

(2016) 03 MAD CK 0117

In the Madras High Court

Case No : W.A. No. 273 of 2016 and C.M.P. No. 4455 of 2016.

The State of Tamil Nadu and Others

APPELLANT

Vs

N. Murugan

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Citation : (2016) 2 LLJ 591

Hon'ble Judges : Satish K. Agnihotri;M. Venugopal, JJ.

Bench : Division Bench

Advocate : A. Srijayanthi, Special Government Pleader, for the Appellant

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J. - This intra-Court appeal arises from the order dated 25 April 2012 passed in W.P. No. 11975 of 2012, whereby and where under, the learned Single Judge, referring to and relying on several judicial pronouncements made earlier, passed the following order:

"7. On a perusal of the above referred orders, it is evident that persons similarly placed like the petitioners were granted regularisation of their services on completion of 10 years of service by relaxing the rule whenever required in terms of G.O. Ms.No. 22, P and A.R. Department dated 28.02.2006 and they were paid arrears of full time salary. The Government, having passed such an order, has to apply the same to all similarly placed persons without any discrimination.

8. Applying the above said orders passed by this Court to the facts of the case, the writ petitions are allowed with direction to the respondents to regularise the services of the petitioners on completion of ten years of service with time scale of pay. The regularisation orders are directed to be issued by the respondents within a period of eight weeks from the date of receipt of a copy of this order. The arrears of salary, payable to the petitioners, pursuant to their regularisation, shall be paid to them within a period of four weeks thereafter.No costs."

2. Subsequently, noticing the discrepancies in case of regularisation of various employees, the State Government issued G.O.Ms. No. 74, P and A.R. (F) Department dated 27 June 2013 (for brevity G.O. Ms.No. 74), where under, it was directed to consider regularisation of only those daily wagers who have completed 10 years of service as on 01 January 2006 and not after the said period.

3. The learned Special Government Pleader appearing for the appellants, relying on the said Government Order, submits that the learned Single Judge has erred in ignoring the said Government Order, viz., G.O. Ms.No. 74, which was issued subsequently.

4. We have examined the facts of the case and also perused the pleadings and documents appended thereto with the impugned order.

5. The gravamen of the case of the learned Special Government Pleader is the subsequent Government Order, viz., G.O. Ms.No. 74. The entire argument is premised on the clarification issued by the State Government in the said Government Order, which reads as under:

"(2) In certain cases of regularisation ordered invoking the Government Order read above, the following deviations were noticed:

(a) The benefit of regularisation available to the full time daily wage employees has been extended to part-time employees also;

(b) The benefit of regularisation available to the daily wage employees initially recruited through the employment exchange has been extended to those initially appointed illegally without reference by the employment exchange or through an open competitive process;

(c) The services were regularised from the date of initial appointment instead of regularising the services from the date of issue of the order;

(d) The monetary and other service benefits were allowed retrospectively from the date of regularisation, in cases where relaxation of service rules are involved without consideration of financial implication;

(e) While relaxing service rules, the rules relating to educational qualification and mode of recruitment are also relaxed;

(f) For allowing the monetary and other service benefits with retrospective effect, Rule 23(a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services was also relaxed, which cannot be relaxed.

(g) The services of daily wage employees appointed after 01.01.1996 were also regularised invoking the Government Order read above.

3. Persons ineligible to get benefit of regularisation as per the Government Order read above have sought legal remedy through writ petitions in the Hon'ble High Court of Madras. In such cases, the Court has passed orders. It is noticed that

such orders are passed because of the following reasons:

(a) Counter affidavits were not filed promptly resulting in ex parte orders pronounced by the Hon"ble Courts.

(b) Even in cases where counter affidavit is filed, the facts and rules are not presented comprehensively.

(c) Appeals are not filed in time.

(d) Delays in filing the writ appeals or Special Leave Petitions resulted in initial orders being confirmed by the Hon"ble Courts.

4. Such court orders have been implemented and the benefits are being extended to all similarly placed persons without examining the merits of individual cases and its financial implications on the State exchequer.

5. The proper implementation of regularisation scheme has caused huge financial commitment running into several crores of rupees to the State Exchequer and defeated the purpose of the Government Order read above. To arrest the improper implementation of the one time regularisation scheme ordered in the Government Order read above, the Government have now decided to lay down fresh modalities to govern the regularisation of the services of full time daily wage employees.

6. In supersession of the orders issued in the Government Order read above, the Government now issue revised orders on regularisation of services of full time daily wages employees working in all Government departments as detailed below:

(i) This order shall be deemed to have been come into force with retrospective effect from 01.01.2006;

(ii) The services of the full time daily wage employees who were initially appointed on full time basis in consultation with the employment exchange to discharge the function of the post in the Tamil Nadu Basic Service and completed 10 (ten) years of service as on 01.01.2006 shall be regularised against regular vacancies in the sanctioned cadre strength;

(iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed;

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23(a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services;

(v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularisation;

(vi) The Part-time and casual employees are not entitled to the concession referred to at para (ii) above;

(vii) The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularised;

6. Indisputably, the respondent was appointed as a daily wage Watchman on 10 March 1993 and on completion of ten years of service, he made a representation on 09 December 2011, seeking consideration for regularisation of his service as Watchman on the basis of G.O. Ms.No. 22, P and A.R. Department dated 28 February 2006, (for brevity G.O. Ms.No. 22), where under, it was provided that a temporary employee, on completion of 10 years of service, is entitled to get his services regularised. The learned Single Judge, considering the fact that the respondent had worked for more than ten years, allowed the writ petition, as afore stated.

7. The subsequent Government Order, viz., G.O. Ms.No. 74, which, as pleaded by the learned Special Government Pleader, is a clarification and applicable retrospectively with effect from 01 January 2006, was issued on 27 June 2013. In that event, the issue in respect of daily wage employees who have already been regularised or have availed the benefit under G.O. Ms.No. 22, on having rendered 10 years of service as on 01 January 2006, cannot be re-opened, especially, when a judicial order is passed in favour of the respondent on 25 April 2012, which remained un-challenged till issuance of G.O. Ms.No. 74 by not filing the instant appeal in time. The issue of grant of benefit under G.O. Ms.No. 22, on the basis of interpretation by a judicial pronouncement, which had attained finality, cannot be re-opened subsequently, on the basis of issuance of a clarificatory order later or a fresh Government Order.

8. As a sequel, the intra-Court appeal stands dismissed. Costs made easy. Connected C.M.P. is closed.