



W.P.(MD)No.28257 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.28257 of 2023

and

W.M.P(MD)Nos.24321 & 24322 of 2023

R.Pandiyaraj

... Petitioner

Vs

1.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai – 600 009.

2.The Commissioner,
Rural Development and Panchayat Raj Department,
Saidapet, Chennai – 600 015.

3.The District Collector,
Theni, Theni District.

4.The Director of Local Fund Audit,
Integrated Finance Departments Building,
Nandhanam, Chennai – 600 035.

5.The Assistant Director of Local Fund Audit,
Collector Office Building,
Theni, Theni District.

6.The Commissioner of Panchayat Union,
Office of the Panchayat Union,
Uthamapalayam Post & Taluk,
Theni District.

... Respondents



W.P.(MD)No.28257 of 2023

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned letter in No.13228/Pa.A.5(2)/2022-1, dated 18.10.2022 issued by the 1st respondent and quash the same as illegal and consequently direct the 1st respondent to ratify the proposal of the 2nd respondent for appointment of the petitioner as Watchman in the proceedings of the 6th respondent in Na.Ka.No. 4948/81/A5, dated 12.02.1982 and subsequent appointment as Office Assistant in the proceedings of the 3rd respondent in Na.Ka.No.K16/10797/91 dated 25.02.1991 and consequently direct the respondents to disburse the Pensionary benefits to the petitioner in the light of the proceedings of the 6th respondent in Na.Ka.No.902/2019/A1, dated 28.02.2020 permitting the petitioner to retire from service on superannuation on 29.02.2000, within the period that may be stipulated by this Court.

For Petitioner : Mr.K.Ponnaiah

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader for R1 to R5
* * * * *

ORDER

The instant writ petition has been filed by a retired Office Assistant from the office of the sixth respondent Panchayat Union, challenging the order dated 18.10.2022, passed by the first respondent herein, wherein the proposal forwarded by the second respondent to ratify the appointment of the writ petitioner as a Watchman and to further ratify the promotion conferred upon the writ petitioner as an Office Assistant was rejected.



W.P.(MD)No.28257 of 2023

2.A perusal of the typed set of papers reveals that the petitioner was appointed as a contingency staff to the post of Night Watchman in the sixth respondent Panchayat Union office on 17.02.1982. Later, he was promoted as an Office Assistant and time scale was conferred upon him w.e.f.08.01.1991 by an order dated 25.02.1991 passed by the third respondent herein. The sixth respondent herein has passed an order on 22.04.1992, regularising the services of the writ petitioner in the cadre of Office Assistant w.e.f.08.01.1991. Later the petitioner was conferred with the selection grade and Special Grade and he had attained superannuation on 29.02.2020.

3.On 19.04.2021, the third respondent in the writ petition has addressed a communication to the first respondent seeking ratification of the first respondent for his appointment as a contingency staff in the post of Night Watchman on 17.02.1982 and for further ratification of his promotion on 08.01.1991 as an Office Assistant. This proposal of the third respondent was rejected by the first respondent under the impugned order on the ground that since ban orders have been in force from 01.04.1981 onwards. The appointment of the writ petitioner dated 17.02.1982 is dehors of the service rules. The impugned order points out that the sixth respondent has no authority whatsoever to regularise the services of the writ petitioner as an Office Assistant w.e.f.



W.P.(MD)No.28257 of 2023

08.01.1991 onwards. The impugned order further points out that the list of the contingency staffs that were forwarded to the Government for the purpose of issuance of Government order for regularising the services, did not contain the name of the writ petitioner. Therefore, the appointment of the writ petitioner and his further promotion to the post of Office Assistant cannot be ratified. The said impugned order is under challenge in the present writ petition.

4. According to the learned Counsel appearing for the writ petitioner, due to emergent situation, the Panchayat Union has proceeded to appoint him as a contingency staff and later he was promoted as an Office Assistant and his appointment as an Office Assistant was also regularised by the sixth respondent w.e.f.08.01.1991 onwards. He further contended that in view of the G.O.Ms.No. 878, Rural Development and Local Administration, dated 15.05.1981, G.O.Ms.No.217, Rural Development (E5) department, dated 03.07.1997 and G.O.Ms.No.267, Rural Development(E7) Department, dated 22.12.1999, his services have to be regularised. According to him, all similarly placed persons have been regularised under the said Government order and his name was left out by the authorities concerned and therefore, he has filed the present writ petition.



