entitled to regularization from the date indicated in the said proceedings. The respondents are directed to pass orders within a period of two months from the date of receipt of a copy of this order.”

Since the direction was not complied with, the petitioner filed W.P.No. 7155 of 2011. The writ petition was disposed on 24.03.2011 in the following terms:-

“4.Hence, the petitioner along with similarly placed persons filed T.A.No.482 of 1992 before the Administrative Tribunal praying to direct the respondents to regularize their services. The Tribunal by its order dated 19.04.2022 directed the respondents to pass orders regarding the regularization of the petitioner, within a period of two months from the date of receipt of the order. But, inspite of the same, the respondents have not taken any steps to regularize the petitioner's sergice and the petitioner remains to be a daily wage employee till date.



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5.It is very unfortunate to note that when the services of another watchman by name C.Senbagalingam was regularized with effect from 24.02.1995 by relaxing the rules regarding age, payment of arrears etc., in the light of G.O.No.73 Agriculture (vea NI) Department, dated 23.02.1999 and in spite of the order passed by the Administrative Tribunal as early as on 19.04.2002 to consider the case of the petitioner for regularization, the case of the petitioner was not considered even though he has put in 28 years of daily paid service and just have only more year of service left before his retirement.

6.In view of the above facts and circumstances, the petitioner is directed to submit a representation before the first respondent within a period of two weeks from the date of receipt of a copy of this order, along with a copy of this order and a copy of the order passed by the Administrative Tribunal and there upon the first respondent is directed to consider the representation of the petitioner pursuant to the G.O. and taking into consideration of the earlier direction of the Administrative Tribunal dated 19.04.2002 and pass orders regarding regularization of the services of the petitioner within a period of two months.”

Pursuant to the said direction, the impugned order came to be passed.

Challenging same, this writ petition has been filed.



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4.The learned counsel for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed.

5.The respondents have filed counter affidavit and the learned Special Government Pleader took me through its contents. His first contention is that this writ petition is hopelessly barred by laches. He wanted this Court to bear in mind that what is under challenge is an order passed way back on 21.08.2014. According to him, the writ petition filed after a gap of nine year cannot be entertained. He also would submit that the petitioner having not been recruited under any relevant service rules cannot claim the benefits regularization and absorption. He pressed for dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record. As regards laches, the petitioner has already forgone his claim for monetary benefits for the intervening period ie., from the date of passing of the impugned order till the date of filing of the writ petition.



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7.The prime question that calls for consideration is whether the impugned order has been correctly passed. As rightly pointed out by the learned counsel for the petitioner, the impugned order rests on G.O.(Ms)No.74 Personnel and Administrative Reforms Department dated 27.06.2013. By then, the petitioner had already crossed the age of superannuation. A government order issued subsequent to the petitioner's superannuation cannot be put against him. This Court vide order 24.03.2011 had called upon the department to consider the petitioner's case in the light of G.O.(Ms)No.73, Agriculture Department, dated 23.02.1999. This Court had also called upon the department to bear in mind the directions given by the Tribunal. The direction given by the Tribunal clearly provides for regularization of the petitioner's service. Therefore, the order impugned in this writ petition is clearly not in consonance with the order passed by this Court. It is therefore set aside. The second respondent is directed to send proposal to the first respondent for regularizing the petitioner's service and for disbursement of his terminal benefits. Such a proposal shall be sent by the second respondent within a period of four weeks from the date of receipt of a copy of this



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order. The first respondent shall pass an appropriate order as stipulated in this order within a period of eight weeks thereafter. Disbursement of the petitioner's benefits will be done within a period of eight weeks thereafter.

8.This writ petition is allowed accordingly. No costs.
Consequently, connected miscellaneous petition is closed.

27.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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