



WEB COPY

W.P.No.18291 of 2022



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 22.04.2024

CORAM:

**THE HON'BLE MR.JUSTICE S.S.SUNDAR  
and  
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR**

**W.P.No.18291 of 2022  
and W.M.P.No.17645 of 2022**

M.Mala

...Petitioner

vs.

1.The State of Tamilnadu,  
Rep. by its Secretary to Government,  
Rural Development and Panchayat Raj Department,  
Fort St. George, Chennai – 600 009.

2.The Additional Director,  
O/o. the Directorate of Rural Development & Panchayat Raj,  
Panagal Maligai, 4<sup>th</sup> & 5<sup>th</sup> Floor,  
Abdul Razak Street, Saidapet,  
Chennai – 15.

3.The District Collector,  
O/o. the District Collectorate,  
Ranipet District,  
Ranipet.

4.The Block Development Officer (B.P.),  
Panchayat Union, Arakkonam,  
Ranipet District – 631 003.

...Respondents

**Prayer in :** Writ Petition filed under Article 226 of Constitution of India,

to issue a Writ of Certiorarified Manadamus, to call for the records in



WEB COPY

connection with impugned order issued by the 3<sup>rd</sup> respondent bearing ref.Na.Ka.Pa.A5/3579/2016 dated 06.07.2022 and quash the same and direct the respondents to re-instate the petitioner and regularize her service from the date of order of appointment with all other attendant benefits including the monetary benefits.

For Petitioner : Mr.V.Prakash, Senior Counsel  
for Mr.K.Krishnamoorthy

For Respondents : Mr.Haja Nazirudeen,  
Additional Advocate General  
Assisted by Mrs.V.Yamuna Devi  
Special Government Pleader

### **ORDER**

**(Order of the Court was made by S.S.Sundar, J.)**

This petition is filed challenging the proceedings of the third respondent dated 06.07.2022 and to direct the respondents to reinstate the petitioner and regularize her service from the date of order of appointment with all other attendant benefits including the monetary benefits.

**2.The brief facts of the case are as follows:**

2(i).The petitioner was engaged as Work Assistant in March 1998.

It is admitted that she continued in the said post till the Government



issued G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5)

Department dated 06.08.2012.

WEB COPY

2(ii).By the said Government Order, the Government regularized the services of 184 persons who have completed 10 years as Work Assistant. All the persons who are identified as eligible, were directed to be appointed as Record Clerk or as Work Assistants on a regular basis. However, in the same Government Order, a condition was also prescribed that the benefit would be given only to those who joined in service in the year 1997 or earlier.

2(iii).It is admitted before this Court that the petitioner is also one among 184 Work Assistants who were regularized on the basis of G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012. By virtue of proceedings of the District Collector dated 04.09.2012, applying the benefit of G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012, the petitioner was appointed on regular basis as Record Clerk. However, the said order reads as follows:

“Nkw;gb ,e;epakdk; Kw;wpYk;

jw;fhypfkhdJ. ,e;epakdj;ijf; nfhz;L gpd;dh;



WEB COPY

W.P.No.18291 of 2022



vt;tpj chpikAk; Nfhuf;\$lhJ vd;Wk;,  
rk;ke;jg;gl;Ls;;s egh;fshy; mspf;fg;gl;Ls;s fy;tp  
rhd;Wfs;, Mtzq;fspd; nka;j;jd;ik jtwhdit vd  
gpd;dh; fz;lwpag;gl;lhy;, ahnjhU  
Kd;dwptpg;gpd;wp rk;ke;jg;gl;l egh;fs;  
gzpePf;fk; nra;ag;gLthh;fs; vdj;  
njhptpf;fg;gLfpwJ.”

