
(2011) 12 MAD CK 0164

In the Madras High Court

Case No : Writ Petition No. 7391 of 2007

C.P. Murugesan

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 10(a), 48

Citation : (2011) 12 MAD CK 0164

Hon'ble Judges : D.Hariparanthaman, J;D. Hariparanthaman, J

Bench : Division Bench

Advocate : C.K.Chandrasekar, for the Appellant; Rm. Muthukumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner was appointed as Steno Typist by an order dated 28.4.1986 on temporary basis under Rule 10 (a) (i) of the General Rules of the Tamil Nadu State and Subordinate Services. His appointment was pursuant to the sponsorship made by the Employment Exchange, Dindigul. Thereafter, the petitioner was ousted from service by an order dated 20.9.1991, while he was working at Coimbatore .

2.The petitioner filed Original Application No. 3955 of 1991 questioning the order dated 20.9.1991, ousting the petitioner from service. The Tribunal while admitting the said Original Application, granted interim stay of the termination order on 12.11.1991. Pursuant to the same, the petitioner was reappointed by the fourth respondent by an order dated 9.12.1991. He joined duty on 11.12.1991.

3.While so, the first respondent issued G.O.Ms.No.377, Personnel and Administrative Reforms (P) Department, dated 12.12.1995, regularising the service of the petitioner with effect from 29.3.1994.

4.The petitioner made a representation dated 2.6.2000 to regularise his service

from 28.4.1986, the date of his initial appointment, to the second respondent. The request of the petitioner to count his service from 28.4.1986 was rejected by the third respondent by his order dated 28.1.2002 on the ground that the temporary service of the petitioner could not be taken into account as it is not feasible.

5. The petitioner filed Original Application No. 5295 of 2007 (W.P. No. 7391 of 2007) to quash the aforesaid order dated 28.1.2002 and for a consequential direction to count the service rendered by him from 28.4.1986 for all purposes including pay fixation, seniority, grant of Selection Grade and terminal benefits.

6. The respondents filed reply affidavit refuting the allegations. It is stated in paragraph 9 of the reply affidavit that by relaxing the Rules, the petitioner was regularised by issuing G.O. Ms. No. 377, Personnel and Administrative Reforms (P) Department, dated 12.12.1995.

7. I have heard the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate.

8. The learned counsel for the petitioner submits that G.O. Ms. No. 377, Personnel and Administrative Reforms (P) Department, dated 12.12.1995, while regularising 13 persons, relaxed the age in respect of six persons and in respect of seven others, no relaxation was made and the petitioner was one among them. The averment made in the reply affidavit that the relaxation was made in respect of age and therefore, regularisation was to take effect from 29.3.1994 has no substance. It is further submitted that even in case, where the Government has sought to exercise its power under Rule 48 of the Tamil Nadu State and Subordinate Service Rules, relaxation shall take effect from the date of appointment and not from some other date. Therefore, the respondents shall not score out the earlier service rendered by the petitioner.

9. On the other hand, the learned Government Advocate seeks to sustain the impugned order based on the reply affidavit.

10. I have considered the submissions made on either side.

11. The petitioner was appointed as Steno Typist under Rule 10 (a)(i) of Tamil Nadu State and Subordinate Service Rules. It is true that his appointment was a temporary one under the aforesaid Rule. He was sponsored by Employment Exchange and pursuant to his sponsorship, he was appointed as Steno Typist. It is not in dispute that he is having required qualification for the post of Steno Typist. While so, the petitioner was regularised in service, vide G.O. Ms. No. 377, Personnel and Administrative Reforms (P) Department, dated 12.12.1995 with effect from 29.3.1994. But, the petitioner seeks regularisation with effect from 28.4.1986 i.e. from the date of his initial appointment. His request was rejected by the third respondent by an order dated 28.1.2002. It is stated that since the petitioner was regularised with effect from 29.3.1994, the earlier service rendered before 29.3.1994 could not be taken into account for fixing of pay.

