IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.12.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 1053 of 2023
&
W.M.P.Nos. 1044 & 1045 of 2023

D.Senthil Kumar ...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Commercial Taxes and Registration (A1) Department,
Fort St. George,
Chennai – 600009.

2.The Principal Secretary / Commissioner for Commercial Taxes,
O/o The Commissioner for Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600005.

3.The Joint Commissioner for State Tax (Commercial Taxes)
Commercial Taxes Department,
Vellore Division, Vellore – 632 001.

4.The Deputy Commissioner for State Tax (Commercial Taxes)
Office of the Deputy Commissioner for Commercial Taxes,
Cuddlaore. ...Respondents

Prayer: Writ Petition is filed under Section 226 of the Constitution of India for issue of Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in the proceedings bearing RC.No.A2/10076/2022 dated 23.12.2022 and quash the same and consequently directing the respondents to regularise the services of the petitioner from the date of his initial appointment in the post of Driver with all service and attendant, monetary benefits on par with the drivers who were appointed subsequent to the petitioner in regular time scale of pay within a time frame fixed by this Court.

For Petitioner	:	Mr. G.Ilamurugu
For Respondents	:	Mrs. K.Vasanthamala Government Advocate.

ORDER

This writ petition has been filed for the following relief:

"calling for the records of the 3rd respondent in the proceedings bearing RC.No.A2/10076/2022 dated 23.12.2022 and quash the same and consequently

directing the respondents to regularise the services of the petitioner from the date of his initial appointment in the post of Driver with all service and attendant, monetary benefits on par with the drivers who were appointed subsequent to the petitioner in regular time scale of pay within a time frame fixed by this Court".

2. The brief facts are as follows.

3. The petitioner was appointed as a daily wage Driver on regular basis (full time) against the sanctioned vacant post in the office of the Assistant Commercial Taxes Officer at Virudhachalam Enforcement Wing. The petitioner was directed to join duty by proceedings of the Commercial Tax Officer (Enforcement), Cuddalore dated 30.09.2004 and he had also reported for duty immediately. The said appointment was in consultation with the District Employment Exchange and along with the petitioner, two others, i.e., U.Selvam and P.Subramani, have also joined the duty.

4. The petitioner would submit that post his appointment he has been continuously working as a Driver without any blemish records and even during COVID period, he has been functioning continuously. The petitioner during this period has to work in various places within the range of the 3rd respondent on deputation which is also on regular basis.

5. While so, the 2nd respondent had called for the service particulars of U.Selvam and the petitioner, in order to regularise their services vide letter dated 05.10.2009, from office of the 3rd respondent as the said Selvam and the petitioner had requested for regularisation.

6. The 2nd respondent had instructed the 3rd respondent to fill up the remaining vacancies for driver immediately from among Ex-Servicemen candidates and to send service particulars of the petitioner and Selvam for regularisation as there was no specific service rule seeking approval from the Government for regularising the post of driver.

7. The petitioner was under a *bona fide* impression that his service would be regularised and since there was no further orders, the petitioner gave a representation to the 2nd respondent on 30.06.2021 seeking regularisation, as he had completed 17 years of service in the year 2021.

8. The petitioner would submit that his daily salary was a sum of Rs.615/- per day and a monthly salary of Rs.18,450/-, was sanctioned by proceedings dated 30.11.2022. The 2nd respondent had once again recommended the regularisation of the petitioner's service to the 1st respondent from the date of his appointment. This has not been properly considered and the 1st respondent rejected the request and the rejection order has been served upon the petitioner on 06.01.2023. The rejection order is absolutely without any reasons.

9. The petitioner would submit that Selvam and P.Subramani, who were similarly placed candidates have been regularised pursuant to their filing of Writ Petitions in WP.No.2015 of 2017 and WP.No.1650 of 2016, respectively. The petitioner would submit that despite positive

recommendations as early as in the year 2011, the impugned order has been passed. The similarly placed persons have been regularised and the petitioner is entitled to the same treatment. Therefore, the petitioner has come forward with this writ petition.

