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W.P.(MD)No.24649 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.24649 of 2019
and
W.M.P.(MD)No.21279 of 2019

K.Madasamy

... Petitioner

vs.

- 1.The Secretary to Government
of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai-600 009.
- 2.The Special Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai-600 005.
- 3.The District Collector,
Collectorate Campus,
Palayamkottai-627 007,
Tirunelveli District.



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4.The Tahsildar,
Taluk Office,
Aalangulam- 627 851,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents herein to regularize the services of the petitioner as Office Assistant or Night Watchman in the Tamil Nadu Basic Service with effect from the date of his first appointment namely, 01.09.1998 with continuity of service, all attendant service benefits such as grant of time scale from 01.09.1998, arrears of salary, future retiral and pensionary benefits, regular pension and the consequential and monetary benefits as has been ordered in the similar cases by this Court in i) W.P.No.32278 of 2006, dated 04.09.2007 and Government orders, ii) G.O.Ms.280, Finance (T and A) Department, dated 10.4.1991, iii) G.O.Ms.No.377, Finance (Ka.Ka.2) Department dated 30.8.2008, iv) G.O.Ms.No.505, Finance (Ka.Ka.2) Department dated 14.10.2009 and in the light of recommendation of the Tahsildar and Alangulam made in Na.Ka.A6.4228/2017, dated 16.08.2017 and to disburse all the arrears accrued on the above heads within a short date that may be fixed by this Court.



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For Petitioner : Mr.B.Brijesh Kishore
For Respondents : Mr.M.Lingadurai
Special Government Pleader

ORDER

This writ petition is filed for issuance of a writ of Mandamus, to direct the respondents herein to regularize the services of the petitioner as Office Assistant or Night Watchman under the Tamil Nadu Basic Service with effect from the date of his first appointment namely, 01.09.1998 with continuity of service and all attendant, service benefits including time scale from 01.09.1998, arrears of salary, future retiral and pensionary benefits, regular pension and the consequential and monetary benefits as has been ordered in the similar cases by this Court and Government orders and in the light of recommendation of the Tahsildar, Alangulam, dated 16.08.2017 and to disburse all the arrears accrued within stipulated time.



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2. The petitioner was appointed on 01.09.1998 as Night Watchman cum Masalchi and has rendered two decades of service in the Taluk office. The petitioner was assigned duty to clean the office in the morning, to bring drinking water and also to discharge his service as Night Watchman. But the respondents have not regularized the service of the petitioner. After several representations, finally after 10 years, the then 4th respondent, vide his letter, dated 26.06.2007, recommended to the District Collector, to absorb the petitioner in permanent post. In the said letter, it has been stated that the petitioner is working for more than 9 years by getting a sum of Rs.60/- as monthly salary. The respondents are having power to relax the service conditions and absorb the petitioner.

3. A similarly placed person namely P.Subramanian, who had worked as part time Masalchi was appointed as Office Assistant on full



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time basis. Another person, namely T.Subbarayalu, who was working as part time Masalchi was absorbed as full time Night Watchman. Likewise, the respondents have granted regularization to several persons. Since the respondents have failed to grant the same, the petitioner is before this Court. However, on the date of filing this writ petition, the petitioner had already attained superannuation. As on date, he is 62 years old.

4. The 4th respondent has filed a counter affidavit stating that the petitioner cannot be absorbed in Grade D post because the basic qualification of the Group D post is 8th standard but the petitioner has admitted the fact that he has completed only 4th standard. The rules and regulations for filling up of Group D post is that it has to be filled up by direct recruitment or by list of names from the employment exchange and the qualifications prescribed thereunder. Thereafter, a proper interview has to be conducted, then based on merit and ability the candidates ought



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to be accessed, then only the persons would be employed.

5. The counter affidavit also states that in the present case, the respondents have not carried out any recruitment process at all. Therefore, the appointment of the petitioner itself is illegal. Hence, the petitioner cannot claim for absorption in service. Moreover, absorption is not a fundamental right. Absorption and regulation can be carried out only based on any policy or scheme that has to be formulated by the Government. As on date, there is no scheme or G.O., where the petitioner is entitled to be considered for absorption. Therefore, the respondents prayed to dismiss this writ petition.

6. It is seen from the records that even though the petitioner has studied 4th standard, the respondents have recruited him as Night Watchman cum Masalchi. Further the respondents have submitted that



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there is no sanctioned post of Night Watchman cum Masalchi in the 4th respondent office. Moreover, the petitioner was over aged at the time of appointment. Hence in the case of the petitioner for each and every aspect relaxation is required therefore, it is not possible to regularize the petitioner as on date. The date of birth of the petitioner is 10.01.1960 and as on date the petitioner had attained superannuation and retired from service.

7. Therefore, this Court is of the considered opinion that the petitioner is not entitled to regularization. However, the petitioner is hailing from downtrodden section of community. The petitioner has served in the institution for more than two decades for a meager amount of Rs.60/-. The petitioner was not even paid the minimum wages which has been statutorily prescribed. Therefore, this Court is directing the 3rd respondent to pay Rs.1,00,000/- (Rupees One Lakh only) to the



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petitioner within a period of eight weeks from the date of receipt of a copy of this order.

8.With the above said direction, the writ petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

19.06.2023

Internet : Yes

NCC : Yes / No

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S.SRIMATHY, J

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