2(iv).Even though the petitioner was in service pursuant to the appointment order that was issued to the petitioner on 04.09.2012, by the impugned order 06.07.2022, the petitioner was terminated from service on the ground that the petitioner was given appointment order wrongly and that the petitioner was not eligible to be regularized in terms of G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012, and that her appointment is contrary to G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012 and is liable to be recalled and hence the termination of service of the petitioner is inevitable. The said order of the District Collector dated 06.09.2022, terminating the service of the petitioner is challenged before this Court in the Writ Petition mainly on the ground that the impugned order is arbitrary and unconstitutional.



WEB COPY

W.P.No.18291 of 2022



3.Learned Senior Counsel appearing for the petitioner would rely upon two judgments, particularly, the judgment of a Division Bench of this Court in ***W.A.No.1458 of 2019 dated 20.01.2023***, which was passed in a case of similar nature. The learned Senior Counsel also pointed out that the order which was passed nearly 10 years after regularization, cannot be sustained on ground of delay and laches. Learned Senior Counsel appearing for the petitioner also raised various grounds supporting the case of the petitioner.

4.The third respondent has filed a detailed counter *inter alia* pointing out that G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012 is not applicable to the case of the petitioner as there is no specific inclusion of persons who were appointed after 1997. Referring to the fact that the petitioner though had completed 10 years of service, had joined in service only on March 1998, the third respondent reiterated in the counter affidavit that the petitioner's appointment by order dated 04.09.2012 is illegal inasmuch as the appointment is contrary to G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012.



WEB COPY

5.It is contended by the learned Additional Advocate General that the petitioner was appointed as Work Assistant only in the year 1998 and therefore the petitioner is not eligible to get benefit of G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012. Since the facts are not in issue and the petitioner's service was regularized in 2012 on the assumption that the petitioner was appointed in 1997 in terms of the order of appointment dated 04.09.2012, the respondents have reserved their right to terminate the services in case the appointment is found to be irregular later.

6.Learned Senior Counsel appearing for the petitioner however relied upon a Division Bench judgment in W.A.No.1458 of 2019 dated 20.01.2023 ***[M.Shanmugam and 3 others vs. State of Tamil Nadu, represented by its Principal Secretary, Rural Development & Panchayat Raj Department, Chennai and 3 others]***, wherein the order of the learned Single Judge dismissed the Writ Petition filed by the four individuals who were appointed between 1999 and 2000, was considered.

7.Considering the fact that the appellants therein were made permanent and they were in service for more than 10 years after



WEB COPY



regularization, refused to accept the case of the respondents by holding that the Government is guilty of exploitation of the appellants for more than 22 years. The relevant paragraphs of the aforesaid judgment is extracted hereunder:

*“21.The Hon-ble Supreme Court even after the judgment in Umadevi had held that in appropriate cases, it will be open to regularise the services of temporary daily rated employees if it is shown that the nature of the work done by them was permanent and they were served for more than 10 years. This Court has also issued several directions in this regard.*

*22.No doubt, the exploitation of this daily rated employees by the Government should be stopped. But, at the same time, if we refuse to regularize the persons like the appellants, who have put in 20 years of service as daily rated employees, we would only be encouraging exploitation by the state. If the private individual running an industry with 20 employees cannot have temporary employees and the Tamil Nadu Industrial Employees (Conferment Permanent Status) Act would apply to them, we see no reason to allow those persons, who are working under the State or its wings to suffer the temporary employment for a span of 10 years and more.*



WEB COPY

W.P.No.18291 of 2022



23. *The learned Government Advocate would submit that if we direct regularisation of the appellants that would open the flood gates. We are alive to that fact. The Government is guilty of exploitation of atleast these four individuals for more than 22 years now. If their service had been regularized, they would have been entitled to various benefits including increments, Dearness Allowance etc. The Government should be a model employer. We find that the Government has been a worse employer in the case of these four appellants and it had been exploiting them for more than 22 years. Whatever is the difference between the daily wages that has been paid to the appellants and what should have been paid to them if they had been permanent employees would be the illegal gain made by the Government at the cost of these appellants. We should not be misunderstood as being sentimental or emotional, we are only sympathetic. Sympathetic to the cause of such persons, who are exploited by the mighty state.*