10. A Counter affidavit has been filed by the respondents denying the claim of the petitioner. In the counter affidavit, they would state as follows:

> *"23.It is respectfully submitted that, on perusal of the aforesaid High Court orders, it is seen that the petitioner Thiru U.Selvam was recruited in a temporary capacity as a Driver through sponsorship by the jurisdictional employment exchange. However, the petitioner in the present writ petition is a not a sponsor of jurisdictional Employment Exchange. Hence, the petitioner cannot claim advantage on the above writ petition. Further, one Thiru P.Subramani, Daily wages Driver, Trichy Division had filed Writ Petition No. 1650/2016 before the High Court of Madras. The High*

Court in its order, dated 11.01.2019, has allowed the said Writ Petition with a direction to grant the benefit of regularization to the petitioner in the post of Driver from the date of his appointment, within the period stipulated therein. Against the said order, a Writ Appeal has been filed before the High court of Madras and numbered as SR.No.69360/2019 on 10.06.2019. However, the High Court of Madras in its order dated 21.08.2019 has rejected the Writ Appeal at the SR Stage itself holding,on the ground of delay. Since Thiru P.Subramani has challenged and obtained favourable orders of the High Court of Madras dated 11.01.2019 and the Government did not appeal further due to the demise of the individual (date of demise 01.06.2021). the services of Thiru.P.Subramani have been regularized with effect from the date of his initial appointment i.e.,28.02.2005 in the cadre of Driver as per the directions of the High Court of Madras dated 11.01.2019 vide G.O.(D) No.204 Commercial Taxes and Registration Department dated

19.10.2022. The said order has been implemented only on technical grounds. Hence the said case cannot be equated with the case of the present writ petitioner and the writ petitioner cannot claim negative equality under the guise of Article 14 of the Indian Constitution".

Ultimately, they would submit that the petitioner cannot claim equality.

11. Heard the learned counsel on the either side and perused the records.

12. The respondents have not considered the fact that two of the drivers who have been similarly placed have been regularised in service.

13. This Court by order dated ***11.01.2019*** in ***WP.No.1650 of 2016 (P.Subramani's case)*** has taken note of regularisation of two other drivers and allowed the writ petition by holding so in paragraph No.6, which is extracted herein below:

"In the light of the above, after regularising the services of Mr.P.Saminathan and Mr.Divankanth as Drivers, the respondents cannot refuse to extend the same benefit to the petitioner. Therefore, this Court finds no hesitation to allow the writ petition. Accordingly, the writ petition is allowed as prayed for with a direction to the first respondent to pass orders on the proposal / recommendation made by the Commissioner of Commercial Taxes, the second respondent herein dated 10.02.2011 and grant the benefit of regularisation to the petitioner in the post of Driver from the date of his appointment, within a period of eight weeks from the date of receipt of a copy of this order."

Thereafter, the writ petitioner therein, P.Subramani passed away and his wife has been given a compassionate appointment.

14. In the case of U.Selvam, viz., ***WP.No.2015 of 2017***, this Court by order dated 07.12.2022, following the Judgement passed in ***WP.No.1650 of 2016 (P.Subramani's case)*** allowed the writ petition

quashing the impugned letter and issuing direction to respondents 1 and 2 to pass appropriate orders regularising the service of the petitioner therein from the date of his initial appointment.

15. The respondents' contention is that this judgement has been taken up on appeal, however, no interim orders of stay have been obtained. The main contention urged by the learned Government Advocate for the respondents is that no impugned order has been passed and an inter office memo has been projected as an impugned order.

16. No doubt, the said communication is an inter office memo. However, the Joint Commissioner (ST), Vellore, in her letter has clearly informed the Deputy Commissioner (ST), Cuddalore, that the petitioner's request cannot be considered. Therefore, the petitioner can very well sustain this writ petition. Further, the contention that the order obtained by U.Selvam, is subject matter of an appeal would also not enure to the benefit of the respondents as they have not only regularised the service of two other drivers earlier, but also the wife of

deceased P.Subramani have been given a compassionate appointment after his demise. Therefore, the respondents cannot apply different yardstick to the petitioner.

17. In the result, this writ petition is allowed and the respondents are directed to regularise the services of the petitioner from the date of his initial appointment in the post of Driver with all service and attendant, monetary benefits, within a period of 8 weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed. No costs.

02.12.2025

Index : Yes/No
Internet : Yes/No

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P.T. ASHA, J

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