

P. Ravikumar Vs. the Government of Tamil Nadu Rep. by Its Secretary to Government Environment and Forest Department Secretariat, Chennai and Others

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Court : Chennai Madurai

Decided On : Aug-01-2012

Judge : D. Hariparanthaman

Appeal No. : W.P.(MD) NO. 12234 OF 2011

Appellant : P. Ravikumar

Respondent : The Government of Tamil Nadu Rep. by Its Secretary to Government Environment and Forest Department Secretariat, Chennai and Others

Advocate for Pet/Ap. : For the Petitioner: M. Ravi, Advocate. For the Respondent: D. Muruganandam, AGP.

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent relating to letter No.3127/FR-2/2008-6 dated 3/8/2010 and of the second respondent relating to the proceedings in C.No.S1/43577/07 dated 6/12/2010 and to quash the same and to issue consequential directions to the respondents to regularise the service of the petitioner as Research Assistant from

the date of his initial appointment and to absorb him in any regular post commensurate with his educational qualification.)

ORDER

1. The office of Conservator of Forests (Research) Coimbatore by its proceedings dated 17/5/1994 called for the list of candidates to be appointed on daily wage basis to the post of Research Assistant from the District Employment Officer, Madurai District.

2. Pursuant to the aforesaid proceedings, the Employment Exchange sponsored the list of candidates with the required qualification and the petitioner was one among them. An interview was conducted and the petitioner was selected and posted as Research Assistant on daily wages by way of an appointment order dated 9/2/1995.

3. The petitioner has been in service for the past 17 years. He is yet to be regularised. He made various representations. Those representations were forwarded by the third and fourth respondents to the second respondent for recommendation to regularise the services of the petitioner.

4. The third respondent made a recommendation dated 10/7/2006 to the second respondent in the matter of regularisation of service of the petitioner. The fourth respondent also made his recommendation in his letter dated 18/12/2006 on the same lines. Again, the fourth respondent sent proceedings dated 16/5/2007, 17/7/2007 and 26/12/2008 to the third respondent recommending the regularisation of the services of the petitioner.

5. Based on the repeated proceedings sent by the third and fourth respondents, the second respondent sought the service details of the petitioner. The same was also provided by the fourth respondent. It is stated that the petitioner has been in continuous service from 1995, without any break.

6. The petitioner also made a representation dated 8/9/2009 to the first respondent to regularise his service, based on G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28/2/2006. Based on the representation, the first

respondent sent a letter dated 18/9/2009 to the second respondent calling for the service details of the petitioner.

7. Again, the petitioner made a representation dated 9/10/2009 to the first respondent to regularise his service as per G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28/2/2006. The fourth respondent in his proceeding dated 10/10/2009 furnished all the details to the second respondent about the petitioner for regularisation of his service and also again recommended for regularisation of his service.

8. While so, the first respondent, passed the impugned order dated 3/8/2010, refusing to regularise the service of the petitioner as Research Assistant on the ground that the petitioner does not satisfy the requisite educational qualification. The same was communicated by the second respondent in their order dated 6/12/2010.

9. The petitioner has filed the present writ petition seeking to quash the orders dated 3/8/2010 and 6/12/2010 of the first and second respondents respectively and for consequential direction to regularise the services of the petitioner.

10. When the matter came up before this Court on 28/10/2011, this Court ordered notice to the respondents and also granted an order of status-quo. In view of the status-quo order, the petitioner is continued in service.

11. The fourth respondent has filed a counter affidavit. In the counter affidavit it is averred that as per Adhoc Rules of the temporary post of Research Assistant, one should possess M.Sc., Botany, but the petitioner does not possess the same.

12. Heard both sides.

13. The learned counsel appearing for the petitioner submits that the Adhoc Rules for the temporary post of Research Assistant referred to in paragraph 8 of the counter affidavit was framed in G.O.Ms.No.395, Environment and Forests Department dated 13/12/1995 after the appointment of the petitioner on 9/2/1995.

14. According to the learned counsel, at the time of appointment, the requisite educational qualification was B.Sc., Botany and the petitioner was in possession of the same. He has produced Adhoc Rules relating to the temporary post of Research Assistant in Cinchona Department and that was framed in G.O.Ms.No.942, Forest and Fisheries dated 18/10/1975.

