
(2014) 09 MAD CK 0196

In the Madras High Court

Case No : Writ Petition No. 7884 of 2013 and M.P. No. 1 of 2013

D. Arasu

APPELLANT

Vs

Government of Tamilnadu

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : (2014) WritLR 1011

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Judgement

D. Hari Paranthaman, J.—Though originally the petitioners have challenged the order of the 2nd respondent dated 11.12.2012 and prayed for a consequential direction to direct the respondents to regularize their services from the date on which they have completed ten years of service on daily wage basis in the light of the order dated 11.04.2011 passed by this Court in W.P. No. 8745 of 2011, with all consequential service and monetary benefits within a time frame, by way of filing M.P. No. 1 of 2014, the petitioners have prayed for amending the relief sought, which was also ordered on 03.09.2014. Now, the prayer of the petitioners in this writ petition is to quash G.O.Ms. No. 92 Higher Education (G2) Department dated 06.06.2012 on the file of the first respondent and the consequential proceedings in Na.Ka.No. 9318/P4/2011 dated 11.12.2012 on the file of the second respondent and consequently to direct the respondents to regularize their services in the cadre of Sweeper from the date of their initial appointment with all consequential service and monetary benefits within a time frame that may be stipulated by this Court.

2. The 1st petitioner Arasu belongs to Schedule Caste Community. He registered his name in the District Employment Exchange, Vellore on 26.10.1988. Based on the sponsorship from the Employment Exchange, the 3rd respondent appointed him as Scavenger (toilet cleaner) in the college. Likewise, the 2nd petitioner, registered his name in the District Employment Exchange, Dharmapuri on 09.01.2001 and based on the sponsorship from the Employment Exchange, he

was appointed by an order dated 07.05.2001 by the 4th respondent as daily wage Scavenger (toilet cleaner).

3. The petitioners have been working from the date of appointment as Scavengers (toilet cleaners) in the Government Arts Colleges. It is their grievance that their services should be regularized from the date of their initial appointment or at least from the date of completion of 10 years of service, since they were appointed through Employment Exchanges, by following the selection process. In support of their contention, they relied on G.O.Ms. No. 22, Personnel & Administrative Department, dated 28.02.2006. As per the said G.O., persons who have rendered service on daily wage basis shall be regularized on completion of 10 years of service. While so, the 1st respondent issued G.O.Ms. No. 92 Higher Education (G2) Department dated 06.06.2012, regularising the services of the petitioners from the date of issuance of the said G.O. in the scale of pay of 1300-3000 with the grade pay of Rs. 300 p.m. Hence, the petitioners have filed this writ petition challenging the aforesaid G.O.Ms. No. 92 Higher Education (G2) Department dated 06.06.2012 on the file of the first respondent and the consequential proceedings dated 11.12.2012 on the file of the second respondent and for the consequential direction to regularise their services in the cadre of Scavengers (toilet cleaners) from the date of their initial appointment with all consequential service and monetary benefits.

4. A counter affidavit is filed refuting the allegations. It is stated in the counter affidavit that the petitioners cannot seek relief under G.O.Ms. No. 22, Personnel and Administrative Reforms Department dated 28.02.2006, since, later, a G.O. was passed in G.O.Ms. No. 74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013. It is further averred that now only G.O.Ms. No. 74 governs the field and hence the claim made under G.O.Ms. No. 22 has to be rejected.

5. The learned counsel for the petitioners submitted that the petitioners were appointed under regular vacancies of Scavengers (toilet cleaners) in the 3rd and 4th respondent Colleges respectively. He further submitted that the petitioners were appointed as full time employees and not part time employees and Rs. 1300-3000 with grade pay of Rs. 300 is the pay scale prescribed in G.O.Ms. No. 385, Finance Department dated 01.10.2010 for Part Time employees and since the petitioners are full time employees, G.O.Ms. No. 385 cannot be invoked and they are entitled to scale of pay applicable to full time Scavengers (toilet cleaners). Further, the learned counsel submitted that since the petitioners were appointed through Employment Exchange against regular vacancies, they should have been regularised with effect from the date of their appointment with all monetary benefits, as they did not come by way of back door method.

6. The learned counsel for the petitioners has relied on G.O.Ms. No. 179, School Education Department, dated 13.07.2012, in and by which, the services of Night Watchman, Gardeners and Scavengers were regularised from the date on which they joined in the regular post. According to him, those persons were initially

appointed as Part Time workers and thereafter they were appointed as Full Time Workers in the Regular Post, but paid on daily wage basis and by the G.O. regularisation was made from the date on which they joined in the regular post with all monetary benefits. According to him, as far as the petitioners are concerned, though they were regularly appointed from the date of their regular appointment, the monetary benefits was paid from the date of issuance of G.O. 92. As far as those persons mentioned in G.O.Ms. No. 179 are concerned, they were not appointed through Employment Exchange, but even then, they were given the full time scale of pay and also the rules were relaxed, since they were appointed without reference to Employment Exchange.

