



W.P(MD)No.8933 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.8933 of 2016

K. Subramani

...Petitioner

Vs.

1. The Secretary to the Government,
Department of School Education,
State of Tamil Nadu,
Fort St. George, Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 006.
3. The Chief Educational Officer,
Trichy District, Trichy.
4. The Headmaster
Government High School,
Poongudi, Paganur Post – 620 009.
Trichy District.

....Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd respondent herein in NaKa.No.



W.P(MD)No.8933 of 2016

WEB COPY

67765/A5/E2/2014 dated 18.12.2014, quash the same and further directing the respondents herein to regularize the service of the petitioner as Sweeper since 02.02.1982 with salary and other attendant benefits on par with the similarly placed person whose service have been regularized vide G.O.Ms.No.179 (School Education (R-1) Department) dated 13.07.2012 and G.O.Ms.No.247 (School Education (R-1) Department) dated 03.10.2012.

For Petitioner : Mr.E.V.N.Siva

For R1 to R3 : Mr.V.Nirmalkumar
Government Advocate

ORDER

This Writ Petition has been filed seeking a Writ of Certiorarified Mandamus against the impugned proceedings issued by the 2nd respondent herein in Na.Ka.No.67765/A5/E2/2014 dated 18.12.2014 and for a consequential direction to the respondents to regularize the service of the petitioner as Sweeper since 02.02.1982 with salary and other attendant benefits on par with the similarly placed person whose service have been regularized vide G.O.Ms.No.



W.P(MD)No.8933 of 2016

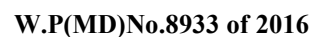
WEB COPY

179 (School Eudcation (R-1) Department) dated 13.07.2012 and G.O.Ms.No.247 (School Education (R-1) Department dated 03.10.2012.

2. Heard the learned counsel for the petitioner and learned Government Advocate for respondents 1 to 3 and perused the record.

3. The case of the petitioner is that the petitioner was working as Sweeper (Part Time) in the 4th respondent-School, which is a Government School on 02.02.1982 in pursuance to the appointment order issued by the 3rd respondent on 26.01.1982.

4. Since the petitioner was working as Sweeper (Part Time) from 02.02.1982, he is eligible for regularization and therefore, the proposal for regularization was forwarded by the 3rd respondent to the 2nd respondent. However, there is no progress. The service of the similarly placed persons working in the Education Department were regularised by the State Government. Hence, the petitioner submitted a detailed representation to the respondents on 01.07.2014 requesting them to take



5. Resisting the claim of the petitioner, counter affidavit has been filed by the 4th respondent. In the said counter affidavit, it is stated that the petitioner is not sponsored through employment and he has not been appointed in a sanctioned post and not a full time employee and therefore, the claim of regularization is unsustainable. It is also averred that the petitioner was not engaged in any full time employment and as such, he is not entitled for regularization in terms of the Government Order No.22, dated 28.02.2006.



W.P(MD)No.8933 of 2016

WEB COPY

6. Learned counsel for the petitioner would submit that the petitioner was appointed in a sanctioned post. The appointment order issued on 26.01.1982 clearly proves that though it is mentioned that the petitioner was appointed as Part Time Sweeper, it is mentioned in the appointment order that he was appointed in the existing vacancy. Learned counsel further submits that though it is mentioned in the appointment order as Part Time Sweeper, the petitioner's services were utilized for all other works 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) Department, dated 09.05.2012 from the date of completion of 10 years of service. But the respondents did not extend the same benefit to the petitioner, which is discriminatory.



W.P(MD)No.8933 of 2016

WEB COPY

8. The learned counsel finally submits that the petitioner is entitled for regularization from the date of completion of 10 years of service, as he 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 3 contends that as the petitioner was appointed as Part Time Sweeper, he 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 Sweeper, he is not entitled for regularization and other relief sought in this Writ Petition and prayed to dismiss the Writ Petition.



W.P(MD)No.8933 of 2016

WEB COPY

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 Sweeper from 02.02.1982.

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 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, the petitioner's appointment was approved the Chief Educational Officer, Trichy. From the date of appointment, the petitioner is discharging his duties without any break or blemish and he completed service of 34 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



W.P(MD)No.8933 of 2016

WEB COPY

Time employees, who completed 10 years of service. The case of the petitioner is that as the petitioner was appointed in the sanctioned post, he is entitled for the benefit under G.O.Ms.No.22. But the contention of respondents 1 to 3 is that as the petitioner was appointed as Part Time Sweeper and his nature of work is to be limited for two hours per day, he is not entitled for the benefit under G.O.Ms.No.22, for regularization of his services. It is true that the 3rd respondent has sent a proposal to the 2nd respondent to regularize the services of the petitioner and to place him 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 02.02.1992.

14. On a careful perusal of the appointment order, dated 26.01.1982, which is annuexed in paper No.1 of the typed set of papers, it clearly proves that the petitioner was appointed as Part Time Sweeper in the existing vacancy. The said appointment was approved by the Chief Educational Officer, Trichy, on 26.01.1982 in Na.Ka.No. 1289.B2/82. As such, this Court has no hesitation to note that the petitioner was appointed in the sanctioned post.



W.P(MD)No.8933 of 2016

WEB COPY

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) 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



W.P(MD)No.8933 of 2016

post. The answer to the question should be negative- against the appellant and in favour of the management appointed Teacher. This is so 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



W.P(MD)No.8933 of 2016

applied to the facts and circumstances of the present case.”

17. In view of the facts and circumstances of the case, this Court is satisfied that the petitioner had been working as Part Time Sweeper in a sanctioned post and had completed 10 years of service on 02.02.1992 and as such, from that date, the petitioner is entitled to get his 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 impugned order issued by the 2nd respondent herein in NaKa.No.67765/A5/E2/2014 dated 18.12.2014;



W.P(MD)No.8933 of 2016

WEB COPY

ii) The respondents 1 to 3 are directed to regularize the services of the petitioner from the date of completion of 10 years of service, i.e., 02.02.1992 and disburse all monetary benefits to him for which he is entitled from the said date;

iii) The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

20. No costs.

26.09.2023

Index : Yes / No
NCC : Yes / No
CM



W.P(MD)No.8933 of 2016

To,

WEB COPY

1. The Secretary to the Government,
Department of School Education,
State of Tamil Nadu,
Fort St. George, Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 006.
3. The Chief Educational Officer,
Trichy District, Trichy.
4. The Headmaster
Government High School,
Poongudi, Paganur Post – 620 009.
Trichy District.



WEB COPY



W.P(MD)No.8933 of 2016

BATTU DEVANAND, J.

CM

W.P.(MD)No.8933 of 2016

26.09.2023