



W.P.(MD)No.17394 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.17394 of 2024

S.Jeyakumar

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government
Environment and Forest Department,
Fort. St. George, Chennai - 9.

2.The Principal Chief Conservator of Forest &
Head of Forests
Velachery Main Road,
Guindy, Chennai,
Tamil Nadu State - 600 032.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to notionally regularize the petitioner service by relaxing the rules from the date of initial appointment as a Plot Watcher on daily wage basis as qualifying service for the purpose of getting pension and family pension by giving relaxation on par with the petitioner's junior namely M. Arumugam SWS No.3382 in the light of Hon'ble Supreme Court Judgment delivered in CA No.6798 of 2019 dated 02.09.2019 and orders



W.P.(MD)No.17394 of 2024

passed in WP NO.21627 of 2021 dated 07.10.2021 and WA No.2072 of 2018 compiled in G.O. (2D) No.09, dated 08.02.2022 respectively and to confer all consequential pensionary benefits by the way of the petitioner's representation to the respondent within a time frame.

For Petitioner: Mr.T.Kannapatel

For Respondents: Mr.S.Shamugavel
Additional Government Pleader

ORDER

Heard Mr.I.Kannapatel, learned counsel appearing for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the respondents.

2. The petitioner's name has already been included for regularization. The GO issued in this regard in GO MS No.64, Environment and Forest Department, dated 08.03.1999. In the said G.O., 5,442 names of the workers have been included, under which, the petitioner names found place. The petitioner has been appointed as Plot Watcher on full time basis from 12.12.1983 onwards and his S.W.S. number is 3382. The petitioner's grievance is that though his junior's



W.P.(MD)No.17394 of 2024

service was regularized and he was given with the corresponding pensionary benefit, but he was not given with the similar benefit. It is claimed that similarly placed persons have already filed W.P.No.21627 of 2021 and got orders in their favour. Subsequent Government Order issued in G.O.Ms.No.131 Personnel and Administrative Reforms (F) Department, dated 28.11.2020, also stated that those persons, who have attained the age of superannuation before regularization orders were issued, cannot be deprived from getting the benefits of regularization and pensionary benefits and orders were issued for giving notional regularization even post superannuation.

3. The issue on hand is no more *res integra*. It has already been decided by this Court in an earlier writ petition in W.P.(MD)No.15339 of 2024 dated 10.07.2024, wherein, this Court has held as under.

"6.In this regard, it is relevant to refer the judgment of Hon'ble Supreme Court in Prem Kumar Singh Vs State of Uttar Pradesh (CA No. 6798 of 2019 dated 02.09.2019), wherein, the Hon'ble Supreme Court has dealt with the case of the persons rendered service in work-charged establishment, but whose services have not been taken into consideration for receiving pension. In the said case, the Hon'ble Supreme Court has held that such persons, who entered the work-



W.P.(MD)No.17394 of 2024

charged establishment, shall have benefits of 20 years of regular services for getting pensionary benefit. The relevant portion of the decision is extracted hereunder:

35. There are some of the employees who have not been regularized in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularized under the Government instructions and even as per the decision of this Court in Secretary, State of Karnataka & Ors. v. Uma Devi 2006 (4) SCC 1. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one time measure, the services be regularized of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularized. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.

36. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed.”



W.P.(MD)No.17394 of 2024

WEB COPY

7. In a subsequent judgment rendered by this Court in W.P.No.19023 of 2021, a reference was made to G.O.Ms.No. 131 Personnel and Administrative Reforms (F) Department, dated 28.11.2020 and it is held that the petitioners involved in that petition are entitled to get the benefits on expiry of 10 years or on the date on which they were originally appointed. The relevant part of the above judgment is extracted below:

“7. The learned counsel for the petitioners submits that a similar provision in G.O.Ms.No.131, Personnel and Administrative Reforms (F) Department dated 28.11.2020 has been issued. In this connection, the learned counsel for the petitioners has referred to Paragraphs 4 to 6 of the aforesaid Government Order which reads as under:-

“4. In the above said “Umadevi case”, among other things, the Constitution Bench of the Supreme Court of India, emphasized that if rules have been made under Article-309 of the Constitution, then the Government can make appointments only in accordance with the rules. If sanctioned posts are vacant, the State will take immediate steps for filling those posts, by a regular process of selection. The State Government and their instrumentalities should take steps to regularize, as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts, but not under cover of orders of the courts or of Tribunals, and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that required to be filled up, in cases, where temporary employees or daily wages are being now employed. If sanctioned posts are vacant, the State will take immediate steps for filling those posts, by a regular process of selection. There should be no further bypassing of the Constitutional requirement, regularizing or making permanent, those not duly appointed as per the Constitutional scheme.