24. *We therefore, have no hesitation in setting aside the order of the Writ Court and directing regularization of the appellants with effect from the date on which they completed 10 years in service. We make it clear that the appellants would be entitled to monetary benefits only from the date on which they came before this Court in W.P.No.32112*



*of 2018 i.e., on 03.12.2018.”*

8.It was further pointed out that the Hon'ble Supreme Court, dismissed the Special Leave Petition as against the order of the Division Bench dated 20.01.2023 after recording the fact that the Writ Petitioner therein had been in service for the past 22 years.

9.Learned Additional Advocate General however relied upon the judgments of this Court in W.P.No.10386 of 2017 dated 27.07.2021 wherein the Writ Petition filed by an individual who joined as daily wage on 01.12.1999 and whose service was regularized pursuant to G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012, but was cancelled on the ground that the employee had not completed 10 years of service in the year 1997. The order of termination of the employee was challenged before this Court relying upon the decision of the learned Single Judge in ***S.Sujatha vs. State of Tamil Nadu*** (dated 09.11.2022 in W.P(MD).No.12768 of 2022 etc batch). Following the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab vs. Jagdip Singh*** reported in ***AIR 1964 SC 521***, wherein the Hon'ble Supreme Court has held that a void order of confirmation of employment made by an authority who had no powers cannot give any legal right to the Government servant, the learned Single



WEB COPY

Judge was unable to subscribe to the view expressed in S.Sujatha vs. State of Tamil Nadu, directed to place the matter for reconsideration by a larger bench. It is to be noted that the learned Single Judge in W.P.No.18291 of 2022 dated 11.04.2023 has understood G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012 and held that the appointment of the petitioner therein was cancelled on the ground that the petitioner had not completed 10 years of service in the year 1997. In other words, the learned Single Judge was under the impression that the G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012, gives benefit to only those who have completed 10 years of service in the year 1997.

10.This Court need not wait for the outcome of reference in view of the judgment of Division Bench in M.Shanmugam and Others extracted above. Further, the learned Single Judge failed to take note of the object of G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012. It is also to be noted that as in the case before the Division Bench in M.Shanmugam and Others, the petitioner herein was in service from 1998 and completed 14 years when she was appointed on regular basis and she had been terminated after completing



WEB COPY

W.P.No.18291 of 2022



another 10 years. It is true that the Hon'ble Supreme Court has ruled that the Government servant who has no right to choose post or particular status but obtained an order by an Authority who is not competent to confirm the benefit has no protection in law based on such invalid appointment. In the judgment of the Hon'ble Supreme Court relied upon by the learned Single Judge, it was held that some persons were appointed as Tahsildar, but no post was available at the time when their appointment was confirmed. The Hon'ble Supreme Court therefore examined the effect of a void order of confirmation and held that the appointment by the Authority has no power to make it and cannot give the person a legal right.

11.The Hon'ble Supreme Court laid the position that the order made by an authority, who is not competent, is void and that the Government can always cancel such void order and that the persons who have no legal right to the post cannot be taken advantage of such illegal order to claim any benefit. The petitioner was appointed on 01.10.1998 as Work Assistant in Nemily Panchayat Union. The Panchayat Union passed a resolution on 10.12.2007 approving the decision to seek regularization of service of the petitioner in the vacant post.

G.O.Ms.No.69 dated 06.08.2012 was issued by the first respondent



WEB COPY

sanctioning for absorption of 184 persons including the petitioner, relaxing the recruitment rules. Appointment order dated 04.09.2012 was issued to the petitioner appointing her in the post of Record Clerk on 05.10.2012, the service register of the petitioner was opened. In December 2012, the petitioner passed Departmental test for officers of the Panchayat Development Department Paper II & III and has continuously worked till the order of termination dated 06.07.2022. By the impugned order, a person who is in service and doing continuous work for more than 24 years is terminated. G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012 is applicable only to those who have been appointed during 1997 or prior to 1997 and had completed 10 years of service as on 06.08.2012.

