



W.A.(MD)No.538 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 01.04.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.538 of 2024
and
C.M.P.(MD)No.4130 of 2024**

1.The State of Tamil Nadu,
represented by the Secretary to Government,
Revenue Department,
Fort St.George, Chennai.

2.The District Collector,
Madurai District, Madurai.

3.The Revenue Divisional Officer,
Usilampatti Division, Madurai District.

4.The Tahsildar,
Peraiyur Taluk, Madurai District.

... Appellants

VS

V.Ashokan (Died)
A.Anuratha

...Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 15.12.2022 passed in W.P(MD)No.18679 of 2016.

1/15



W.A.(MD)No.538 of 2024

For Appellants : Mr.S.Shaji Bino
Special Government Pleader
For Respondent : Mr.S.Ramsundar Vijayaraj

JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

This Writ Appeal is filed challenging the order, dated 15.12.2022 passed in W.P(MD)No.18679 of 2016, whereby, the Writ Court had held that the Writ Petitioner is entitled to regularisation from the date of order, 30.01.2006 in W.P.No.32144 of 2005, but however, is not entitled to old pension scheme and his service from 30.01.2006 until his retirement shall be counted for his terminal benefits.

2.The Writ Petitioner was appointed as a Masalchi on 16.06.1980 in the Taluk Office, Usilampatti Taluk on temporary basis. Thereafter, in the year 1983, he was appointed as temporary Copyist and since he had put up a service of three years, a representation was made for regularisation of the services. However, by order, dated 12.02.1997, the second appellant rejected his request, which was challenged by the Writ Petitioner before the



W.A.(MD)No.538 of 2024

Administrative Tribunal in O.A.No.954 of 1998 with a prayer to quash the order and for regularisation in the post of Copyist in the time scale of pay. Subsequently, O.A.No.954 of 1998 was transferred to this Court and taken up in W.P.No.32144 of 2005. By order, dated 30.01.2006, the learned Single Judge had set aside the order impugned in the Writ Petition and directed the appellants to absorb the Writ Petitioner as Copyist on regular basis. In a Writ Appeal filed by the appellants in W.A.No.1098 of 2006, the Division Bench of this Court, by judgment, dated 28.01.2008, directed the appellants to absorb the Writ Petitioner as Copyist on regular basis, if he is in service.

3.In the meantime, due to some irregularities, a criminal case was registered against the Writ Petitioner in Cr.No.82 of 2003 on the file of the Usilampatti Town Police Station, based on which, he was terminated from service. The order of termination was put to challenge in O.A.No.2662 of 2003 before the Administrative Tribunal, which was also later transferred to this Court and taken up in W.P.No.28305 of 2005. By order, dated 24.03.2006, the Writ Petition was allowed and the order of termination was set aside with a further direction to the appellants to keep the Writ Petitioner



W.A.(MD)No.538 of 2024

under suspension from 01.06.2003 till the criminal case is over or the initiation of the disciplinary proceedings. However, subsistence allowed was directed to be paid from 01.06.2003. This order was also put to challenge in W.A.No.1052 of 2006, which was ultimately dismissed by judgment, dated 20.03.2009.

4.As the Writ Petitioner was acquitted from the criminal case, by judgment, dated 09.06.2008 in C.C.No.68 of 2004 on the file of the District Munsif-cum-Judicial Magistrate-I, Usilampatti, he made a representation on 29.01.2010 seeking to reinstate him in service. As the same was not considered, he approached this Court in W.P(MD)No.5557 of 2010 for a direction to allow him to function as Copyist on regular basis. By order, dated 22.04.2010, this Court directed the appellants to consider his request and permit him to be reinstated into service, if there are no other legal impediments. Pursuant to the same, the second appellant/District Collector passed orders, dated 05.12.2014 in Na.Ka.No.55589/2014 Pa.A3, by which, he was directed to join duty as Office Assistant and based on which, he was also joined as Office Assistant on 09.12.2014. Thereafter, the Government had issued G.O.Ms.No.184, Revenue (Service-8(1)) Department, dated



W.A.(MD)No.538 of 2024

01.07.2016, whereby, the services of the Writ Petitioner were regularised, but however, only with effect from the date of issuance of the Government Order.

5.Challenging the Government Order in G.O.Ms.No.184, dated 01.07.2016, the Writ Petitioner has filed W.P.(MD)No.18679 of 2016 to quash the same with a consequential direction to regularise his service from the date of initial appointment. Pending Writ Petition, the Writ Petitioner died and his wife was substituted as his legal heir. The learned Single Judge of this Court, by impugned order, dated 15.12.2022 disposed of the Writ Petition by holding that the Writ Petitioner is entitled for regularisation with effect from 30.01.2006, but is not entitled to old pension scheme. However, his services from 30.01.2006 until his retirement shall be counted for his terminal benefits. Challenging the same, the appellants are before this Court.

