



W.P.(MD) No.18192 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 17.08.2023

ORDERS PRONOUNCED ON : 25.08.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.18192 of 2019

and

W.M.P.(MD) No.14624 of 2019

N.Bai

... Petitioner

Vs.

- 1.The State of Tamilnadu,
Rep., by its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.
- 4.The District Educational Officer,
Thuckalay, Kanyakumari District.
- 5.The Secretary,
Devaswom High School,



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Thirparappu-629 161,
Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, directing the respondents forthwith to regularize the petitioner's service as Scavenger in Time Scale of Pay from the date of completion of 10 years of service i.e., on 23.06.1995 in the 5th respondent school and disburse all monetary benefits to the petitioner.

For Petitioner	:	Mr.S.Xavier Rajini
For RR1 to 4	:	Mr.V.Nirmal Kumar Government Advocate
For R5	:	Mr.K.Sathya Singh

ORDER

This writ petition has been filed seeking a Writ of Mandamus to direct the respondents forthwith to regularize the petitioner's service as Scavenger in time scale of pay from the date of completion of 10 years of service, i.e., on 23.06.1995 in the 5th respondent-School and to disburse all monetary benefits.



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2. Heard the learned counsel for the petitioner, learned Government Advocate for respondents 1 to 4 and the learned counsel for the 5th respondent and perused the record.

3. The case of the petitioner is that the petitioner was working as Scavenger (Part Time) in the 5th respondent-School, which is a recognized and aided private school. The school is offering education from VI to X Standards. The petitioner was receiving a sum of Rs.1,875/- towards monthly salary. The petitioner was initially appointed as Scavenger (Part Time) in the 5th respondent-School in the vacancy arose due to the resignation of one S.Saleenal. The District Employment Officer, Nagercoil, sponsored the name of the petitioner for appointment. After conducting proper selection process, the petitioner was appointed and the same was approved by the 4th respondent on 23.12.1986 in RC.No.20990 BO/85.

4. The 1st respondent regularized the services of various part time employees on completion of 10 years of service as per G.O.Ms.No.22,



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Personnel and Administrative Reforms (F) Department, dated 28.02.2006.

The petitioner requested the respondents to regularize her services and disburse all monetary benefits at least from completion of 10 years of service, i.e., on 23.06.1995. But no orders were passed. The petitioner made several representations dated 25.09.2018, 23.10.2018, 11.12.2018, 06.02.2019 and 04.06.2019 to respondents 1 to 4 requesting to regularize her services and place her under time scale of pay from the date of completion of 10 years of her service on par with similarly placed persons. The 5th respondent also sent a proposal to the 2nd respondent on 12.09.2018 requesting to regularize the services of the petitioner and to place her under time scale of pay from the date of completion of 10 years of service. As there is no action on the part of respondents 1 to 4, the petitioner is constrained to file this writ petition.

5. Resisting the claim of the petitioner, counter affidavits have been filed by the 4th and 5th respondents. In the said counter affidavits, it is averred that the petitioner was engaged to scavenge and other connected works for one or two hours in a day. But she was not engaged in any full



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time employment and as such, she is not entitled for regularization in terms of G.O.Ms.No.22, dated 28.02.2006.

6. Learned counsel for the petitioner would submit that the petitioner was appointed in a sanctioned post. The appointment order issued on 24.06.1985 clearly proves that though it is mentioned that the petitioner was appointed as Part Time Scavenger, it is mentioned in the appointment order that she was appointed in the vacancy arose due to the resignation of one S.Saleenal. Learned counsel further submits that though it is mentioned in the appointment order as Part Time Scavenger, the petitioner's services were utilized for all other works from morning 08.00 a.m. to 04.30 p.m. like regular employees.

7. The learned counsel also contends that the 1st respondent regularized the services of 12 other Part Time employees in time scale of pay and disbursed monetary benefits to them vide G.O.(3D) No.33, School Education (R1) Department, dated 20.03.2012 and regularized the services of 618 Part Time employees vide G.O.Ms.No.111, School Education (R1)



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Department, dated 09.05.2012 from the date of completion of 10 years of service. But respondents 1 to 4 did not extend the same benefit to the petitioner, which is discriminatory.

8. Learned counsel further submits that G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 was issued by the 1st respondent indicating that the services of those who completed 10 years of service on or after 01.01.2006 will not be regularized. However, the said Government Order was not implemented to the persons working in the schools. But the respondents with misconception that G.O.Ms.No.74 imposed condition that no person should be regularized, the petitioner's claim was not considered, which is erroneous. The learned counsel finally submits that the petitioner is entitled for regularization from the date of completion of 10 years of service, as she was appointed in the sanctioned post and sought to allow the writ petition.

9. On the other hand, the learned Government Advocate appearing for respondents 1 to 4 contends that as the petitioner was appointed as Part



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Time Scavenger, she is not entitled for the benefit of regularization after completion of 10 years of service provided under G.O.Ms.No.22, dated 28.02.2006. The learned Government Advocate would submit that the services of Full Time Daily Wage employees, who were initially appointed on Full Time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and who completes 10 years service as on 01.01.2006 only shall be regularized against regular vacancies under the sanctioned cadre strength. In view of the facts and circumstances of the case, as the petitioner was appointed as only Part Time Scavenger, she is not entitled for regularization and other relief sought in this writ petition and prayed to dismiss the writ petition.

