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W.A.No.295 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.295 of 2021 and
C.M.P.No.1198 of 2021

- 1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Rural Development & Panchayat Raj Department,
Fort St. George,
Chennai – 600 009.
- 2.The Director/Commissioner,
Rural Development & Panchayat Raj Department,
Having Office at Panagal Maaligai,
Saidapet, Chennai – 600 015.
- 3.The District Collector,
Krishnagiri District.
- 4.The Commissioner,
Uthangarai Panchayat Union,
Krishnagiri District.

... Appellants

Vs.

A.Subramani

... Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 26.08.2019 made in W.P.No.29870 of 2018.



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For Appellants : Mr.K.V.Sajeev Kumar
Special Government Pleader

For Respondent : Mr.V.Vijay Shankar

JUDGMENT

[Judgment of the Court was delivered by R.SURESH KUMAR, J.]

This writ appeal has been directed against the order passed by the Writ Court dated 26.08.2019 made in W.P.No.29870 of 2018.

2. That the respondent - A.Subramani was engaged by the 4th appellant as Driver in the year 2004 accordingly he had been working for all these years.

3. At one point of time after rendering long years of service he had requested for regularisation of his service for getting service and other perquisites/benefits, however that was rejected by the order dated 13.08.2018 passed by the 4th respondent in the writ petition, challenging the same, the said writ petition was filed.

4. The learned Judge who heard the matter has disposed the writ petition by order dated 26.08.2019 where the learned Judge having taken



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note of the fact that the respondent/writ petitioner was engaged by the appellant Department i.e. the 4th appellant as a Jeep Driver at the age of 42 and he had been working for more than 10 years without any blemish and such an experience gained by him can be equated with the lesser educational qualification of VIII standard as fixed by the Government Order in G.O.Ms.No.134 Rural Development and Panchayat Raj (E5) Department dated 14.12.2009 and also the upper age limit of 30 also can be relaxed in view of the long experience gained by him in working in the 4th respondent Department.

5. The direction given by the learned Judge in quashing the order dated 13.08.2018 through the impugned order is appealed herein.

6. Assailing the same, Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellants would contend that, the minimum educational qualification and upper age limit has been prescribed by the Government in G.O.Ms.No.134 at clause 5. Such a qualification prescribed under the G.O. cannot be given a go by or given up by the 4th appellant as such a power not vested in him, therefore on that ground the 4th appellant has rejected the plea of the respondent/writ petitioner which was the order impugned before the Writ Court.



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7. According to the learned Special Government Pleader for the appellants, the said order dated 13.08.2018 passed by the 4th appellant since has been issued strictly in consonance with the rule position as per G.O.Ms.No.134 stated supra, the same need not have been interfered with by the Writ Court. The learned Judge, according to the learned Special Government Pleader, in paragraph 18, 19 and 20 of the impugned order, has equated the experience gained by the respondent/writ petitioner with the minimum educational qualification and maximum or upper age prescribed under the rule, that kind of approach to equate the experience in lieu of the educational qualification as well as the upper age limit prescribed under the rule is a wrong application and therefore based on which since the learned Judge has come to the conclusion that, the order of rejection passed by the 4th appellant is to be interfered with and accordingly the learned Judge had set aside the order and given direction to the appellant Department to regularise the services of the writ petitioner/respondent, is completely erroneous, therefore the learned Special Government Pleader seeks indulgence of this Court to interfere with the impugned order.



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8. We also heard Mr.V.Vijay Shankar, learned counsel appearing for the respondent/writ petitioner who relied upon the judgment of the Hon'ble Supreme Court relied by the learned Judge in para 10 of the order which reads thus:

“10. The learned counsel, in respect of relaxation of educational qualification, relies the decision of the Hon'ble Supreme Court of India in Gujarat Agricultural University vs Rathod Labhu Bechar and Others reported in (2001) 3 SCC 574 and would draw the attention of this Court to paragraph Nos.28 and 30 of the judgment, which are extracted hereunder:

“ 28. We feel that daily-rate workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition. It would not be appropriate to disqualify them on this ground for their absorption, hence clause 1(a) needs modification to this effect.

30. Thus, in view of their long experience, on the fact of this case, and for the posts concerned the prescribed qualification, if any, should not come in the way of their regularisation. Clause 1(b) provides for the regularisation of daily wagers in a phased manner to the extent of available sanctioned post.”



