
(2011) 01 MAD CK 0150
In the Madras High Court
Case No : Writ Appeal No. 989 of 2009

Perumal	Vs	APPELLANT
The State of Tamil Nadu		RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Citation : (2011) 1 APLJ 127 : (2011) WritLR 132

Hon'ble Judges : Elipe Dharma Rao, J;D. Hariparanthaman, J

Bench : Division Bench

Advocate : C. Manohar, for the Appellant; Malarvizhi Udhayakumar, Spl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—This writ appeal is directed against the order dated 05.09.2007 made in W.P. No. 5863 of 2005, wherein the

challenge made by the Appellant to the orders of the Respondents 1 and 2 dated 06.01.2005 and 28.01.2005 respectively, thereby rejecting his

request for regularization from the date of his initial appointment, was negatived.

2. It brief facts, necessary for the disposal of the writ appeal, are as follows:

(a) The Appellant is a Ceylon Repatriate, born in Colombo and repatriated to India in the year 1969, based on Srimavo Bandaranayaka

Agreement entered between India and Colombo during the year 1964. The Appellant, who is an Arts Graduate, came to India, registered his

name in the employment exchange, and thereafter, he submitted a petition to the Director of Employment and Training, Chepauk, Chennai, for employment.

(b) The Government of Tamil Nadu, as per G.O. Ms. No. 1223, Public Services-A

Department, dated 25.06.1965, has issued instructions to appoint repatriates as long as possible in long pending vacancies. In G.O. Ms. No. 2149, Public Services-A Department, dated 11.08.1973, it has been clearly stated that the repatriates should not be discharged from service and in any case, if they had to be discharged for want of vacancy, the appointing authority should explore the possibility of giving some other job in the same Department and if a repatriate is likely to be discharged for want of vacancy in a particular post, the appointing authorities, who are subordinates to the Head of the Department, should consult the Head of the Department. The said Government Orders were issued to enable the repatriates to be placed in another unit under the control of the Head of the Department.

(c) The Appellant was appointed as an Assistant Statistical Investigator in the Department of Statistics, Vellore, North Arcot District, on 18.02.1974, through employment exchange. His service was extended every month from 18.02.1974 to 10.01.1984 with a short break in service for a few days. Thereafter, the Appellant was terminated from service by the Assistant Director of Statistics, Vellore, as per the order dated 11.01.1984, on the ground of want of vacancy, to accommodate the candidates selected by the Tamil Nadu Public Service Commission.

(d) According to the Appellant, when the Government Orders, referred to above, clearly state that in case a Ceylon repatriate was to be retrenched for want of vacancy, the appointing authority should explore the possibility of giving some other job in the same Department or they have to be accommodated in other places then and there, without following the said orders as well as the instructions given by the Director of Employment and Training, Chepuak, in his letter dated 25.06.1974 to the Director of Statistics and others, the Assistant Director of Statistics has terminated the Appellant from service, for want of vacancy.

(e) Hence, the Appellant has made number of representations to the Government for reappointment. The Government, as per G.O.D. No. 134, Planning and Development Department, dated 19.08.1998, issued an order appointing the Appellant as Assistant Statistical Investigator by relaxing Rule 4(2) of the Tamil Nadu Ministerial Service, in respect of age. The said Government Order also states that the service of the Appellant

ought not have been terminated for want of vacancy. Thereafter, the Appellant joined duty on 21.08.1998 and his probation has not been declared

so far, for want of clarification from the first Respondent. Hence, the Appellant submitted a petition to the Respondents to regularize his services

from the date of his initial appointment, i.e., 18.02.1974 and condone the break in service with back wages and service benefits.

(e) As per G.O. Ms. No. 2024, Revenue Department, dated 15.05.1974, relaxation of rules relating to age and educational qualifications made in

favor of the repatriates appointed to various categories in public services should be made effective from the date of their appointment to such

posts. This has been further clarified by the Public Department (Repatriates Rehabilitations) in letter No. 3096 dated 11.08.1989 stating that the

repatriates" services should be regularized from the date of their first appointment. Based on the representation given by the Appellant, the second

Respondent, as per his letter dated 24.04.2001, recommended the case of the Petitioner to the first Respondent for regularization of his services

from 18.02.1974. But, the first Respondent, as per his order dated 06.01.2005, has rejected the claim of the Appellant for regularization of his

service from the date of his initial appointment dated 18.02.1974, after four years and held that his services can be regularized only from

21.08.1998. Following the said order, the second Respondent issued a similar order rejecting the claim of the Appellant on 20.01.2005, against

which, the writ petition has been filed by him.

3. The learned single Judge, on consideration of the facts and circumstances of the case, dismissed the writ petition, by holding that the claim made

by the Petitioner/Appellant that since he was in service from 1974 to 1984 and again he was appointed in 1998, his service should be regularized

from 1974 onwards, i.e., from the date of his initial appointment, cannot be countenanced for the simple reason that there was disturbance of

service from 1984 to 1998, i.e., for a period of fourteen years and this is nothing but allowing the person as if he was in continuous service, which

cannot be done. The learned single Judge also held that the order of the authorities that the service of the Petitioner could be regularized only from

1998 onwards was correct and proper and there is nothing to interfere with the same. Aggrieved by the said order, the present writ appeal has

been filed.