W.P.(MD)No.28257 of 2023

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5.Per contra, the learned Special Government Pleader appearing for the respondent herein would contend that since he was illegally promoted on 08.01.1991 and an illegal order of regularisation was passed on 22.04.1992, his name was not included in the list for issuance of Government order for regularising his service. Without his services being regularised in the cadre of Night Watchman, he could not have been promoted as an Office Assistant. When the appointment, promotion and regularisation in the cadre of Office Assistant are contrary to the Government orders, naturally the Government was constrained to reject the request for ratification of the same. Hence he prayed for dismissal of the writ petition.

6.I have carefully considered the submission on either side and perused the materials available on record.

7.The Government of Tamil Nadu has issued G.O.Ms.No.878, Rural Development and Local Administration, dated 15.05.1981, freezing the appointments in the said department after 01.04.1981. In cases of any further appointment after 01.04.1981 or those who have already completed 10 years of service, the executive authority of the Panchayat Union was directed to sent



W.P.(MD)No.28257 of 2023

necessary proposals to bring them to time scale of pay through the District Collectors concerned and the Director of Rural Development for approval of the Government. After this ban order, the writ petitioner was appointed as a contingency staff in the cadre of Night Watchman on 17.02.1982. Therefore, on the date of G.O.Ms.No.878, Rural Development and Local Administration, dated 15.05.1981, the petitioner has not completed 10 years of service.

8.The Rural Development Department had issued G.O.Ms.No.267, dated 22.12.1999, to regularise the services of 218 contingency staffs, who were appointed after 01.04.1981 following the procedure as contemplated under class (7) of the G.O.Ms.No.878, Rural Development and Local Administration, dated 15.05.1981. However, the name of the writ petitioner was not sent for regularisation, in view of the fact that the petitioner had managed to get his services regularised by the sixth respondent by his order dated 22.04.1992 itself. The petitioner name was left out for being considered for regularisation in the cadre of Night Watchman. The Government has passed G.O.Ms.No.161, dated 26.06.2000, creating 171 Night Watchmen posts and for regularising, those who were appointed in a Panchayat Union after 01.04.1981. The petitioner name was obviously left out for the reason that he managed to get promotion to the post of Office Assistant. After his superannuation, the District



W.P.(MD)No.28257 of 2023

Collector had invoked G.O.Ms.No.878, Rural Development and Local Administration, dated 15.05.1981 and he has sent the proposals to the Government for ratification of the appointment and also regularisation of the services.

9.The facts narrated above will clearly indicate that though the petitioner is on par with others, who were regularised under G.O.Ms.No.267, Rural Development(E7) Department, dated 22.12.1999 and G.O.Ms.No.161, Rural Development(E7) Department, dated 26.06.2000, his name could not be recommended by the District Collector, in view of the fact that he was already promoted as an Office Assistant and his service were already regularised. Now the Government has chosen to reject the request of the District Collector for ratification of his appointment as an Office Assistant w.e.f.08.01.1991 onwards. Therefore, it is for the Government to take a decision, whether the petitioner could be regularised in the cadre of Night Watchmen under G.O.Ms.No.878, Rural Development and Local Administration, dated 15.05.1981, G.O.Ms.No. 267, Rural Development(E7) department, dated 12.12.1999, G.O.Ms.No.161, Rural Development(E7) department, dated 26.06.2000. Under the impugned order, the District Collector has requested the Government to ratify his appointment as Night Watchman as well as the promotion of the writ petitioner



W.P.(MD)No.28257 of 2023

as Office Assistant w.e.f.08.01.1991. The Government had rightly rejected the request of the District Collector for ratification of the promotion of the writ petitioner as Office Assistant w.e.f.08.01.1991. However, the Government ought to have considered the request of the proposals of the District Collector for regularisation of the writ petitioner in the cadre of Night Watchman in the light of the above referred three Government Orders.

10.The order impugned in the writ petition is partly set aside. The order rejecting the proposal of the District Collector for regularisation of the service of the writ petitioner w.e.f.08.01.1991 in the cadre of Office Assistant stands confirmed. The other part of the order is hereby set aside and the matter is remitted back to the first respondent herein to consider the proposal of the District Collector to regularise the services of the writ petitioner in the cadre of Night Watchman w.e.f.17.02.1982, on the basis of the above referred Government orders and pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.



W.P.(MD)No.28257 of 2023

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11. With the above said observations, this writ petition stands partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

19.08.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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W.P.(MD)No.28257 of 2023

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