



W.P.No.11211 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2025

CORAM:

THE HONOURABLE MRS. N.MALA

W.P.No.11211 of 2021

A.Sivalingam

... Petitioner

vs.

1.The Government of Tamilnadu
Rep. by the Principle Secretary,
School Education Department,
Fort St.George, Chennai - 600 009.

2.The Director of School Education
College Road,
Nungambakkam, Chennai - 600 006.

3.The District Educational Officer,
Kallakurichi District,
Kallakurichi.

4.The Headmaster,
Government Higher Secondary School,
Arasampattu,
Sankarapuram Taluk,
Villupuram District.

5.The Accountant General (A & E),
Tamilnadu,
Chennai - 600 018.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned G.O (1D) No.101 School Education (Pa.Ka.4 [1]) Department dated 04.03.2016 issued by the first respondent and quash the same in so far as in giving it prospective effect in regularizing the petitioner service i.e from the date of issuing the said G.O. and consequently direct the respondents to treat the petitioner as having been regularized in service w.e.f. the date of initial appointment i.e. 03.06.1992 and count his service from the day from the purpose of grant of pensionary and other retirement benefits.

For Petitioner : Mr.J.Muthukumaran

For Respondents : Mr.L.S.M. Hasan Fazil
Additional Government Pleader

ORDER

The present writ petition is filed to call for the records pertaining to the Government Order in G.O (1D) No.101 School Education (Pa.Ka.4 [1]) Department dated 04.03.2016, issued by the first respondent and quash the same in so far as it gives prospective effect in regularizing the petitioner's service i.e from the date of issuing the said



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G.O. and consequently direct the respondents to treat the petitioner as having been regularized in service with effect from the date of initial appointment i.e. 03.06.1992, and count his service from the day for the purpose of grant of pensionary and other retirement benefits.

2. The petitioner was appointed as Night Watchman on full time basis in the Government High School, Keelakkal, Poondi, by the proceedings of the District Educational Officer, Virudhachalam, vide Na.Ka.No.11435/A1/1992 dated 03.06.1992 in the time scale of pay of Rs.750 - 12 -870 -15 -945. While the petitioner was working in Government High School, Brahmakundam, the Headmaster of the said school sent a proposal to the District Educational Officer, Virudhachalam, vide his proceedings Na.Ka.No.278/File No.2/93 dated 02.04.1996, requesting for age relaxation in order to regularise the services of the petitioner, since the petitioner was over aged at the time of appointment as part time Sweeper on, 01.06.1990. Thereafter, the first respondent passed the impugned order vide G.O.(1D) No.101, dated 04.03.2016, regularising the services of the petitioner with effect from the date of the said order by granting relaxation of age. Challenging the said order the



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petitioner filed the above writ petition for the aforesaid relief.

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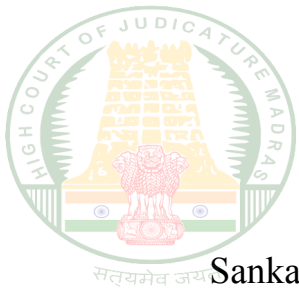
3. The respondents filed a detailed counter justifying the impugned order.

4. The counsel for the petitioner submitted that because of astronomical and abnormal delay of 20 years by the administration in passing the impugned G.O.(1D) No.101 dated 04.03.2016, the petitioner was deprived of his 25 years of unblemished service. The counsel therefore prayed for setting aside the impugned order of the first respondent.

5. The learned Additional Government Pleader appearing for the respondents reiterated the contentions raised in the counter affidavit.

6. Heard both sides.

7. It is admitted fact that the petitioner was appointed as part time Sweeper in the Government High School, Arasampattu,



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Sankarapuram Taluk, by the proceedings bearing Na.Ka.No.325/90-1991 dated 01.06.1990, of the fourth respondent. Subsequently, the petitioner was appointed as regular Night Watchman on full time basis in the Government High School, Keelakkal, Poondi, by the proceedings of the District Educational Officer, Virudhachalam, vide Na.Ka.No.11435/A1/1992 dated 03.06.1992, in the time scale of pay of Rs.750-12-870-15-945. Thereafter, the petitioner was transferred to Government High School, Brahmarkundam. The Headmaster of the said school vide proceedings dated 02.04.1996, submitted a proposal to the District Educational Officer, Virudhachalam, requesting for age relaxation for the petitioner for regularising his services. Subsequently, the fourth respondent also sent a proposal on 29.11.2007, annexing all the documents required and thereafter, again on 20.10.2009, the fourth respondent sent additional documents. The respondents for the reasons best known to them kept the proposal pending. After sending communications between 2007 - 2015, the third respondent submitted the proposal to the second respondent on 20.04.2015. In turn, the second respondent forwarded the same to the government by letter Na.Ka.No.648/A1/2015 dated 08.07.2015. On receipt of the proposal, the



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first respondent considered and passed orders vide the impugned G.O. (1D) No.101 dated 04.03.2016, relaxing the age in favour of the petitioner.

8. The issue is whether the respondent was justified in regularising the services of the petitioner from the date of the impugned order, overlooking his past regular service of 25 years. In this regard, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in *The State of Gujarat & Others vs. Tulsibhai Dhanjibhai Patel* reported in *(SLP (C) No.1109/2022)* dated 18.02.2022. The Hon'ble Court held as under :

"It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the Respondents are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years are thereafter to contend that an employee who has rendered 30 years continues service shall be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have



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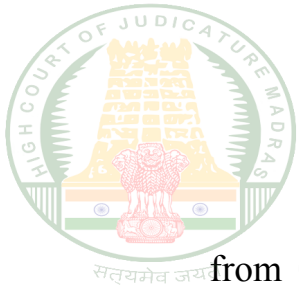
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taken such a stand.

In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the Respondent who has retired after rendering more than 30 years service.?"

9. In my view the said judgment would squarely apply to the facts of the present case. The State having taken services of the petitioner as a full time Night Watchman for the past 25 years, cannot be permitted to take the benefit of its own lapse in belatedly relaxing the age rule, the proposal for which was sent as early as in 1996. The services of the petitioner for the past 25 years cannot be ignored. In my view the astronomical delay in granting age relaxation by the respondents cannot prejudice the petitioner's claim for pension. Moreso, when the petitioner was not at fault at all. I am therefore of the view that the petitioner is entitled to counting of his past services for the purpose of pensionary benefits.

10. In view of the aforesaid discussions, the Writ Petition is allowed. The respondents are directed to count the petitioner's services



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from 03.06.1992, the date of initial of appointment for the purpose of grant of pension and other benefits. The respondents are directed to calculate the pension and other benefits of the petitioner and disburse the same within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

13.03.2025

Index : Yes/No
Speaking / Non-speaking order
mtl



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N.MALA, J.

mtl

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