4. Heard the learned Counsel for the Appellant and the learned Special Government Pleader for the Respondents.

5. We have gone through the entire materials placed on record. We are unable to agree with the reasons offered by the learned single Judge in

dismissing the writ petition on the ground that there is a break of service from 1984 to 1998 due to want of vacancy. It is not in dispute that the

Appellant was a refugee from Ceylon and he was appointed through employment exchange as Assistant Statistical Investigator in the Department

of Statistics, Vellore, on 18.02.1974 and he was terminated from service in the year 1984 for want of vacancy in order to accommodate the

candidates appointed through the Tamil Nadu Public Service Commission. It is also not in dispute that thereafter, he made representations to the

Government to reappoint him and in this regard, there were lot of correspondence between the authorities and at one stage, it was replied that the

certificate issued on the basis of which, he was initially appointed on 18.02.1974, was sufficient to reappoint him. Even then, the Appellant's case

was not considered. It is pertinent to note that the Government has taken a Policy Decision to accommodate the Srilankan refugees in temporary

post. Therefore, if the Appellant was terminated from service in the year 1984 for want of vacancy, he should have been accommodated in any

temporary post immediately in terms of G.O. Ms. No. 2149, Public Services-A Department, dated 11.08.1973. But the same was not done and

ultimately after a long gap, his case was recommended as per letter dated 18.07.1994 for consideration to accommodate him in any one of the

temporary posts.

6. G.O. Ms. No. 2149, Public (Services-A) Department, dated 11.08.1973, reads as follows:

The Government ordered in the G.O. cited first above that the repatriates from Burma, who are employed in Government Services should be

allowed to continue in long standing vacancies. The Government directed that they should not just be discharged from service. In case, however,

any repatriates were to be discharged for want of a vacancy, the appointing authority should explore the possibility of giving him some other job in

the same Department. The appointing authorities, who are subordinate to Heads

of Departments, should consult the Heads of Departments if a repatriate was likely to be discharged for want of vacancy in a particular unit. This was to enable the repatriate to be absorbed in another unit under the control of the Head of the Department. In the reference cited second above, the Director of Rehabilitation, Madras, has requested the Government to extend the orders issued in the Government Order cited as first above to the repatriates from Sri Lanka also.

2. The Government have considered the question carefully. The Government direct that the procedure adopted in the case of repatriates from Burma as envisaged in the Government Order cited as first above should be followed by all appointing authorities in the case of repatriates from Sri Lanka also, for employment in Government Departments.

7. As per G.O. Ms. No. 2024, Revenue Department, dated 15.05.1974, the Government issued directions to the effect that the appointing authority may appoint repatriates from Burma and Sri Lanka in public Services even if they do not possess age and educational qualification prescribed under the rules governing the recruitment of persons to such posts, if they are found suitable for the posts otherwise and then approach the Government for necessary relaxation of the rules in favor of these repatriates.

8. In view of the above, the Appellant was reappointed as temporary Assistant Statistical Investigator in the Department of Statistics as per

G.O.D. No. 134, Planning and Development (Statistics.3) Department, dated 19.08.1998 and he joined duty on 21.08.1998. Thereafter, though a recommendation was made by the second Respondent to the Government, vide order dated 24.04.2001 on the basis of the aforesaid

Government Orders, and also the order in G.O. No. 239, P and AR Department, dated 15.04.1996, wherein the services of a similarly placed

person was regularized from the date of initial appointment, the Government has taken a different view and agreed to regularize the service of the

Appellant only from the date of his reappointment, i.e., from 21.08.1998. It is also evident from the communication sent by the second Respondent

that the delay in reappointing the Appellant from 1984 to 1998 has been caused due to the prolonged correspondence between the authorities and

such delay cannot be attributed to the Appellant. It is further seen from the materials placed on record that as per the policy of the Government,

when the service of a repatriate, who was appointed through employment exchange, was terminated due to want of vacancy and to accommodate the candidates selected from the Tamil Nadu Public Service Commission, they have to accommodate the repatriate in any temporary post. The intention of the Government, as could be seen from series of orders issued by it, is to protect the welfare and interest of the repatriates by way of continuing their employment so as to assure their survival. But the Officers, at the helm of affairs, without bearing in mind the welfare policy of the Government and also without looking into the orders issued by the Government referred to above, but merely acting on the ground that the Appellant was reappointed on compassionate ground on 21.08.1998, have held that his service could be regularized only after relaxing the relevant rules of the services, and thus refused the claim of the Appellant for regularization from the date of his initial appointment, which amounts to passing an order, impugned in the writ petition, against the policy of the Government, for which action, we are unable to give our consent.

9. On going through the materials placed on record, we are of the considered opinion that the learned single Judge has not gone into the details of the matter, including the policy decision of the Government, as contemplated under the orders passed by the Government, referred to above, viz., G.O. Ms. No. 1223, Public (Services-A) Department, dated 25.06.1965 and G.O. Ms. No. 2140, Public (Services-A) Department, dated 11.08.1973. Accordingly, the order passed by the learned single Judge and the orders impugned in the writ petition are set aside.

10. It is seen from the facts of the case that as on the date of filing of the writ petition, the Petitioner/Appellant was aged about 55 years and by this time, he would have attained the age of superannuation. Hence, the Respondents are directed to consider his case for payment of pension. As per the communications emanated from the Respondents and the Government's decision, if the service of the Appellant is regularized from the date of his initial appointment, he is not entitled for the monetary benefit, but his service can be counted for the purpose of calculating pensionary benefits.

Hence, it is clear that the Appellant is entitled for regularization of his service from the date of his initial appointment, i.e., from 18.02.1974 to

21.08.1998, (on which date, he was reappointed) and till the date of his retirement. Accordingly, the Respondents are directed to re-calculate the

pension of the Appellant. It is made clear that the period of unemployment from 12.01.1984 to 20.08.1998 shall also be taken into count for

counting the service for pensionary benefits alone. The entire process shall be completed by the Respondents within a period of twelve weeks from

the date of receipt of a copy of this judgment.

11. The writ appeal is allowed with the above observation. However, there will be no order as to costs.