

(2011) 08 MAD CK 0382

In the Madras High Court

Case No : Writ Petition (MD) No. 11258 of 2009

K. Kandasamy

APPELLANT

Vs

The District Educational Officer, Cheranmahadevi Tirunelveli
District and The Assistant Elementary Educational Officer,
Ambasamudram Tirunelveli District

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0382

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : V. Paneer Selvam, for the Appellant; T.S. Mohammed Mohideen
Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice P. Jyothimani

1. The writ Petitioner, who is a physically handicapped person, being deaf and dumb, was appointed as a part time Sweeper by the District Educational Officer, Tirunelveli, in the appointment order, dated 29.08.1996, along with other two persons, namely, M. Pitchaiya and M. Ramakrishnan, who are not physically challenged. Under G.O. Ms. No. 22 Personnel and Administrative Reforms Department dated 28.02.2006, the Government based on the announcement of the Hon'ble Chief Minister on the floor of the Assembly that persons, who are in the Government Department on daily wages basis, completed 10 years of service as on 01.01.2006, has directed them to be regularised in the said posts. It was based on the said Government order, the other two persons appointed along with the Petitioner, namely, M. Pitchai and M. Ramakrishnan, were regularised as per the orders of the District Educational Officer, dated 30.06.2009, even though as on 01.01.2006, they have not completed 10 years of service on consolidated pay. It is seen that they were regularised based on a direction given by this Court in W.P. No. 10887 of 2007 and W.P. No. 11326 of 2006 respectively directing the

educational authorities to consider the representation.

2. It is stated that the Petitioner has also filed a writ petition, as that of the two persons, W.P. No. 2649 of 2007 and this Court has also issued a similar direction to consider the representation by an order dated 23.03.2007. However, the claim of the Petitioner came to be rejected under the impugned order passed by the first Respondent stating that as on 01.01.2006, the Petitioner has not completed 10 years of service.

3. In respect of the physically challenged persons, the Government has also passed G.O. Ms. No. 151 Social Welfare Department, dated 16.10.2008, to the effect that physically challenged persons, who are in service on consolidated pay for more than two years, shall be granted regularisation and time scale of pay. The writ petition is filed not only on the ground that when in respect of the similarly situated two persons by applying G.O. Ms. No. 22 dated 28.02.2006, their services were regularised, the Petitioner is denied the said right and therefore, there is an arbitrariness, apart from another ground that even based on the subsequent G.O. Ms. No. 151, dated 16.10.2008, the Petitioner being physically challenged person is entitled to be regularised after completion of two years of service irrespective of G.O. Ms. No. 22, dated 16.10.2008.

4. In the counter affidavit filed by the first Respondent, while the facts are not disputed, it is only stated that the Petitioner cannot as a matter of right claim himself to be regularised as per G.O. Ms. No. 22 Personnel and Administrative Reforms Department, dated 28.02.2006, for the reason that as on the cut off date given under the said G.O., namely, 01.01.2006, the Petitioner has not completed 10 years of service, as his appointment having been given on 29.08.1996. It is also stated that the Petitioner cannot claim equity based on certain wrong orders, which would have been passed in the administration.

5. It is not in dispute that the Petitioner being a person as deaf and dumb and cannot be stated to be disqualified for the reason that he was appointed in the year 1996, in which event, he has been continuing as a part time Sweeper even as on date. Even otherwise, as stated above, under G.O. Ms. No. 151, Social Welfare Department, dated 16.10.2008, which intended for physically challenged persons, given as a beneficiary scheme as per the provisions of the Persons With disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), the Petitioner is entitled to be considered for regularisation and payment of time scale.

6. In this view of the matter, the writ petition is allowed and the impugned order passed by the first Respondent stands set aside with a direction against the first Respondent to reconsider the case of the Petitioner in the light of the above said facts including G.O. Ms. No. 151 Social Welfare Department dated 16.10.2008, and as per G.O. Ms. No. 22 dated 28.02.2006, which contemplate the duty on the part of the Respondents to confer the time scale of pay and regularisation on completion of two years of service on consolidated pay as a part time Sweeper

and such order shall be passed within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.