12. After finding that 191 employees have completed 10 years of service as on 06.08.2012, the Government has excluded 7 members who had been appointed after 1997 only as a policy of Government regarding regularization of Technical Assistant as Road Inspector post on completion of 10 years of service. The cut off date was not on the basis of any intelligible criteria which would justify the discrimination between persons appointed before 1997 and persons appointed just one year after.



The benefit of regularization was given to those who have completed 10 years of service as on 06.08.2012. The basis of Policy of the Government in fixing cut off is not evident from G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012. The petitioner was subsequently regularized following the same Government Order. The regularization appears to be based on the recommendation of Panchayat Union Council. This Court is unable to justify the termination 10 years after the order of regularization.

13.It is seen from the facts that the petitioner has completed 10 years of service even in October 2008 is admitted. When G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012 was issued, it was open to the petitioner to challenge the same on the ground of discrimination between the employees who were appointed before 1997 and persons appointed in 1998. It is true that the petitioner was appointed on the wrong understanding that the petitioner had completed 10 years of service and joined in service in 1997. However, it was not on the basis of any misrepresentation by the petitioner but on an erroneous assumption of the District Collector. Even though the order states that the regularization of petitioner is purely temporary, the petitioner had worked for 24 years in a permanent post.



The petitioner was not disturbed atleast for 10 years. The fact that the petitioner's service on a regular basis for a period of 24 year prompts this Court to follow the Division Bench in M.Shanmugam's case.

14.The learned Additional Advocate General relied upon a judgment of the learned Single Judge in W.P.No.10386 of 2017 dated 27.07.2021 in the case of ***C.Jayaseelan vs. The Director, Rural Development and Panchayat Raj, Chennai and two others***, wherein the order refusing to regularize the services of the writ petitioner was confirmed as the writ petition was dismissed. The facts of that case are different. The petitioner therein claimed that he was in service on daily wages from 01.01.1997. Placing reliance on regularization order passed in favour of another person who had served for 17 years vide G.O.(Ms)No.38 dated 23.09.2008, the Writ Petitioner challenged the order rejecting his request for regularization.

15.Taking note of the fact that the petitioner therein was working with the respondent only from 01.12.1999 and had completed just 8 years of service, and that he cannot compare himself with other persons who was in service for more than 17 years, the learned Single Judge held that the petitioner who has not completed 10 years of service is not



entitled to any relief.

WEB COPY

16.Learned Senior Counsel appearing for the petitioner relied upon a judgment of the learned Single Judge of this Court in ***W.P.(MD)No.12768 of 2022 etc batch*** dated ***09.11.2022*** in the case of ***S.Sujatha vs. The State of Tamil Nadu represented by its Principal Secretary, Rural Development and Panchayat Raj Department, Chennai and five others***, wherein the petitioner therein along with others challenged the order of termination issued by the fourth respondent dated 14.06.2022. All the Writ Petitioners before the learned Single Judge were appointed as Work Assistants in various Local Bodies prior to 1997. The petitioner therein was terminated from service and the learned Single Judge allowed the Writ Petition has held as follows:

*“9. The orders are ex-facie illegal and bereft of jurisdiction. The writ petitioners herein admittedly had served the local body for more than 15 years by the time they were regularised by the orders of Government. The petitioners' probation was declared in the regularised post as Record Clerk. They had been in service for almost ten years. The petitioners cannot be said to be guilty of any kind of misrepresentation. Only after their service particulars were duly checked and verified, their names were proposed for regularisation. Their names are found in annexure 2 of the G.O.Ms.No.69, Rural Development and Panchayat Raj (E3) Department, dated 06.08.2012. To show the door to the writ petitioners at this point of time is monstrously unjust.”*



