

W.P(MD)No.25325 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.25325 of 2022

T.Ramakrishnan

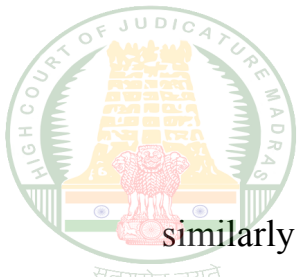
... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. By its Secretary,
Labour Welfare and Skill Development Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Labour,
DPI Campus, College Road,
Nungambakkam, Chennai-600 006.
- 3.The Joint Commissioner of Labour,
Trichy, Trichy District.
- 4.The Assistant Commissioner of Labour,
Thiruvarur, Thiruvarur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in connection with the impugned order passed by him vide his proceedings in Lr.No.17889/E2/2021-4, dated 14.12.2021 and quash the same as illegal, arbitrary and thereby directing him to regularize the petitioner's service in the post of Watchman with effect from 28.05.1999 and pay gratuity and pension by extending the benefit extended to



W.P(MD)No.25325 of 2022

similarly placed person vide G.O.Ms.No.43, Labour & Employment (E2) Department, dated 26.04.2019 within the time limit stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu
For Respondents : Mr.P.Thambidurai,
Government Advocate

ORDER

This Writ Petition is filed seeking quashment of the order of the 1st respondent dated 14.12.2021 vide his proceedings in Lr.No.17889/E2/2021-4 and consequently, to direct the first respondent to regularize the petitioner's service in the post of Watchman with effect from 28.05.1999 and pay gratuity and pension by extending the benefit extended to similarly placed person vide G.O.Ms.No.43, Labour & Employment (E2) Department, dated 26.04.2019 within the time limit stipulated by this Court.

2. The learned counsel appearing for the petitioner would submit that the petitioner was initially appointed as Night Watchman Cum Sweeper on 28.05.1989 through employment exchange on the regular vacancy by the 3rd respondent, but, his service was not regularized for very long time. In the meantime, the Government has issued an Order vide G.O.(Ms)No.22, P & AR Department, dated 28.02.2006 (hereinafter, referred to as 'G.O. Dated



W.P(MD)No.25325 of 2022

28.02.2006) stating that the services of the daily wages employees working in all the Government Departments, who have rendered 10 years of service as on 01.01.2006 be regularized by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned, subject to their being otherwise qualified for the post.

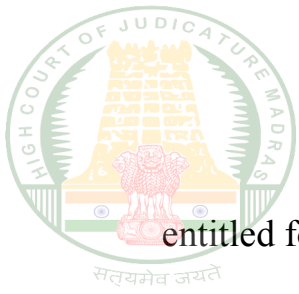
3. Referring the above Government Order, the learned counsel for the petitioner would submit that the petitioner is entitled for regularization with effect from 29.05.1999, since he had continuously worked for 10 years. However, the respondents have failed to take any steps to regularize the petitioner. In the meantime, the 1st respondent has regularized the junior of the petitioner, namely, Murugan, who was appointed on 11.03.1993, immediately upon completion of 10 years ie., on 10.03.2003. Aggrieved by the same, the petitioner has filed W.P.(MD)No.14716 of 2011, wherein this Court, vide order dated 10.09.2013, directed the respondents to regularize the services of the petitioner from the date on which his immediate juniors were regularized as per G.O.(Ms)No.58, Labour and Employment (E2) Department, dated 21.05.2008. However, the 3rd respondent, vide his proceedings dated 17.06.2021 regularized the service of the petitioner with effect from 21.05.2008, instead of regularizing his service from the date of completion of 10 years ie., from 29.05.1999 as done



W.P(MD)No.25325 of 2022

in the case of his juniors. Therefore, he submitted a representation dated 21.12.2020 to the 1st respondent, seeking regularization on par with his juniors and pay retirement benefits including pension and gratuity. Since the same has not been considered, the petitioner has filed W.P.No.14738 of 2021, wherein this Court, vide order dated 16.07.2021, directed the respondents to dispose of the representation of the petitioner. Pursuant to the same, the 1st respondent has passed the impugned order dated 14.12.2021, regularizing the petitioner with effect from 21.05.2008 without giving any reasons.

4.He would further submit that the said Murugan filed W.P.(MD)No.11975 of 2012, seeking regularization, wherein this Court vide order dated 25.04.2012, directed the respondents to regularize the said Murugan. Aggrieved by the same, the respondents filed W.A.(MD)No.273 of 2016, which was also dismissed. Aggrieved by the same, the respondents filed Special Leave Petition before the Hon'ble Supreme Court and the same was also dismissed. Since the matter has attained finality and the junior of the petitioner got benefitted and the same benefit has to be extended to the petitioner as well. Even otherwise in terms of the provisions of both the Government Orders ie., G.O.(Ms)No.22, P & AR Department, dated 28.02.2006 and G.O.(Ms)No.74, P & AR Department, dated 27.06.2013, the petitioner is



W.P(MD)No.25325 of 2022

entitled for regularization with effect from 29.05.1999.