12.While the petitioner sought for regularisation from the date of appointment, it is stated in paragraph 9 of the reply affidavit that by relaxing the Rules, the petitioner was regularised in service and therefore, the regularisation was to take effect from 29.3.1994. In this regard, para 9 of the reply affidavit is extracted hereunder:

It is submitted that after carefully considering the request of the applicant ,the Government in their letter No.48065/E2/2001-3, Labour and Employment Department, dated 21.01.2002have negated the request of the applicant ,as his services were regularised with effect from 29.03.1994by a special order of the Government viz., G.O.Ms.No.377, Personnel andAdministrative Reforms Department, dated12.12.1995 by relaxing the rules. He was also informed that as his services were regularised with effect from29.3.1994, past temporary services could not be taken into account either for fixation of pay or for allowing increment .

13.But, the aforesaid statement made in paragraph 9 of the reply affidavit is not correct. In this regard, paragraph 5 of the.O.Ms.No.377, Personnel and Administrative Reforms (P) Department, dated 12.12.1995 is extracted hereunder:

The Government after careful examination ,appoint the following 13candidates (by relaxing age rule in respect of 6 candidates indicated in para 4 above and without any relaxation in respect of other 7 candidates) on a regular basis in the posts indicated against their names in their respective departments who are involved inO.A.No.3002/91 as in the case of Tmt. S. Packialakshmi, with effect from29.3.1994.

Sl.No

Tvl./Tmt.

1

K. Radha.

Steno-Typist

2

D. Kalaivani< /p>

-do

3

S. Gomathi Leela

-do

4

K. Ramalingam< /p>

-do

5

S. Vagulavalli< /p>

-do

Sl.N o

Tvl./Tmt.

6

K. Kalyani< /p>

Typist

7

P. Selvaraj< /p>

-do

8

D. Saraswathi< /p>

-do

9

K. Manoharan< /p>

Steno Typist

10

P.V. Komalam< /p>

-do

11

Josepine Mary Glara

-do

12

N. Manimegalai< /p>

-do

13

P. Murugesan< /p>

-do

14.The petitioner is at Serial No.13. The relaxation in respect of the age was made only in respect of six persons and in respect of seven persons, no relaxation was made. Therefore, the respondents are not correct in stating that there was relaxation in respect of the petitioner and therefore, relaxation was to take effect from 29.3.1994.

15.Furthermore, as rightly contended by the learned counsel for the petitioner, even when the Government sought to relax certain qualification, the relaxation shall take effect from the date of appointment and not from some other date.

16.The learned counsel for the petitioner has relied on the order dated 20.10.2011 made in W.P.No.3491 to 3493 of 2007 in this regard. Paragraph 12 of the said order is extracted hereunder:

The issue as to whether the first respondent is justified in not regularising the service of the petitioners, while relaxing their educational qualification, from the date of their initial appointment. The post of Irrigation Assistant requires that the concerned person should have passed 8th standard. In such circumstances, the impugned G.O was passed by the Government regularising the services of the petitioners from the date of issuance of Government Order relaxing the educational qualification. But the regularisation was not granted from the date of their initial appointment. The petitioners were initially appointed on compassionate ground in the posts of Night watchman .The post of Night watchman does not require the educational qualification of 8th standard. Under such circumstances, when the first respondent sought to relax the educational qualification of the petitioners, the respondents ought to have regularised their services from the date of initial appointment and not from the date of issuance of G.O. The judgments relied on by the learned counsel for the petitioners squarely cover the issue. The order in W.P.No.20197 of 2006 is based on the order in the judgment reported in V. Perumal Vs. The Commissioner and Secretary to the Government, Health and Family Welfare Department, The Director of Medical Education and The Dean, and the judgment dated 10.1.2007 in W.P.No.28263 of 2006.Paragraph 6 to 8 of the decision referred to above in W.P.No.20917 of 2006 reads as follows :