6.The learned Special Government Pleader appearing for the appellants argued that since the Writ Petitioner has originally been appointed only on a consolidated basis and not on a regular vacancy and



W.A.(MD)No.538 of 2024

further he was not sponsored through employment exchange, the impugned order, whereby, his service was directed to be regularised from 2006, is not sustainable. Further, when the Writ Petitioner was involved in irregularities, based on which, a complaint was lodged against him and a criminal case in Cr.No.82 of 2003 was registered, as he got involved in fraudulent manipulation of Government records, his services in the Revenue Department was not found desirable in public interest and therefore, he was terminated from service.

7.The learned Special Government Pleader further contended that even though the order of termination was later set aside, which was only on technical grounds, the fact remains that as on 30.01.2006, he was not serving in any capacity in the service of the appellants and therefore, the impugned order directing the services to be regularised from 30.01.2006 is without any basis and not legally sustainable. The learned Special Government Pleader further contended that since the Writ Petitioner was only appointed on temporary service, his services were terminated and further, there is no provision either in the Revenue Standing Order or Rules pertaining to the post of Copyist in the Revenue Department. When such is



W.A.(MD)No.538 of 2024

the position, admittedly, the Government, only with a view to comply with the orders of this Court, took a decision to appoint the Writ Petitioner as Office Assistant by relaxing relevant rules, whereby, G.O.Ms.No.184, dated 01.07.2016 came to be passed, which is a special case. He further submitted that the impugned order directing the services to be regularised from 2006 is against the decision rendered by the Hon'ble Supreme Court in the case of ***State of Karnataka vs Uma Devi*** reported in ***(2006) 4 SCC 1*** and also the further decision of the Hon'ble Supreme Court reported in ***AIR 2017 SC 1304*** in the case of ***Secretary to Government, Commercial Taxes and Registration Department and another -vs- Singamuthu***, whereby, the services of only the full time daily wagers, who have completed 10 years of continuous service, can be regularised and such benefit cannot be extended to part time employees and sought for allowing the Writ Appeal.

8.*Per contra*, the learned Counsel appearing for the respondent contended that when the Writ Petitioner was appointed as Masalchi as early in 16.06.1980 and thereafter, has been appointed as Copyist in the year 1983 and have put in more than 25 years of service, his claim for regularisation was rejected and he had approached the Administrative Tribunal as early in



W.A.(MD)No.538 of 2024

the year 1998 itself, which was later transferred to this Court. The learned Counsel further contended that in fact, pursuant to the claim of the Writ Petitioner for regularisation, the District Collector by proceedings, dated 10.08.1990 itself had recommended for regular absorption as Copyist and only when the proposals were forwarded to the Commissioner for Revenue Administration, his claim was rejected by holding that the Writ Petitioner was appointed only on temporary basis. The learned Counsel further contended that the entire claim regarding regularisation was decided by the learned Single Judge of this Court in W.P.No.32144 of 2005, whereby, the appellants were directed to absorb the Writ Petitioner as Copyist in the available vacancy and if no vacancy is available as on date, atleast in future vacancy. Thereafter, when the termination order passed as against the Writ Petitioner was set aside and also confirmed in Writ Appeal, the Writ Petitioner is entitled for regularisation of service atleast from 30.01.2006, when order was passed in the Writ Petition. He further contended that the learned Single Judge has rightly taken note of this aspect and has passed order, which needs no interference and sought for dismissal of this Writ Appeal.



W.A.(MD)No.538 of 2024

WEB COPY

9. Heard the learned Counsels on either side and perused the materials available on record.

10. Admittedly, the Writ Petitioner was appointed in the services of the Taluk office, Usilampatti Taluk, on temporary basis as Masalchi on 16.06.1980 and thereafter, he was also appointed as Copyist in the year 1983. Only, when he sought for regularisation of the service, his claim was rejected, which was challenged by him before the Administrative Tribunal in O.A.No.954 of 1998. It is seen that in fact, the District Collector by proceedings, dated 10.08.1990, had recommended for regular absorption of the Writ Petitioner as Copyist. Later, when the O.A., was transferred and taken up on the file of this Court in W.P.No.32144 of 2005, by order, dated 30.01.2006, the learned Single Judge has allowed the Writ Petition by quashing the impugned order and directed the appellants to absorb the Writ Petitioner as Copyist in the available vacancy and if no vacancy is available as on date, atleast in the future vacancy. This order was also put to challenge in W.A.No.1098 of 2006, which was disposed of by judgment, dated 28.01.2008 with a direction to the appellants to absorb the Writ



W.A.(MD)No.538 of 2024

Petitioner as Copyist on regular basis, if he is in service on the date.