7. Further, by drawing the attention of this Court to category 8 of class IV of the Special Rules for the Tamil Nadu Basic Service, which is extracted below:-

8. The learned counsel for the petitioners also by placing reliance on Rule 5 of the Tamil Nadu Basic Service Rules, which prescribes educational qualification for the post in the Tamil Nadu Basic Service Rules, submitted that as per sub rule (2) (aa) of Rule 5, the required educational qualification is only read and write. The relevant Rule (2)(aa) of Rule 5 reads as follows:

"Rule (5)(2)(aa): Candidates for appointment by direct recruitment to any of the categories in Class IV must be able to read and write in Tamil."

9. The learned counsel for the petitioners also draws the attention of this Court to Rule 4(a) of the Tamil Nadu Basic Service Rules and submitted that the appointment has to be made through employment exchange. Further, according to him, since the petitioners were appointed as per the Tamil Nadu Basic Service Rules, against permanent vacancies, as per Rules 4 and 5 of the said Rules, mentioned supra, they should be regularised from the date of appointment in the regular post in the scale of pay applicable to full time employees with monetary benefits.

10. On the other hand, the learned Additional Government Pleader by heavily relying on G.O.Ms. No. 74, P & AR Department, dated 27.06.2013, contended that the petitioners are not entitled to the benefits of G.O.Ms. No. 22, P & AR Department, dated 28.02.2006, in view of the passing of subsequent G.O.Ms. No. 74 mentioned supra.

11. I have heard the submissions made by the learned counsel on either side and perused the materials available on record.

12. Both G.O.Ms. No. 22 as well as G.O.Ms. No. 74 cited supra are only Government Orders to regularise the services of persons who were irregularly appointed. As far as the case on hand is concerned, it is the specific case of the petitioners that they were not appointed irregularly and they were appointed against regular vacancies, by following the Tamil Nadu Basic Service Rules.

13. It is relevant at this juncture to extract hereunder Rule 4 of the Tamil Nadu Basic Service Rules:-

"4. Selection of direct recruits:-

a) Selection of candidates to any of the categories by direct recruitment shall be made in the manner indicated below:-

The appointing authority shall call for a panel of names from the Employment Exchange concerned informing that office of the anticipated vacancies of the posts and the qualifications prescribed for such posts. A selection shall be made only from out of the candidates included in the panel sent by the Employment Exchange concerned. If the appointing authority finds that none of the candidates in the panel sent by the Employment Exchange is suitable for appointment, he shall send the requisition to the Employment Exchange for forwarding a second list or necessary further lists of candidates and make his selection from out of such list or lists. Appointment of persons not nominated by the Employment Exchange concerned may be made only when the Employment Exchange concerned is unable to sponsor qualified candidates, and in such cases of appointment both the Employment Exchange concerned and the immediate superior officer of the appointing authority should be informed of the appointment and the circumstances in which such appointments has to be made.

Provided that this sub rule shall not apply in the case of appointment of any person transferred from a local fund or municipal institution in consequence of the transfer of such institution to the control of the State Government, or to any person, who has been appointed through the Employment Exchange to a post paid from contingencies.

Provided further that this sub-rule shall not apply in the case of appointment of the wife/husband/unmarried daughter of Government servant who dies in harness leaving his family in indigent circumstances and who is retired from service on medical invalidation under Article 441 read with Article 452 and 454 of the Civil Service Regulations.

Provided further for recruitment to the post of residential Office Assistants to the eligible Officers, the appointing authority may call for from the Employment Exchange a list of candidates residing in and around the places or locality of the residences of the eligible officers.

Provided that the appointing authority may call for from the Employment Exchange a list of candidates who have previous experience in driving light motor vehicles for not less than three years and who possess a valid driving licence."

A reading of the aforesaid rule would make it clear that the appointment shall be made through employment exchange.

14. The petitioners have also produced copy of their appointment orders. The appointment orders in respect of the 1st petitioner dated 09.04.1997 and the order dated 09.01.2001 in respect of the 2nd petitioner are extracted hereunder:

A perusal of the above cited appointment orders make it very clear that the

petitioners were recruited pursuant to the sponsorship from the employment exchanges.

15. Now, the petitioners services were regularised by the impugned G.O.Ms. No. 92 with effect from the date of issuance of the said G.O. viz., 06.06.2012 and they were also given the scale of pay of 1300-3000 with grade pay of Rs. 300/-.