5. In view of the above, it is hereby reiterated that in case of posts



WEB COPY



W.P.(MD)No.17394 of 2024

governed by Rules, in all the Services, including Tamil Nadu Basic Service, appointment shall be made only with reference to the existing rules. While selecting candidates for appointment, the claim of the contesting candidates shall be weighed with reference to the rules, in force, as emphasized in the “Umadevi Case” [State of Karnataka Vs. Umadevi (2006)4 SCC 1].

6. All the appointing authorities should adhere to the above instructions scrupulously, failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules, against the persons responsible for the said lapses. All Heads of Departments are directed to ensure that the above said instructions are followed, without fail.”

8. If the above view of the Hon'ble Supreme Court in State of Karnataka Vs. Umadevi (2006)4 SCC 1 has been followed by the Government of Tamil Nadu in G.O.Ms.No.131, Personnel and Administrative Reforms (F) Department dated 28.11.2020, the petitioners services was to be regularized at the expiry of ten years on the date of which they were originally appointed.

9. Considering the fact that they were appointed ten years earlier, they are also entitled to pension and the other attendant benefits. Further, Government Order in G.O.Ms.No.131, Personnel and Administrative Reforms (F) Department dated 28.11.2020 is binding on the respondents. Merely because the petitioners have attained the age of superannuation prior to the aforesaid date would not mean that the petitioners should not be given the benefit for the services rendered by them with the respondents Forest Department. Under these circumstances, this Writ Petition deserves to be allowed and is accordingly allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.”

8.In fact, the above G.O.Ms.No. 131 Personnel and Administrative



W.P.(MD)No.17394 of 2024

WEB COPY

*Reforms (F) Department, dated 28.11.2020 has been issued following the judgment of the Constitution Bench of the Hon'ble Supreme Court in **State of Karnataka v. Uma Devi** reported in **2006(4) SCC 1**. The cumulative effect of the judgment would only crystallize the decision that the employees, who have entered into work-charged establishment, shall be considered as persons rendered regular services. Even according to the dictum laid down in **State of Karnataka v. Uma Devi**, the persons, who have rendered 10 years of service in such establishment, should also be regularized as stated in **Prem Kumar Singh Vs State of Uttar Pradesh (CA No. 6798 of 2019 dated 02.09.2019)**, where, the Hon'ble Suupreme Court has gone one step ahead and held that if the very service of the employee is rendered in the work-charged establishment, it has to be considered as regular service and hence, they are entitled to count the service rendered in the work-charged establishment for the purpose of pensionary benefits."*

4. The petitioner has been appointed as Plot Watcher as early as on 12.12.1983 and he retired as Forest Watcher on 31.05.2020. Till date, his services were not regularized. Even though his junior was granted with the benefit of regularization and pensionary benefits, the petitioner was not granted with those benefits. In view of the Judgments referred above, the petitioner is obviously entitled to the benefits of notional regularization and pensionary benefits.



W.P.(MD)No.17394 of 2024

WEB COPY

5. In view of the above stated reasons, this writ petition is **allowed** and the respondents are directed to regularize the service of the petitioner notionally after the completion of 10 years of service from the date of the initial appointment as Plot Watcher and count the same along with the regular service for the purpose of pensionary benefits in the light of the orders of the Apex Court rendered in C.A.No.6798 of 2019 and in light of various judgments of the High Court following the same and pass appropriate orders within a period of four weeks from the date of receipt of copy of this order. No costs.

29.07.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

PNM

To

- 1.The Secretary to Government,
Environment and Forest Department,
Fort. St. George, Chennai - 9.
- 2.The Principal Chief Conservator of Forest &
Head of Forests



W.P.(MD)No.17394 of 2024

Velachery Main Road,
Guindy, Chennai,
Tamil Nadu State - 600 032.

R.N.MANJULA, J.

PNM

W.P.(MD)No.17394 of 2024



WEB COPY



W.P.(MD)No.17394 of 2024

29.07.2024