
(2013) 02 MAD CK 0141

In the Madras High Court

Case No : W.A. (MD) No. 147 of 2013 and M.P. (MD) No. 2 of 2013

C. Jeba Kumar

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) 4 MLJ 172

Hon'ble Judges : S. Vimala, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : K. Gini Manuel for Ms. D. Anbarasu, for the Appellant; B. Pugalendhi, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Vimala, J.—The writ appellant is the writ petitioner. Writ of mandamus sought for by the petitioner directing the respondents to regularize the services of the petitioner as Water Supply Assistant in Maruthangur Panchayat was dismissed in W.P. (MD) No. 4820 of 2011 dated 17.7.2012. Challenging the dismissal, this writ appeal has been filed.

2. Facts:

The appellant/petitioner was working as Drinking Water Supply Assistant from 14.12.1999 under the third respondent Panchayat on daily wages basis. Daily wages were fixed as per the market rate fixed by the Kanyakumari District Collector. The Panchayat, without giving any notice, revised the pay of the petitioner from the market rate to the consolidated rate of Rs. 400/- per month based upon G.O. Ms. No. 119 Rural Development Department, dated 10.5.2000.

2.1. Therefore, the petitioner filed Writ Petition before the Principal Bench of this Court in W.P. No. 10437 of 2002 with a prayer to direct the respondents to pay salary as per the order of the District Collector. The Writ Petition was allowed on 2.3.2002. As against which, the respondents filed Writ Appeal in W.A.(MD) No. 2413 of 2003 and the same was dismissed on 17.2.2004. SLP preferred in SLP

No. 122380 of 2004 was also withdrawn by the Government on 30.7.2004. However, the salary was wrongly continued to pay as per the Government Orders. Under G.O. Ms. No. 528, Personnel and Administrative Reforms Department, dated 10.10.1998, Panchayats themselves were directed that the persons appointed on daily wages to discharge the functions of the posts in Tamil Nadu Basic Services through Employment exchange have to be appointed as against the regular vacancies in the regular time scale of pay with reference to the age and educational qualification in any one of the suitable posts in the Tamil Nadu Basic Services. Subsequently, the Secretary to the Government also issued a circular by clarifying that part-time employees, those who were employed through the Employment Exchange should also be appointed in the regular time scale of pay under G.O. Ms. No. 528, Personnel and Administrative Reforms Department, dated 10.10.1998. Based upon the clarification issued, the third respondent prepared a list of candidates and has appointed some persons in the regular time scale of pay under G.O.Ms. No. 528 dated 10.10.1988.

2.2. The appellant/petitioner herein approached the respondents to appoint him in the regular time scale of pay. He sent a detailed representation to the third respondent and the third respondent also recommended the case of the petitioner for regular employment. But, the first respondent did not issue any orders appointing the petitioner in the regular time scale of pay.

23. In respect of the similarly placed persons, this Court has ordered the respective administration to appoint them in the regular time scale of pay by order dated 22.12.2006 in W.P. (MD) No. 11707 of 2006. Aggrieved by the order, the appointing authority preferred Writ Appeal in W.A. (MD) No. 391 of 2007 and it was dismissed by order dated 25.10.2007.

2.4. While so, since the respondents herein did not pass any order in respect of the appellant/petitioner herein, the present Writ Petition has been filed seeking a writ of mandamus to direct the second respondent to consider the representation of the petitioner dated 17.2.2010 based on the resolution of the panchayat dated 26.3.2010 and to absorb the petitioner in the regular time scale of pay as Drinking Water Supply Assistant in the third respondent Panchayat.

2.5 In considering the prayer, the learned single Judge following the order dated 18.7.2007 passed in W.P. (MD) No. 1333 of 2004 dismissed the writ petition. Aggrieved over the dismissal of the writ petition, the present Appeal has been filed.

3. Learned Special Government Pleader for the respondents contended that the appellant/petitioner is not entitled to regularization as he was only a part time employee and not a full time employee.

3.1. A perusal of the order of appointment dated 15.10.1999 go to show that the employment of the appellant/petitioner cannot be construed as a part time employment as he has been directed to work not only in morning and evening, but during day times if required by the panchayat. It goes without saying that

the appellant/petitioner should make himself available, awaiting the call of the panchayat at any time during day time, apart from discharging his duties in the morning as well as in the evening. The appellant/petitioner, who is a daily wage employee is likely to lose even that daily wage if he is not available for the call of the panchayat at any time during the day. Therefore, the contention that the appellant/petitioner was a part time employee cannot be accepted. A perusal of the order dated 15.10.1999 also go to show that he had been discharging his duties even prior to that date. It will be relevant to quote the order passed by this Court in W.P. No. 12332 of 2010 dated 26.11.2009 relying upon the norms (aid down under the Tamil Nadu Industrial Establishment (Conferment of permanent status to workmen) Act and also relying upon the decision K. Duraisamy v. Tamil Nadu Electricity Board, rep. by its K. Duraisamy Vs. Tamil Nadu Electricity Board and others, , ordering regularization of the services of a water supply attended in a village panchayat. This decision would apply to the case of the appellant/petitioner also.

4. The learned counsel appearing for the appellant submitted that already there is an order passed by this Court in W.A. No. 2413 of 2003 and as against which, SLP preferred by the Government was also withdrawn and therefore, the only course open to the Government is to obey the orders passed by this Court and to appoint the petitioner in the regular time scale of pay based on the resolution of the panchayat. It is also contended that as per the resolution of the panchayat, it is the right of the petitioner to get appointment as full time worker on regular basis.

4. 1. When it is an admitted fact that the SLP was withdrawn by the Government itself and consequently, the order of the Writ Appeal in W.A. No. 2413 of 2003 has become final, it is not open to the Government to contend that they will not consider the case of the petitioner. Moreover, when persons similarly placed have been favourably considered and they have been appointed in the regular time scale of pay, there is no reason as to why this petitioner alone should be singled out and should not be appointed, especially when there is a resolution dated 26.3.2010 passed by the third respondent panchayat. Therefore, the claim of the appellant/writ petitioner has to be accepted. If so, the order passed by the learned single Judge has to be set aside and accordingly, the same is set aside.

5. In the result, the Writ Appeal is allowed and the order passed in the Writ Petition is set aside. The connected Miscellaneous Petition is closed. No costs. The Government is directed to pass orders regularizing the services of the appellant/petitioner in the regular time scale of pay within a period of six weeks from the date of receipt of a copy of this order.