Learned counsel appearing for the petitioner strenuously contended that the petitioner was appointed as early as on 21.3.1975 and at that time ,she has passed the certificate course in Bakery and Confectionary in second class. There was no ad hoc rules for the said post at that point of time. Only after the petitioner was appointed, the adhoc rules have been framed by the Government. Further more, by regularising the service of the petitioner only from 14.5.1991, her service from 21.3.1975 to 13.5.1991, that is for a period of 16 years and 2 months has been ignored by the Government. This will cause considerable hardship to her. Further the learned counsel for the petitioner cited a decision reported in V. Perumal Vs. The Commissioner and Secretary to the Government,

Health and Family Welfare Department, The Director of Medical Education and The Dean, wherein this court has held as follows :

The grievance of the petitioner is that there is no justification to restrict the relaxation applicable prospectively and not from the date of petitioner's passing the Nursing Assistant test from 30.8.1975. The Government have relaxed the qualification in favour of the petitioner and having regard to the appointment of the petitioner as Hospital Servant on regular basis with effect from 19.3.1965 and having appointed the petitioner as Nursing Assistant Grade II temporarily and the petitioner having completed training on 30.8.1975, there is no justification on the part of the Government to restrict the relaxation only from the date of the order. The relaxation is granted by the Government for the purpose of regularisation of petitioner's service. The regularisation of service cannot be made after 20 years of the petitioner's service. If the impugned Government Order is applied strictly the petitioner's valuable service of 20 years will get obliterated and the petitioner will not be in a position to get annual increments and other benefits .Hence, the action of the first respondent in restricting the relaxation only from 27.6.1996 is unreasonable and arbitrary in exercise of power.

Further the learned counsel for the petitioner relied upon an unreported judgment of this Court in W.P.No.28263 of 2006 dated 18.1.2007 in which this Court held as follows:

6. In normal circumstances what the Government could have been approved ,since any order granting relaxation and regularising the services of a person can take only prospective effect. But in this case the action of the Government cannot be approved for two reasons namely:

a) 17 years of service of the petitioner from 1974 to 1991 is sought to be wiped out by a single stroke by way of a Government Order and the same is arbitrary and unfair .

By citing those judgments, learned counsel for the petitioner contended that there is no justification on the part of the respondent to regularise the service of the petitioner only from 14.5.1991 and not from the date on which originally she was appointed on 21.3.1975. Further learned counsel submitted that if her service is regularised only from 14.5.1991, her valuable service for the past 16 years and two months will get obliterated and the petitioner will not be in a position to get other benefits.

The said submission of the learned counsel for the petitioner appears to be well founded. When the petitioner was appointed on 21.3.1975, she had possessed certificates course in Bakery and Confectionary in second class. The Government of Tamil Nadu has not issued any adhoc rules at that point of time. The adhoc rules came into effect only after the petitioner was appointed as Baker .Further more, when the Government thought it fit to relax the educational qualification ,considering the fact that the petitioner was appointed as early as on

11.3.1975, it is not known as to why the relaxation shall be given effect to only from 14.5.1991 and not from 21.3.1975, when the petitioner was appointed. As contended by the learned counsel for the petitioner, the petitioner's valuable service for the past 16 years and 2 months will get obliterated and the petitioner will not be in a position to get any monetary benefits. Learned Additional Government Pleader is unable to point out why such benefit should not be conferred on the petitioner. Hence, for all the reasons stated above, the impugned order of the respondent in G.O.Ms.No.1062, Education (I) Department, dated 6.11.1992 regularising the service of the petitioner only with effect from 14.5.1991 and not from 21.3.1975, the date on which the petitioner was appointed is liable to be quashed and the same is quashed.

In the result, the writ petition stands allowed directing the respondent to treat the service of the petitioner regularised with effect from the date of appointment namely, 21.3.1975 and to grant all consequential benefits within a period of three months from the date of receipt of production of the copy of this order. No costs.

17. In view of the aforesaid reasons and in the light of the above said judgments referred, the impugned order is quashed. The first respondent is directed to count the service of the petitioner from 28.4.1986 for all purposes including pay fixation, seniority, grant of Selection Grade and terminal benefits, etc. The first respondent is further directed to pass appropriate orders in this regard within a period of twelve weeks from the date of receipt of a copy of this order.

18. The writ petition is allowed on the above terms. No costs.