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5.The learned Government Advocate appearing for the respondents, by referring G.O.(Ms)No.22, would submit that regularization is made for those who completed 10 years as on 01.01.2006 and therefore, the cut off date would be on '01.01.2006' suspending all the number of years they have worked and they are entitled for regularization only with effect from 01.01.2006 or after the Government Order. Accordingly, the impugned order has been passed by the 1st respondent.

6.With regard to the Writ Petition filed by the said Murugan, to whom the 1st respondent has granted regularization immediately upon expiry of 10 years from the date of appointment ie., 10.03.2003, he would submit that in order to implement the order of this Court, without having any other option, the 1st respondent has regularized the said Murugan, by relaxing the Rules 5(1) and 3(A) of Rule of Reservation of Tamil Nadu Basic Service Rules and Section 28(2) of Tamil Nadu Government Servants (CoS) Act, 2016. Therefore, the same benefit cannot apply to the petitioner's case.

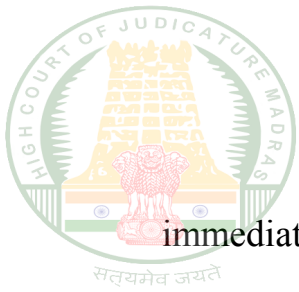


W.P(MD)No.25325 of 2022

7.I have given due consideration to the submissions made on either side and perused the materials available on record carefully.

8.Admittedly, there is no dispute on the aspect that the petitioner was appointed as Night Watchman Cum Sweeper as against regular vacancy through employment exchange with effect from 28.05.1989. He has been working as on date. The Government Order in G.O.(Ms)No.22 was issued on 28.02.2006 and it is the contention of the respondents that G.O(Ms)No.22, dated 28.02.2006 will take effect only with effect from 01.01.2006, suspending all the number of years the employees have put into service. As on 01.01.2006, the petitioner has completed almost 15 ½ years. A person, who had put 15 years of service cannot be equated with a person, who had put 10 years of service.

9.Upon perusal of the said Government Order, it is clear that the cut-off date mentioned as 01.01.2006 is only to determine as to whoever have completed 10 years service and there is no mention on the aspect that from which date, the service of temporary employees have to be regularized either as per G.O(Ms)No.22 or in G.O(Ms)No.74. The Government Orders were misunderstood by the respondents and they are taking decisions on case to case basis. In the case of Murugan, the respondents had given regularization



W.P(MD)No.25325 of 2022

immediately upon completion of 10 years. However, insofar as the petitioner's

case is concerned, such regularization was made with effect from 21.05.2008,

for which, no reason was provided by the 1st respondent. Therefore,

regularizing the service of the petitioner from 21.05.2008 is not in consonance

with G.O.(Ms)No.22 and and G.O.(Ms)No.74 and as per the Government

Orders, the petitioner's service has to be regularized, immediately upon the

completion of 10 years from the date of his appointment. The following two

examples will give more clarity to the present issue:

a) If the initial appointment is 31.03.1989, he/she has to be regularize immediately after completion of 10 years, i.e., with effect from 01.04.1999;

b) If the initial appointment is 31.12.1995, he/she has to be regularized with effect from 01.01.2006.

10.The learned Government Advocate appearing for the respondents would submit that whenever the permanent vacancy arises only then, he can be accommodated is concerned, since the petitioner was recruited through employment exchange as Night Watchman Cum Sweeper in the permanent vacancy, which was vacant at that time. Therefore, the question of availability of sanctioned post does not arise.



W.P(MD)No.25325 of 2022

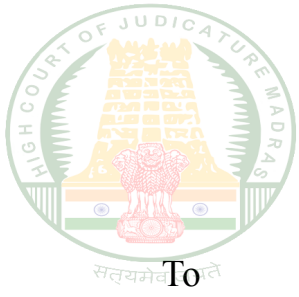
11. Therefore, for all these reasons, I am of the considered view that the petitioner has to be regularized with effect from 29.05.1999, since he has completed 10 years of service on 28.05.1999, as he was appointed originally, on 28.05.1989. Therefore, the impugned order has to be set aside and the 1st respondent is directed to regularize the service of the petitioner with effect from 29.05.1999 and certainly, the petitioner is entitled for all the benefits, which are all available for a regular employee, including service and other monetary benefits along with pensionary benefits. Since the petitioner retired on 31.12.2019, the 1st respondent is directed to determine his pension and other pensionary benefits, including monetary benefits and other benefits, which are legally entitled and pay the same to the petitioner within a period of six months from the date of receipt of a copy of this order.

12. Accordingly, this Writ Petition is allowed. No costs.

29.01.2025

NCC : Yes / No
Index : Yes / No

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W.P(MD)No.25325 of 2022

To

WEB COPY

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State of Tamil Nadu,
Labour Welfare and Skill Development Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Labour,
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W.P(MD)No.25325 of 2022

KRISHNAN RAMASAMY, J

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W.P(MD)No.25325 of 2022

29.01.2025