



W.P. No.10870 of 2017 &
W.M.P.No.11814 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

W.P.No.10870 of 2017
and
W.M.P.No.11814 of 2017

1.The Sambanki

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Secretariat,
Chennai – 600 009

2.The Director of Elementary Education,
DPI Campus,
College Road,
Nungambakkam,
Chennai-600 034.

3.The District Elementary Educational Officer,
Vellore District,
Vellore – 635 901.

4.The Assistant Elementary Educational Officer,
Kathili,
Vellore District – 635 901.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records connected with the impugned order passed by the 1st respondent in Lr.No.6630/ni.va.2(2)/2014-2 dated 26.08.2014 and quash the same and consequently direct the 1st respondent to absorb the petitioner in regular time scale of pay in the existing vacancies.

For Petitioner : Mr.V.S.Jagadeesan for
M/S.R.Rengaramanujam

For Respondents 1 to 4 : Mr.M.Alagu Goutham
Government Advocate

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Pleader appearing for the respondents and perused the materials available on record.

2. This writ petition has been filed seeking a direction to the 1st respondent to absorb the petitioner in regular time scale of pay in the existing vacancies by quashing the order dated 26.08.2014 which is impugned in this writ petition.



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3. The case of the petitioner is that he was recruited through employment exchange as part time Sweeper by the 4th respondent and joined duty on 17.09.1983. He was in continuous service without break on consolidated pay for the past 30 years. He has been working continuously without any break with the hope of absorption in the regular time scale of pay in the existing vacancies.

4. In Vellore District, there are more than 50 vacancies for Sweeper, Gardener, Waterman and Watchman are available in regular time scale of pay. When the petitioner requested for the regularisation/absorption, it was replied that in view of the ban order, the posts could not be filled up. Even after lifting of the ban, the petitioner was not considered. The Government had took a policy decision to absorb the existing employees who are working on daily wages for more than 10 years in regular vacancies by relaxing the rules if necessary in terms G.O.Ms.No.22 Personnel and Administrative Reforms (F), dated 28.02.2006 and G.O.(Ms).No.74 Personnel and Administrative Reforms (F) Department, dated 27.06.201.



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5. Thereafter, the petitioner made representation to the 1st respondent on 17.08.2012 to absorb him in the existing vacancy in regular time scale of pay but no orders have been passed. Therefore, he filed a writ petition in W.P.No.33575 of 2013 for a direction to consider his representation. The said writ petition was disposed of on 11.12.2013 with a direction to the 1st respondent to consider his representation. Thereafter, the 1st respondent issued a letter No.6630/ni.va.2(2)/2014-2 dated 26.08.2014 wherein the request of the petitioner was rejected. The said order is impugned in this writ petition.

6. The respondents 1, 2 & 4 did not choose to file their counter affidavit. The 3rd respondent only filed his counter affidavit. In fact, the 1st respondent who passed the impugned order has to file the counter affidavit or with the authorisation of the 1st respondent, the 3rd respondent can file the counter affidavit. But on perusal of the averments in the counter affidavit, it is clear that the 3rd respondent filed the counter affidavit only on behalf of him.



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7. The learned counsel for the petitioner submits that the petitioner who is working as part time Sweeper, falls under the category 12 of the Special Rules for Tamil Nadu Basic Service and he relied on the judgment of the Full Bench of this Court in W.P.No.23823 of 2023 contending that though the petitioner is working as part time Sweeper, he has completed 10 years of service and as on 28.02.2006 and as such, he is entitled for absorption into regular time scale of pay.

8. The learned Government Advocate appearing for the respondents contends that as the petitioner is working as part time Sweeper, he is not entitled for absorption or for claiming time scale of pay and sought to dismiss this writ petition.

9. Heard the submissions of the respective counsels and perused the judgment of the Full Bench of this Court as state *supra*. It is appropriate to extract the relevant paragraph of the Full Bench judgment for better adjudication of this case:

“37. We are of the considered opinion that wherever the



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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 dehors the nomenclature that is given to the appointment.

38.In fine, we hold

(a) If it show 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 dehors G.O.Ms.No.74 dated 27.06.20113.”

10. The Full Bench of this Court opined that wherever the posts are permanent in nature or temporary or part-time and they come within 86 categories of posts which form the Tamil Nadu Basic Service and having been appointed in such posts and who have completed 10 years of service as on 28.02.2006, they are entitled to regularisation *dehors* the nomenclature that is given in the appointment.



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11. Admittedly in the present case the petitioner was appointed on 17.09.1983 as part time Sweeper by the 4th respondent and he is continuously working without any break for 30 years as on the date of filing of the writ petition. Accordingly, the considered opinion expressed by the Full Bench with regard to entitlement of regularisation for the post that comes within 86 categories of Tamil Nadu Basic Service is clearly applicable to the petitioner's case and as such following the judgment of the Full Bench of this Court, the impugned order issued by the 1st respondent would not sustain in law and is liable to be set aside.

12. For the reasons stated above, the writ petition is allowed with following directions:

- 1) The order issued by the Respondent No.1 in letter No.6630/ni.va.2(2)/2014-2 dated 26.08.2014 is hereby set aside.
- 2) The 1st respondent is directed to absorb the petitioner in regular time scale of pay in existing vacancies and settle all the retired and terminal benefits within the period of 2 months from the date of receipt of a copy of this order.



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13. Consequently, the miscellaneous petition stands closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
dpa

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