
(2011) 11 MAD CK 0091

In the Madras High Court

Case No : Writ Petition No. 5173 of 2007 (T) and O.A. No. 4979 of 2001

P. Srinivasan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 12-11-2011

Acts Referred:

Citation : (2011) 11 MAD CK 0091

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : S. Baskaran, for the Appellant; V. Subbiah, Spl. GP, for the Respondent

Judgement

Honourable Mr. Justice D. Hari Paranthaman

1. The petitioner was appointed as Servant-cum-Watchman in College Boys' Hostel, Adi Dravidar Welfare, Karur, by the District Adi Dravida Welfare Officer, Trichy / third respondent herein, by an order dated 05.07.1972. He joined duty on 19.07.1972. While he was working in Kadavur Boys' Hostel, he was dismissed from service by the third respondent, by an order dated 21.11.1978. Aggrieved by the said order, he filed a writ petition in W.P.No.926 of 1984. The writ petition was transferred to the Tribunal and renumbered as T.A.No.1019 of 1989. The Tribunal, by an order dated 30.04.1997, set aside the order of dismissal, directing the third respondent to reinstate him with all wages for the period of non-employment. Pursuant to that order, the petitioner was reinstated in service and he joined the duty on 13.08.1997. Since the petitioner was in contingent employment at the time of dismissal, he sought for regularisation of his service as that of the similarly situated persons, who were regularised in service based on G.O.Ms.No.280, Adi Dravida and Tribal Welfare Department, dated 23.12.1993. Since the petitioner was not in service when the aforesaid G.O. was issued, he was not given the benefit of the said G.O. According to the petitioner, it was not his fault, since he was wrongly dismissed by the third respondent and the same was also set aside by the Tribunal. By complying with the said Tribunal

order, he was restored for duty.

2. The petitioner has sent a representation seeking regularisation of his service as per G.O.Ms.No.280, dated 23.12.1993, to the third respondent. The third respondent, by a letter dated 06.04.1999, sent a proposal to the second respondent, recommending the claim of the petitioner based on the G.O.Ms.No.280, dated 23.12.1993. In turn, the second respondent forwarded the same to the first respondent to regularise the service of the petitioner, by a letter dated 22.04.1999. Since no order was passed, the petitioner filed O.A.No.4979 of 2001, before the Tribunal, seeking to regularise the services of the petitioner from 01.04.1978 as per G.O.Ms.No.280, Adi Dravida and Tribal Welfare Department, dated 23.12.1993, and as per the order of the Tribunal dated 30.04.1997 passed in T.A.No.1019 of 1989 and as per the recommendations of the respondents 2 and 3, as Servant cum Watchman with all benefits. On abolition of the Tribunal, the same was transferred to the file of this Court and renumbered as W.P.No.5173 of 2007.

3. No counter affidavit is filed by the respondents.

4. Heard both sides.

5. For better appreciation of the case, paragraph No.3 of the petition filed by the petitioner is extracted hereunder:

3. Even though, the applicant was reinstated by order dated 31.07.1997, he is paid from contingency funds and his monthly basic pay was fixed at Rs.18/-and his monthly gross salary is fixed at Rs.1788/-. The applicant has given a number of representations to the third respondent and he by a letter dated 06.04.1999, bearing No.L2/32724/98, in reply to the second respondent's reference T2/34563/97, dated 21.01.1998 sent the service particulars of the applicant. In that letter it is specifically stated as follows:

The individual has completed more than 5 years of service, in contingent employment. The Government have clarified in para 3 of the said G.O. that in respect of persons appointed prior to 01.04.1977 the question whether they are appointed through employment exchange or not does not arise. In this case the individual was appointed prior to 01.04.1977 and here the question of appointment through employment exchange does not arise.

The individual will complete five years of service by 18.07.1977.

I request that the individual may be brought to regular establishment on completion of 5 years of service and his may kindly be got regularised from 01.04.1978 by relaxing rule 4(a) of the Special Rules for Tamil Nadu Basic Services as a special case by getting the orders of the Government.

The service Register (in one volume) of the individual and the particulars to the prescribed form are enclosed.

The proposal by the third respondent was forwarded to the first respondent by

the second respondent in his letter bearing No.Ta2/34653/97, dated 22.04.1999. For the reasons best known the file was kept pending without any orders being passed. The applicant is entitled to regularisation from 01.04.1978 and the third respondent sent a reminder with a specific caption.

(Long pending file-reminder) to the second respondent by letter dated 13.10.2000. But, till date the applicant did not get any orders regularising his services from 01.04.1978 as per the order of this Hon"ble Tribunal and as per the recommendation of the respondents 2 and 3....

6. The recommendation made by the third respondent, by a letter dated 06.04.1999, referred to above in the pleadings, is enclosed at page No.24 of the typed set of papers. G.O.Ms.No.280, dated 23.12.1993, is also enclosed in the typed set of papers.

7. The petitioner has been in service from 1972 on contingent establishment. Had he been not removed from service in the year 1978, he would have been regularised in service based on the said G.O.Ms.No.280, dated 23.12.1993. His removal order passed by the third respondent was set aside by the Tribunal and the Tribunal directed the respondents to pay all wages to the petitioner for the period of non-employment. The order was complied with by the respondents. He was reinstated in service and also paid all the benefits. Under these circumstances, the petitioner should be extended the benefit of the said G.O.Ms.No.280, dated 23.12.1993, and he should be regularised with effect from 01.04.1978 with all benefits as recommended by the respondents 2 and 3. The first respondent is directed to regularise the service of the petitioner as Servant-cum-Watchman with effect from 01.04.1978, with all benefits, within a period of 8 weeks from the date of receipt of a copy of this order.

8. Under these circumstances, the writ petition is disposed of in the above terms. No Costs.