17.From the facts, this Court is of the view that the judgment of the learned Single Judge is not the same as in the present case. It is to be noted that the Writ Petitioners therein were appointed prior to 1997. Therefore, they were given the benefit of G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012. Having regard to peculiar facts and circumstances of the case, where the petitioner is not found guilty of any misrepresentation. Therefore, this Court is of the view that the impugned order challenged in the Writ Petition is arbitrary and invalid in the light of the judgment of Division Bench dated 20.01.2023 in W.A.No.1458 of 2019 in the case of M.Shanmugam and 3 others vs. Government of Tamil Nadu and Others.

18.The contention/submission of the learned Additional Advocate General is that the impugned order which is in the nature of correcting the error committed earlier is justified. The question is not only about the eligibility of the petitioner to get the benefit of G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012, but also the right of the petitioner to seek regularization independently, on completion of 10 years in tune with the Policy of the Government to regularize the persons who have completed 10 years service. The discrimination between persons who were appointed on daily wages



before 1997 and after 1997 appears to be on the basis of decision taken by the Government in the case of permanent absorption of Technical Assistants (daily wages basis) as Road Inspectors-II.

19.It is true that the petitioner is not entitled to the benefit of G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012. The said Government Order reflects the Policy of the Government to regularize the employees who are working as Work Assistants for a period of 10 years based on the benefit already extended to Technical Assistants who were appointed on temporary basis. Therefore, a condition was put in the said Government Order to the effect that the benefit of G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012 will be given only for those who were appointed in the year 1997 or prior to 1997. Since the cut of date is not on the basis of any reasonable classification, the same is arbitrary and discriminatory.

20.In case, the petitioner was not given the benefit of G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012, it was open to the petitioner to seek regularization relying upon G.O.Ms.No.69 on the ground that the discrimination is not based on any rational criteria. G.O.(Ms)No.69, Rural Development and Panchayat Raj (E5) Department dated 06.08.2012 was issued pursuant to



WEB COPY

W.P.No.18291 of 2022



the decision of the Government whereby the Technical Assistants were directed to be regularized on completion of 10 years of service as Road Inspector-II. We have no clue to infer the basis to fix 1997.

21.For the reasons stated above, we prefer to follow the decision of Division Bench in M.Shanmugam's case above referred to. Therefore, the impugned order dated 06.07.2022 passed by the third respondent is set aside and the writ petition is allowed. The respondents are directed to reinstate the petitioner from the date of her appointment and to grant all other service benefits that are extended to all other persons vide G.O.Ms.No.69 dated 06.08.2012.

22.The reinstatement of the petitioner shall be done within a period of two weeks from the date of receipt of a copy of this order and other benefits including monetary benefits shall be provided to the petitioner within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R.,J.) (N.S.,J.)  
22.04.2024

Index: yes/no  
Speaking order:yes/no  
Neutral Citation:yes/no

<https://www.mhc.tn.gov.in/judis>



pam

WEB COPY

W.P.No.18291 of 2022





To

WEB COPY

1. The Secretary to Government,  
Rural Development and Panchayat Raj Department,  
Fort St. George, Chennai – 600 009.
2. The Additional Director,  
O/o. the Directorate of Rural Development & Panchayat Raj,  
Panagal Maligai, 4<sup>th</sup> & 5<sup>th</sup> Floor,  
Abdul Razak Street, Saidapet,  
Chennai – 15.
3. The District Collector,  
O/o. the District Collectorate,  
Ranipet District,  
Ranipet.
4. The Block Development Officer (B.P.),  
Panchayat Union, Arakkonam,  
Ranipet District – 631 003.



WEB COPY



W.P.No.18291 of 2022

**S.S.SUNDAR, J.**  
and  
**N.SENTHILKUMAR, J.**

Pam

W.P.No.18291 of 2022

22.04.2024