10. Having heard the submissions of the respective counsels and upon perusal of the material available on record, it is an admitted fact that the petitioner is working as Part Time Scavenger from 24.06.1985.

11. On consideration of the rival contentions made on either side, the only issue to be considered in this writ petition is whether the petitioner



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is entitled for regularization after completion of 10 years of service in terms of G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 or not.

12. As per the contention of the petitioner, her name was sponsored by the District Employment Officer, Nagercoil, for appointment as Scavenger (Part Time) in Devaswom High School, Kuzhithurai, Kanyakumari on 24.06.1985 and the said appointment was approved the District Educational Officer, Kuzhithurai. From the date of appointment, the petitioner is discharging her duties without any break or blemish and she completed service of 30 years as on the date of filing of the writ petition without any interruption and utmost satisfaction to the respondents.

13. There is no any dispute that the 1st respondent issued G.O.Ms.No.22, dated 28.02.2006 to regularize the services of the Part Time employees, who completed 10 years of service. The case of the petitioner is that as the petitioner was appointed in the sanctioned post, she is entitled for the benefit under G.O.Ms.No.22. But the contention of respondents 1 to 4



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is that as the petitioner was appointed as Part Time Scavenger and her nature of work is to be limited for two hours per day, she is not entitled for the benefit under G.O.Ms.No.22, for regularization of her services. It is true that the 5th respondent has sent a proposal to the 2nd respondent to regularize the services of the petitioner and to place her under Time Scale of Pay from the date of completion of 10 years of service. It is an admitted fact that the petitioner has completed 10 years of service by 23.06.1995.

14. On a careful perusal of the appointment order, dated 24.06.1985, which is filed as a material paper No.1, it clearly proves that the petitioner was appointed as Part Time Scavenger in the vacancy arose due to the resignation of one S.Saleenal. The said appointment was approved by the District Educational Officer, Thuckalay on 23.12.1986 in RC.No.20990 BO/85. As such, this Court has no hesitation to note that the petitioner was appointed in the sanctioned post.

15. Learned counsel for the petitioner has drawn the attention of this Court to a judgment of the Division Bench of this Court in W.A.(MD)



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No.93 of 2018, dated 27.03.2018 (***Director of Elementary Education and others Vs. Rani***).

16. On careful perusal of the said judgment, it appears that in identical situation, the respondent therein was appointed as Part Time employee in a sanctioned post. The Division Bench, after considering several decisions passed by this Court, rejecting the contentions of the appellants therein, dismissed the said writ appeal. The finding of the Division Bench is extracted herein under for proper adjudication of this case:

“6.We have considered submission on either side and perused the material placed on record and decision of various Courts relied on by the learned counsels. The undisputed fact is that the respondent/writ petitioner has been appointed in a sanctioned post, therefore, there is no allegation that the writ petitioner was appointed in an unauthorised vacancy. The next question would be whether there can be any Part Time Employment in the sanctioned post. The answer to the question should be negative-against the appellant and in favour of the management appointed Teacher. This is so



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because in the sanctioned post, there cannot be a temporary appointment without prior approval of the department, there cannot be a Part Time Employee. The service particulars furnished by the writ petitioner clearly shows that all along the writ petitioner was treated as full time employee and continued to function in the school through out the year and had sufficient work because the School was a Higher Secondary School. In the case of Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another Vs. A.Singamuthu reported in AIR 2017 SC 1304, the Hon'ble Supreme Court pointed out that the Part-time employees will not be entitled to claim regularisation particularly when he has not worked in the sanctioned post. Therefore, the case on hand is clearly distinguishable on facts. The learned counsel for the appellant-State before the Hon'ble Supreme Court contended that the respondent therein had worked only for 2 to 3 hours per day regularisation granted to such Masalchi was one time scheme to bring it on time scale and such regularisation can be only from the date of issuance of the particular decision. The decision in the case of A.Singamuthu cannot be applied to the facts and circumstances of the present case.”



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17. In view of the facts and circumstances of the case, this Court is satisfied that the petitioner had been working as Part Time Scavenger in a sanctioned post and had completed 10 years of service on 23.06.1995 and as such, from that date, the petitioner is entitled to get her services regularized.

18. In the above referred judgment, the Division Bench of this Court, categorically held that there cannot be any Part Time employment in the sanctioned post. This Court has to follow the proposition of law laid down by the Division Bench of this Court, as the facts and circumstances of the present case are also identical.

19. For the above mentioned reasons, this Writ Petition is allowed with the following directions:

- i. The respondents are directed to regularize the services of the petitioner from the date of completion of 10 years of service, i.e., 23.06.1995 and disburse all monetary benefits to her for which she is entitled from the said date;



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- ii. The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order;
- iii. No costs; and
- iv. Consequently, connected miscellaneous petition is closed.

25.08.2023

Note: Issue order copy by 29.08.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

- 1.The Secretary to Government,
State of Tamilnadu,
Department of School Education,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.
- 4.The District Educational Officer,
Thuckalay, Kanyakumari District.



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BATTU DEVANAND, J.

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Pre-delivery Order made in
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25.08.2023