



W.P.No.23823 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.23823 of 2023
and W.M.P.No.23343 of 2023

M.Sivappa

...Petitioner

-Vs -

1. The State of Tamilnadu,
Rep. by its Principal Secretary,
Rural Development Department,
Secretariat, Fort St. George,
Chennai – 9.
2. The Director of Rural Development,
Panagal Building,
Saidapet, Chennai -15.
3. The District Collector,
Krishnagiri District.
4. The Personal Assistant (Development),
to the District Collector,
Krishnagiri District.
5. The Block Development officer,
Veppanapalli Panchayat Union,
Krishnagiri District.

... Respondents

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



W.P.No.23823 of 2023

records of the third respondent in Na.Ka.No.28224/2020/M3 dated 04.12.2020 quash the same and consequently direct the respondents to regularize the services of the petitioner from the initial date of appointment as was done with respect to Chinnasamy vide G.O.Ms.No.14, Rural Development and Panchayat Raj Department, dated 23.01.2023.

For Petitioner : Mr.Dakshayani Reddy, Senior Counsel
For Mr.C.Mahendran
For Respondents
For R1 to R4 : Mr.E.Vijay Anand
Additional Government Pleader
For R5 : Mr.D.Ravichander
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 04.12.2020, thereby rejected the request made by the petitioner for regularisation of his service from the date of his initial appointment.

2. The petitioner was originally appointed as Masalji by the fifth respondent on 01.03.1991 on consolidate pay. Though, the order of appointment described as part time Masalji, the petitioner was working full time in the office of the fifth respondent. Thereafter, the petitioner was promoted to the post of Night Watchman temporary and once again



W.P.No.23823 of 2023

he was reverted back to original post. While being so, the government passed order in G.O.Ms.22 Personnel and Administrative Reform(F) Department, dated 28.12.2006, thereby ordered that who were appointed on consolidate pay or daily wage and had completed ten years of services were entitled for regularisation of service.

3. As per the recommendation of the fifth respondent, similarly placed person one Chinnasamy was also recommended along with the petitioner. However, the petitioner's service was not regularised. Therefore, he was constrained to filed writ petition in W.P.No.33949 of 2013 and this Court by an order dated 23.07.2020, directed the third respondent to consider the case of the petitioner for regularisation as recommended by the fourth respondent. The said request was rejected by the first respondent on the ground that the petitioner was appointed as part time Masalji as such G.O.Ms.No.74 Personnel and Administrative Reforms (F) Department, dated 27.06.2013 is not applicable to the petitioner. However, the similarly placed person the said Chinnasamy succeeded in the writ petition and thereafter the first respondent by an order dated 23.01.2023 in G.O.Ms.No.14 Rural Development and



W.P.No.23823 of 2023

Panchayat Raj Department, ordered to regularise the service of the said Chinnasamy. Hence, the petitioner filed the present writ petition with the above prayer.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. This issue already dealt with by the Hon'ble Division Bench differently and as such this Court referred the matter to a Larger Bench of this Court as to whether the part time employee are entitled to regularisation as per the G.O.Ms.No.74 Personnel and Administrative Reforms(F) Department, dated 27.06.2013 or whether the said government order will be applicable only prospectively. The Large Bench of this Court by an order dated 26.02.2024, held as follows :-

“36. Having considered the entire literature that is available in the form of various pronouncements of this court, as well as the Hon'ble Supreme Court, we find it difficult to accept the judgment of the Division Bench in State of Tamil Nadu. by its Secretary, Public Works Department. and another vs. S. John Charles and others, as one laying down the law to the effect that the



WEB COPY



W.P.No.23823 of 2023

Government is free to appoint persons either in part-time or on a full-time temporary basis to permanent posts and oust them out at its whims and fancies and we conclude that such unbridled exercise of indiscretions by the State Government would amount to exploitation.

37. We are of the considered opinion that wherever the posts are permanent in nature and they come within 86 categories of posts which form the Tamil Nadu Basic Service, temporary or part-time employment should be avoided and those persons, who have been appointed to such posts and who have completed 10 years of service as on 28.02.2006 would be entitled to regularisation de hors the nomenclature that is given to the appointment.

38. In fine, we hold

(a) If it is shown that the appointment is made to anyone of the 86 categories of posts enumerated in the Tamil Nadu Basic Service immaterial of the fact that whether such appointment is part-time or full-time, the employee would be entitled to the benefit of regularisation de hors G.O.Ms.No.74 dated 27.06.2013.

(b) If it is shown that the nature of employment is temporary and the requirement will cease to exist after a particular time, like those appointments that are made under various welfare schemes, it will then be open to



WEB COPY



W.P.No.23823 of 2023

the Government to engage temporary employees or part-time employees.

39. We conclude that the judgments in State of Tamil Nadu. by its Secretary, Public Works Department, and another vs. S. John Charles and others, and State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others vs K.Rajakrishnan, cannot be taken as laying down an inflexible rule of law that any part-time or temporary employee who has completed 10 years of service on 28.02.2006 will not be entitled to regularisation. The benefit of regularisation will depend on the nature of the job and the fact that whether the post falls within any one of the 86 categories mentioned in the Special Rules for Tamil Nadu Basic Service.

40. Having answered the reference as above, we direct the Registry to list the Writ Petition before the learned Single Judge as per the roster for disposal in accordance with the opinion expressed above.”

Accordingly, the Hon'ble Larger Bench directed the Registry to place the matter before this Court for disposal in accordance with the opinion express above.



W.P.No.23823 of 2023

6. As extracted above, wherever the posts are permanent in nature and they come within 86 categories of posts which form the Tamil Nadu Basic Service, temporary or part time employment should be avoided and those persons, who have appointed to such posts and who completed ten years of service as on 28.02.2006 would be entitled for regularisation irrespective of the nomenclature that is given to their appointment. Therefore, the service of the petitioner has come under the categories of Tamil Nadu Basic Service. Hence, the appointment of the petitioner as part time or full time, he is entitled for regularisation deors the government order in G.O.Ms.No.74 Personnel and Administrative Reforms (F) Department dated 27.06.2013.

7. In view of the above discussions, the order impugned cannot be sustained and liable to be quashed. Accordingly, the impugned order dated 04.12.2020 passed by the third respondent in Na.Ka.No. 28224/2020/M3, is hereby quashed. The respondents are directed to regularise the service of the petitioner from the date of his initial appointment with all service benefits, within the period of four weeks from the date of receipt of a copy of this Order.



W.P.No.23823 of 2023

WEB COPY 8. With the above directions, the Writ Petition stands allowed.

Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

19.07.2024

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

rts



W.P.No.23823 of 2023

To
WEB COPY

1. The Principal Secretary,
State of Tamilnadu,
Rural Development Department,
Secretariat, Fort St. George,
Chennai – 9.
2. The Director of Rural Development,
Panagal Building,
Saidapet, Chennai -15.
3. The District Collector,
Krishnagiri District.
4. The Personal Assistant (Development),
to the District Collector,
Krishnagiri District.
5. The Block Development officer,
Veppanapalli Panchayat Union,
Krishnagiri District.



WEB COPY



W.P.No.23823 of 2023

G.K.ILANTHIRAIYAN. J.

rts

W.P.No.23823 of 2023
and W.M.P.No.23343 of 2023

19.07.2024