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W.P.No.33146 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.33146 of 2023
and WMP No.32833 of 2023

J.Ramesh

....

Petitioner

-Vs-

- 1.The Industries Commissioner and
Director of Industries and Commerce
Department of Industries and Commerce
SIDCO Industries Complex
Guindy, Chnneia-32.
- 2.The Chief Executive Officer
The INDCOSERVE
No.35, Church Road
Coonoor-643101.
The Nilgiris District.
- 3.The Joint Director (Tea)
INDCOSERVE Campus
Coonoor-643101.
The Nilgiris District.
- 4.The Additional Director (Tea)
INDCOSERVE Campus
Coonoor
The Nilgiris.
- 5.The Director-BikkattyuIndco Tea Factory
The INDCOSERVE
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6.The Managing Director
The Bikkatty Industrial Cooperative
Tea Factory Limited
Bikkatty, IND.1703, Bikkatty P.O.,
The Nilgiris-643 209.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the entire recprds pursuant to the proceedings dated 04.08.2023 vide in Na.Ka.No.JDT/2022-23 of the 6th respondent, quash the same and consequently direct the 6th respondent to regularize the petitioner's service and to disburse all the monetary benefits from the date of appointment as watchman from 01.03.1991 with promotions and increments and all other benefits.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.P.Balathandayutham
Special Government Pleader for R1, R5 & R6

No appearance for R2 to R4

ORDER

This writ petition has been filed challenging the impugned proceedings of the 6th respondent dated 04.08.2023 and for a consequential direction to the 6th respondent to regularize the services of the petitioner with all attendant benefits effective from 01.03.1991.

2.The case of the petitioner is that he was appointed as a Watchman in the 6th respondent factory on 01.03.1991. Initially, he was paid wages on a daily basis. In



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the year 1995, the petitioner was conferred with a permanent status and he was absorbed. Initially, the petitioner was paid consolidated pay of Rs.3,750/-. It was increased from time to time. The petitioner had put in nearly 27 years of service. However, his request for regularization was not considered. In view of the same, the petitioner filed WP.No.29468 of 2022. This writ petition was disposed of by an order dated 16.11.2022 and a direction was given to the 6th respondent to consider the claim made by the petitioner for regularization from the date of his original appointment and pass orders within a period of eight weeks.

3.Pursuant to the above order, the 6th respondent through the impugned proceedings dated 04.08.2023, rejected the claim made by the petitioner on the ground that there is no sanctioned post of Watchman as per the bye-law and hence, the services of the petitioner cannot be regularized. That apart, the petitioner also does not possess the educational qualification or experience. Aggrieved by the same, the present writ petition has been filed before this Court.

4.The 3rd respondent and the 6th respondent have filed counter affidavits. They have also taken a stand that there is no sanctioned post of Watchman available in the 6th respondent factory and therefore, the claim made by the petitioner for regularization cannot be considered. Accordingly, they have sought for the dismissal of this writ petition.



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5.Heard Mr.S.Saravanan, learned counsel for the petitioner and Mr.P.Balathandayutham, learned Special Government Pleader for R1, R5 & R6. There is no appearance for R2 to R4 either in person or through counsel.

6.In the considered view of this Court, the services of the petitioner has been utilized for the last 27 years and the petitioner is not regularized on the ground that he was not holding a sanctioned post. The fact that the petitioner is holding a post for a period of 27 years shows that there was necessity to engage the petitioner in the concerned post.

7.The issue regarding engaging persons for a long period of time and not regularizing them in service was considered by the full Bench of this Court in the light of the relevant Government orders in **M.Sivappa .vs. State of Tamil Nadu, rep. by its Principal Secretary, Chennai-15 and Others** reported in **2024(2) CTC 1**. The relevant portions are extracted hereunder:

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, W.A.Nos.2875 & 2644 of 2018, etc., dated 16.8.2019, as one laying down the law to the effect that the Government is free to appoint persons either in part- time or on a full-time temporary basis to



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permanent posts and oust them out at it 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 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 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, W.A.Nos.2875 & 2644 of 2018, etc., dated



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16.8.2019 and State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others vs K.Rajakrishnan, W.A.(MD).No.836 & 837 of 2014, dated 5.7.2023 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.

8.It is clear from the above that where a person holds any post out of the 86 categories which has been identified and completes 10 years of service as on 28.02.2006, he will be entitled for regularization de hors the nomenclature that is given to the appointment. This Court further made it clear that it is immaterial as to whether such appointment is part-time or full time. This Court also lamented that appointing persons on a temporary basis for a long time will amount to exploitation.

9.The case in hand is a textbook case where the services of the petitioner has been utilized for 27 long years and the petitioner has not been regularized. Such attitude on the part of the respondents will clearly amount to exploitation. This attitude is nothing short of slavery and in a country which is governed by rule of law, this Court can never permit such exploitation and more particularly by the Government and its instrumentalities.



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10. In the light of the above discussion, the impugned proceedings of the 6th respondent dated 04.08.2023, is hereby quashed. The matter is remanded back to the file of the 6th respondent with a direction to pass appropriate orders by regularizing the services of the petitioner in the light of the judgment of the full Bench. This process shall be completed within a period of eight weeks from the date of receipt of copy of the order.

11. In the result, this writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

NCS : Yes/No

KP

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