16. The two issues that have arisen for consideration in this case are that

(1) Whether G.O.Ms. No. 92 is correct in regularising the services of the petitioners from the date of issuance of the said G.O. or the petitioners are entitled to regularisation from the date of appointment?

(2) Whether the G.O. is correct in fixing the pay of 1300-3000 with grade pay of Rs. 300 or the petitioners are entitled to full time scale of pay of Rs. 2550-55-2660-60-3200?

17. If the petitioners are appointed against regular vacancies by following the Tamil Nadu Basic Service Rules, the services of the petitioners are entitled to be regularised from the date of their initial appointment. Even the impugned G.O. makes it clear that these posts are in existence. It is not the case of the respondents in the counter affidavit that there are no posts and those persons were irregularly or illegally appointed to the posts.

18. A perusal of Rule 4 of the Tamil Nadu Basic Service Rules cited supra make it clear that the appointment to the Basic Services is made through employment exchange. In the case on hand, the petitioners were appointed through employment exchange and they were not appointed by way of back door method. The appointment orders which are extracted supra make it very clear.

19. That apart, Rule 5(2) of the Tamil Nadu Basic Service Rules prescribes educational qualification relating to the post which the petitioners hold. Rule 5(2) (aa) prescribes qualification for appointment to the post of class IV service, which reads as follows:-

"(5)(2)(aa) Candidates for appointment by direct recruitment to any of the categories in Class IV must be able to read and write in Tamil."

20. At this juncture, it is relevant to extract Rule 5(2)(a) of the Tamil Nadu Basic Rules:-

Rule 5(2) Educational Qualification:

(a) No person shall be eligible for appointment by direct recruitment to any category of the service in class I, II and III unless he has passed the III form or the VIII Standard (or the E.S.L.C.) of a recognised school (i.e.) a school maintained by or opened with the sanction of the Government of Tamil Nadu or to which recognition has been accorded by the Director of School Education under the Educational Rules of the State...."

Rule 5(2)(a) states that one should have passed 8th standard as qualification for

appointment to Class III and III of the Basic service and Rule 5(2)(aa) makes it very clear that the qualification prescribed for appointment to the post in Class IV service is that one must be able to read and write in Tamil only.

21. Thus, the qualification prescribed in the Tamil Nadu Basic Service Rules is only read and write in Tamil. The recruitment was also made about more than 17 years back in the case of the 1st petitioner and 13 years back in the case of the 2nd petitioner, and still the same rules continue to be in operation and only in cases where persons were appointed irregularly G.O.Ms. No. 22 or G.O.Ms. No. 74, as the case may be, will apply and as far as the case of the petitioners is concerned, they were not irregularly appointed and they were appointed as Scavengers (Toilet Cleaners) following the Tamil Nadu Basic Service Rules in the Government Colleges. However, they were kept as such for decades together without regularising their services and when they sought for regularisation, the Government issued the impugned G.O. regularising their services and granted pay in the scale of pay of Rs. 1300-3000 with grade pay of Rs. 300. Further, on a perusal of G.O.Ms. No. 385 dated 01.10.2010, it is clear that is only applicable to part time employees and scale of pay of Rs. 1300-3000 with grade pay of Rs. 300 was granted to part time scavengers, sweepers, etc. It is not the case of the respondents either in the G.O. or in the counter affidavit that the petitioners are appointed as part time employees. Further, neither in the appointment orders nor in the regularisation orders, it is stated that they were appointed as part time employees. Further G.O.Ms. No. 92 nowhere states that the petitioners are part time scavengers.

22. That apart, the petitioners also produced an order in the additional typed set of papers relating to appointment of one Balamma in Queen Mary's college, which is also a Government college, wherein the said Balamma was appointed in Rs. 2550-55-2660-60-3200 scale of pay by order dated 30.07.1998 and her services was regularised with effect from 05.08.1998, from the date of her appointment and the same is not disputed. The aforesaid scale was revised with effect from 01.01.2006. Therefore, the treatment that is given to Balamma in the Government Women College ought to have been given to the petitioners, who are appointed in the Government Arts Colleges of the same Tamil Nadu Government. Hence, I am of the view that the impugned orders are liable to be interfered with. Accordingly, the writ petition is allowed. The impugned orders are quashed as far as the petitioners are concerned and a direction is issued to the respondents to pass orders regularly appointing the petitioners from the date of initial appointment as full time scavengers in the proper scale of pay applicable to the full time scavengers with all monetary benefits. The respondents are directed to comply with the aforesaid direction within a period of three months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.