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9. Therefore, if long number of years the incumbent had been working on temporary basis or daily rated basis, such a long experience can be taken for the purpose of giving relaxation of other eligibility conditions like minimum educational qualification as well as the upper age limit. Therefore, such a dictum given by the Hon'ble Supreme Court in the said judgment reported in *(2001) 3 SCC 574* has been applied in the present facts of the case by the learned Judge and accordingly the learned Judge had given a direction to give such relaxation thereby the rejection order made by the 4th appellant dated 13.08.2018 was found to be unsustainable and therefore the learned Judge since has set aside the order and allowed the writ petition, the learned counsel would submit that, it is a reasoned order which does not warrant or called for any interference from this Court.

10. It has also been brought to the notice of this Court that, the respondent/writ petitioner after completing his service superannuated in February, 2022 thereby the entire service from the date of initial engagement he has rendered to the Department without any break and blemish.



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11. We have considered the said rival submissions made by the

learned counsel appearing for both sides.

12. Even though under G.O.Ms.No.134 in clause 5 under the heading 'Qualifications' the upper age limit of 30 has been prescribed for non SC candidates and the minimum educational qualification has been prescribed as VIII standard and the respondent/writ petitioner at the time of initial engagement in the year 2004 has already reached 42 years and has not qualified with the VIII standard still in the substantive vacancy which was available with the 4th appellant Department he had been engaged as Jeep Driver. With regard to the other qualification of his experience in driving and the driving licence is concerned, he has fulfilled the same which are the primary requirement of a Driver to be employed, therefore having considered such a qualification which he was holding he was engaged by the 4th appellant office. Since his initial engagement continuously he had been working unblemishedly and absolutely there has been no complaint whatsoever against his working pattern and therefore he was permitted to continue till his superannuation age i.e. up to the age of 60 years and ultimately permitted to retire from service in February, 2022.



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14. When that being the position, whether the minimum educational qualification as well as the upper age limit as has been prescribed under clause 5 of the G.O. referred to above can be put against this employee is the question.

15. In this context, it is to be reminded that, the Courts have already taken the view that, if the appointment is an illegal appointment that cannot be regularised at any point of time, whereas if it is an irregular appointment, it can be regularised or ratified.

16. Here in the case in hand, since he was engaged or appointed only as Jeep Driver of the office of the 4th appellant, where the essential requirements or the qualification was his experience in driving as well as the driving licence which of those essential qualifications he had fulfilled.

17. However, knowing well that he had not completed VIII



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standard and he has also studied only the 4th standard, he had been engaged. It is to be noted that, he was not engaged or appointed for a stop gap arrangement for a short period, he in fact had been appointed or engaged in a permanent vacancy for years together that too from the date of engagement till date of superannuation he had been continuously engaged or permitted to work for 18 years. Therefore such a long service cannot be stated to be an *ad hoc* appointment or a temporary appointment or a daily wage appointment.

18. Therefore it is an appointment in a substantive vacancy where for the entire period of his service he had rendered service, therefore it become essential to give regularisation by giving relaxation to the said two conditions viz., the upper age limit as well as the minimum educational qualification.

19. Though such a power is not vested with the 4th appellant, such a power is vested with the Government i.e. the 1st appellant, hence we feel that such an exercise can very well be undertaken by the State Government i.e. the 1st appellant in giving such relaxation to the respondent/writ petitioner so that his long years of 18 years can be taken



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into account and accordingly his service can be regularised for the purpose of his retiral and service benefits.

20 (i) Therefore, for all these reasons the conclusion arrived at by the learned Judge in the order impugned cannot be found fault with. Hence we do not find any plausible reason available before us to interfere with the order passed by the learned Judge which is impugned herein. Resultantly the appeal fails, therefore it is liable to be dismissed, accordingly is dismissed.

(ii) As a result of which, there shall be a direction to the appellant Department especially the 1st appellant State Government to exercise their power to give relaxation of the upper age limit as well as the minimum educational qualification as has been prescribed in clause 5 of the G.O.Ms.No.134 Rural Development and Panchayat Raj (E5) Department dated 14.12.2009 by taking into account the continuous long service of 18 years rendered by the respondent/writ petitioner at the 4th appellant office. Accordingly such an order of relaxation shall be passed by the 1st appellant within a period of two months from the date of receipt of a copy of this judgment and on passing of such order, the 4th appellant shall



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proceed to calculate the retiral and pensionary benefits payable to the respondent/writ petitioner and such arrears of difference of salary as well as pensionary benefits including the retiral benefits be calculated and paid to the respondent/writ petitioner within a period of two months thereafter.

21. With these directions, the Writ Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

[R.S.K., J.]

[K.B., J.]

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Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

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