WEB COPY

11.Only in respect of a complaint made against the Writ Petitioner, a criminal case was registered against him in Cr.No.82 of 2003 on the file of the Usilampatti Town Police Station, based on which, the services of the Writ Petitioner was terminated. The order of termination was also quashed by order, dated 24.03.2006 in W.P.No.28305 of 2005. The Writ Appeal preferred by the appellants in W.A.No.1052 of 2006, also came to be dismissed on 20.03.2009. In fact, even the criminal case registered as against the Writ Petitioner and tried in C.C.No.68 of 2004 on the file of the District Munsif – cum – Judicial Magistrate No.I, Usilampatti, ended in favour of the Writ Petitioner, whereby, the Writ Petitioner was acquitted by judgment dated 09.06.2008. Therefore, both the criminal case initiated against him and also the termination orders passed was quashed and ended in his favour.

12.Since the claim of the Writ Petitioner for regularisation of his service were not finalised, he had filed a Writ Petition in W.P(MD)No.5557 of 2010 and by order, dated 22.04.2010, the appellants were directed to reinstate the Writ Petitioner into service, if there are no other legal



W.A.(MD)No.538 of 2024

impediments. Pursuant to the said order, the District Collector/second appellant by proceedings, dated 05.12.2014, directed the Writ Petitioner to join in the duty as Office Assistant and accordingly, he has joined duty in the office on 09.12.2014. Subsequently, when the Government passed G.O.Ms.No.184, his services has been regularised only with effect from the date of the Government Order.

13.The learned Single Judge of this Court, while considering the Writ Petition, having found that there had been several round of litigations and orders have been passed to regularise the deceased employee's service as early as in 2006 itself, found that the deceased employee is entitled for regularisation with effect from 30.01.2006. The arguments of the learned Special Government Pleader that since the Writ Petitioner was originally appointed on temporary basis and therefore, his services cannot be regularised in view of the orders passed by the Hon'ble Supreme Court in (1)*State of Karnataka vs Uma Devi* reported in (2006) 4 SCC 1 and (2) *Secretary to Government, Commercial Taxes and Registration Department and another -vs- Singamuthu* reported in AIR 2017 SC 1304, cannot be sustained for the reason that when the appellants themselves has



W.A.(MD)No.538 of 2024

chosen to absorb the Writ Petitioner into service by appointing him as Office Assistant and passed G.O.Ms.No.184, whereby, relaxing the roster, age and other qualification, there is no basis for restricting the claim of the Writ Petitioner for regularisation only from date of issuance of Government Order. As the Government themselves have come forward to regularise the services of the deceased employee, it is no longer available for appellants to contend that since the Writ Petitioner was originally appointed on temporary basis, his services cannot be regularised.

14.As the Writ Petitioner was appointed as early in the year 1980 and admittedly, put in service of nearly 23 years, even when his claim for regularisation was considered by the learned Single Judge of this Court in W.P.No.32144 of 2005 and by order, dated 30.01.2006, the appellants were directed to absorb the Writ Petitioner as Copyist in the available vacancy and if there is no vacancy available as on date, atleast in the future vacancy, which was also confirmed in the Writ Appeal. The learned Single Judge has taken note of all these aspects and by the impugned order held that the deceased employee is entitled to regularisation from the date of order, ie., 30.01.2006 passed in W.P.No.32144 of 2005. While holding so, it is also



W.A.(MD)No.538 of 2024

held that the Writ Petitioner is not entitled to old pension scheme, but, however, for his terminal benefits, his services from 30.01.2006 until his retirement shall be counted.

15. We do not find any fault with the findings of the learned Single Judge of this Court in view of the facts and circumstances stated supra. Therefore, the order of the learned Single Judge is to be sustained and accordingly, sustained. In view of the same, no interference is required and as such, the Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**[R.S.K., J] & [G.A.M., J]
01.04.2024**

Internet : Yes/No
Index : Yes/No
NCC : Yes/No

cmr



WEB COPY



W.A.(MD)No.538 of 2024



WEB COPY



W.A.(MD)No.538 of 2024

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Judgment made in
W.A(MD)No.538 of 2024

01.04.2024