



Writ Petition No.34597 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2024

PRONOUNCED ON: 22 .04.2024

CORAM

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.34597 of 2019
& WMP.No.35349 of 2019

S.Govindaraj

..Petitioner

VS.

1.The Commissioner,
The Rural Development and Panchayat Raj,
Panagal Building,
Chennai.

2.The District Collector,
Sathuvachari,
Vellore-9

3.The Block Development Officer,
Solayarpettai Panchayat Union,
Thirupattur Taluk,
Vellore District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order issued by the second respondent proceedings in Na.Ka.Pa.E-3/6060/2015 dated 26.10.2018 quash the same and



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consequently direct the respondents to regularize the petitioner's service from the date of completion of ten years of service as per the Government Order in G.O.Ms.No.22 dated 28.02.2006 with all back wages and attendant benefits from the date of appointment.

For Petitioner : Mr.R.Govindasamy

For Respondents : Mr.M.Alagu Gowtham, GA for RR1 & 2
Mr.L.S.M.Hasan Fizal, AGP for R3

ORDER

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records of the impugned order issued by the second respondent proceedings in Na.Ka.Pa.E-3/6060/2015 dated 26.10.2018 quash the same and consequently direct the respondents to regularize the petitioner's service from the date of completion of ten years of service as per the Government Order in G.O.Ms.No.22 dated 28.02.2006 with all back wages and attendant benefits from the date of appointment.

2.According to the petitioner, he was appointed as a Gardener by the third respondent vide proceedings dated 10.01.1980 on consolidated monthly pay of Rs.3000/- and from the date of his appointment, the



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petitioner has been working as such. The petitioner made several representations to the respondents, requesting to regularize his service. But his representations were not considered. While so, the Government has issued G.O.No.22, Personnel and Administrative Reforms Department dated 28.02.2006, extending the benefit of regularization of services of the persons who worked on a consolidated pay for more than 10 years as on 01.01.2006. Based on the said Government Order, the second respondent sent a proposal to the first respondent vide proceedings dated 27.08.2009 to regularize the service of the petitioner. However, no order was passed on the proposal sent by the second respondent. Hence, the petitioner filed a Writ Petition in WP.No.446 of 2015, seeking a Writ of Mandamus to the respondents therein, to consider his representation dated 28.10.2014, to regularise his service. The said Writ Petition was disposed of by this Court on 21.09.2017, directing the second respondent herein/ the District Collector to consider his representation dated 28.04.2014 and pass orders on merit and in accordance with law. Thereafter, the second respondent/District Collector has passed the impugned order dated 28.10.2018, rejecting the representation made by the petitioner without any valid reasons. Challenging the same, the petitioner has constrained to file



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the present Writ Petition.

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3.A detailed counter affidavit has been filed on behalf of the third respondent, wherein, it is stated that the post in which the petitioner is working as a Gardener, did not come within the categories of posts sanctioned under the Government/Panchayat funds and the wages will be paid to the petitioner from the sale proceeds of the fruits yielded in the garden. Further, the petitioner was not recruited through Employment Exchange. The G.O.No.22, Personnel and Administrative Reforms Department dated 26.02.2006 has been issued for regularisation of temporary employees who were sponsored by the Employment Exchange and the Government in a regular sanctioned post continuously without any break. But the petitioner was neither sponsored by the Employment Exchange nor the post in which he is working is a regular sanctioned post. Thus, his service has not been regularised. Therefore, the second respondent has rightly rejected the representation of the petitioner vide impugned order dated 26.10.2018, which requires no interference. With these averments, the third respondent sought for dismissal of the Writ Petition.



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4.Heard Mr.R.Govindasamy, the learned counsel appearing for the petitioner and Mr.Alagu Gowtham, learned Government Advocate appearing for the first and second respondents and Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appearing for the third respondent.

5.It is the case of the petitioner that he has been working in the third respondent Panchayat as a Gardener from 10.01.1980 onwards on consolidated basis. It is an admitted fact that the third respondent has issued an appointment order on 10.01.1980. The petitioner continuously worked as a consolidated worker for 39 years without any break. On a perusal of the proposal sent by the second respondent in proceedings Na Ka No.Pa.As/ 13695/2008 dated 27.08.2009 to the first respondent seeking to regularise the service of certain employees, the name of the petitioner was included. Even in the proceedings of the Personal Assistant(Development), Vellore, the Office of the District Collector, Vellore dated 24.03.2009, the petitioner name was found. It is the contention of the petitioner that the similarly situated persons i.e., Ponnusamy and Dinakaran, whose names were also recommended for regularisation alongwith the petitioner was considered



and their services were regularised.

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6. Though it is contended by the respondents in their counter and in their arguments that the petitioner was not sponsored by the Employment Exchange and he was not working in the sanctioned post and as such, he was not entitled to regularisation under G.O.Ms.no.22, Personnel and Administrative Reforms Department dated 28.02.2006, this Court noticed that the respondents very strangely avoided to answer the specific contentions of the petitioner with regard to regularisation of the services of the similarly situated persons, whose names were recommended alongwith the petitioner. The respondents also kept quite in their counter in answering specific contentions of the petitioner that the District Collector, who is the second respondent herein sent a proposal to the first respondent on 27.08.2009 to regularise the service of certain employees who are working on consolidated pay, wherein, the name of the petitioner also included in the said proposal.

7. Besides this, this Court is unable to accept the contention of the respondents that the post in which the petitioner was working as a Gardener



did not come within the posts sanctioned under the Government/Panchayat,

it is an admitted fact that the respondents utilised the services of the petitioner as a Gardener for 39 years, now they cannot take a stand that it is not a sanctioned post. As and when there is a need for any work continuously for several years, the respondents ought to have sanctioned the permanent post for that purpose. After extracting the service of the petitioner for 39 years, taking the stand by the respondents that he was not sponsored by the Employment Exchange or he worked in a non-sanctioned post, is unjust and irrational and nothing but exploitation.

8.As per the materials available on record, this Court satisfied that the second respondent has sent a proposal to the first respondent recommending certain names for regularisation vide proceedings in Na Ka No.Pa.As/13695/2008 dated 27.08.2009 and the name of the petitioner is found in the said proceedings. It is also an admitted fact that one P.Ponnusamy whose name was found alongwith the petitioner in the proposal sent by the second respondent to the first respondent was regularised and he got all the benefits after regularisation. As and when the respondents regularized the services of the similarly situated persons and



not considering the case of the petitioner for regularisation though he was working for 39 years and he is also a similarly situated person, to those persons whose services were regularised, definitely amounts to discrimination and it has to be declared as violation of Article 14 of the Constitution of India.

9. For the aforesaid reasons, this Court satisfied that there is substantial force in the contention of the petitioner that the proceedings in Na.Ka.Pa.E.3/6060/2015 dated 26.10.2018 issued by the second respondent is illegal and contrary to the settled proposition of law laid down by the Apex Court and this Court.

10. In view of the above, this Writ Petition is allowed with the following directions:

(i) the impugned order of the second respondent vide proceedings in Na.Ka.Pa.E-3/6060/2015 dated 26.10.2018 is hereby quashed.

(ii) the respondents are directed to regularise the service of the petitioner from the date of completion of 10 years of service as per G.O.Ms.no.22, Employees and Administrative Reforms Department dated



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28.02.2006 with all backwages and attendant benefits from the date of regularisation within a period of 3 months from the date of receipt of a copy of this order.

No costs.

Consequently, connected miscellaneous petition is closed.

22.04.2024

Index : Yes/No
Speaking order: Yes/No
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To

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