15. The learned counsel appearing for the petitioner submits that based on G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28/2/2006, the petitioner is entitled for regularisation on completion of ten years of service. Particularly, when the respondents 3 and 4 repeatedly sent proposals recommending regularisation of the service of the petitioner and also since the petitioner has rendered more than 17 years of service, the petitioner shall be regularised in service by relaxing the Rule relating to educational qualification by the first respondent under Rule 48 of the Tamil Nadu State and Subordinate Services Rules.

16. The petitioner has heavily relied on the Division Bench of this Court in S.JALAJAKUMARI and ANOTHER Vs. PERSONAL ASSISTANT (GENERAL) TO THE COLLECTOR and OTHERS) reported in (2008) 5 MLJ - 1073.

17. On the other hand, the learned Additional Government Pleader has made his submissions based on the counter affidavit filed by the fourth respondent.

18. I have considered the submissions made on either side.

19. The petitioner has been serving as Research Assistant on daily wages from 9/2/1995 for the past 17 years. It is not in dispute that the respondents 3 and 4 have written repeated letters recommending for his regularisation and those letters are enclosed in the typed set of papers. Based on those letters, the second respondent has called for service particulars and the same were provided by the fourth respondent. Likewise, when the petitioner made a representation to the first respondent, seeking regularisation of service, the first respondent has sought for service details through the second respondent and the same was also provided.

20. However, the first respondent passed the impugned order dated 3/8/2010 rejecting the request for regularisation on the ground that the petitioner does not possess the requisite educational qualification for the post of Research Assistant as prescribed in the Adhoc Rules.

21. The Government issued G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department dated 28/2/2006 for regularisation of the service of the daily wage employees in regular post on completion of 10 years of service. However, this G.O., also states that the person seeking regularisation under G.O., shall satisfy the qualification prescribed under the relevant rules.

22. The petitioner is in possession of B.Sc., Botany. At the time of his appointment the requisite qualification was B.Sc., Botany, which is not in dispute. However, when the issue of regularisation has come, G.O.Ms.No.395 is relied on and the same came into operation from 13/12/1995. As per G.O.Ms.No.395, the required qualification for Research Assistant is M.Sc., Botany.

23. The petitioner has put in seventeen years of service. As stated above, the respondents 3 and 4 sent various proceedings recommending regularisation of the service of the petitioner.

24. In the facts and circumstances of the case, it is a fit case, wherein the first respondent should have invoked its power under Rule 48 of the Tamil Nadu State and Subordinate Services Rules. To fortify the same, paragraph 15 of the judgment of the Division Bench in S.JALAJAKUMARI and ANOTHER Vs. PERSONAL ASSISTANT (GENERAL) TO THE COLLECTOR and OTHERS) reported in (2008) 5 MLJ - 1073, is extracted in this regard.

"In the light of the above legal pronouncements and also in view of the policy decision taken by the State in G.O.Ms.No.22 Personnel and Administrative Reforms Department dated 28/2/2006 and considering the fact that the State itself had implemented the earlier orders of the Tribunal in identical situations and also the fact that under Rule 48, they have necessary power to grant relaxation and further the fact that the individuals have entered service on being sponsored by Employment Exchange and have put in more than two decades of service, we feel

that it is a fit case that the order of the Tribunal challenged in W.P.No.6331 to 6336 of 2004 must be affirmed though not for the reasons indicated therein."

25. Taking into account the fact that the petitioner has been in service for 17 years and also G.O.Ms.No.22, referred to above and more particularly, the judgment of the Division Bench reported in S.JALAJAKUMARI and ANOTHER Vs. PERSONAL ASSISTANT (GENERAL) TO THE COLLECTOR and OTHERS) reported in (2008) 5 MLJ - 1073, I am inclined to quash the impugned orders.

26. In the result, this writ petition is allowed and the impugned orders are quashed. The first respondent is directed to exercise its power under Rule 48 of the Tamil Nadu State and Subordinate Services Rules and relax the educational qualification for the regularisation of the service of the petitioner. The said exercise has to be carried out by the first respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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