

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.10.2008

CORAM:

THE HON'BLE MR. JSUTICE P.JYOTHIMANI

WRIT PETITION NO.19926 of 2008  
and M.P.No.1 of 2008.

T.Manickam

.. Petitioner

vs.

1.The Government of Tamil Nadu  
rep. By its Secretary to Government  
Handlooms, Handicrafts  
Textiles and Khadi Department  
Fort St.George, Chennai 600 009.

2.The Commissioner of Sericulture  
Salem District  
Salem 631 001.

.. Respondents

For petitioner : Mr.R.Rengaramanujam  
For respondents: Mrs.Lita Srinivasan  
Government Advocate

Petition presented to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned order passed by the 2nd respondent in Na.Ka.28620/Pa.Aa.6/2003 dated 17.07.2007 communicated in his letter dated 07.08.2007 and quash the same and consequently directing the 2nd respondent to regularise his service from the date of which his employees were regularised.

ORDER

By consent of both parties, the main writ petition itself is taken up for final disposal.

2. The writ petitioner was recruited and appointed as practical Sericulturist under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules and he joined in the said capacity on 1.11.1979 under the control of Assistant Inspector of Sericulture, Kancheepuram. It is the case of the petitioner that the Assistant Director of Sericulture, Kancheepuram in his proposal dated 1.4.1986 addressed to the Director of Sericulture, Salem has recommended to bring the petitioner's services into regular establishment. Since no action was taken, the petitioner filed O.A.No.4403 of 1991 before the Tamil Nadu State Administrative Tribunal and by order dated

24.6.2003, the Tribunal has directed the Assistant Director of Sericulture, Kancheepuram to consider the case of the petitioner in the light of the various Government Orders in which it has been stipulated that the daily wages employees in the Government service who have put in service for more than 5 years or 10 years continuously should be brought under the time scale of pay and also to take steps for regularisation. Since the Tribunal's direction was not implemented, the petitioner approached this Court in W.P.No.4716 of 2005, which was disposed of on 15.2.2005, directing the second respondent to comply with the Tribunal's order within six weeks' time. Even thereafter, the case of petitioner for regularisation was not considered and ultimately, the second respondent in the communication dated 2.1.2007, after a complaint was lodged by the petitioner to the Chief Minister Cell, has informed that the proposal for regularisation was sent to the Government and orders are awaited from the Government. The petitioner has filed W.P.No.5574 of 2007 for direction against the Government to pass orders on the proposal sent by the second respondent and that petition was disposed of on 14.3.2007, issuing direction to the first respondent. Ultimately, the second respondent has passed the impugned order dated 17.7.2007 stating that the Government has not accepted the request of the petitioner since the petitioner did not turn up for duty from 2.5.1997 and therefore, the claim of the petitioner for regularisation cannot be considered.

3. It is, as against the said impugned order, the present writ petition has been filed on various legal grounds including that the order is mala fide; that even in the Government Order stated to have been passed has not been communicated to the petitioner; that the petitioner even though was ready and willing to do his job, he was denied employment from 2.5.1997 in spite of several representations and that the conduct of the respondents in having employed the petitioner for many years on temporary basis and denying employment to him from 2.5.1997 is illegal and that was not considered by the Government at all.

4. In the counter affidavit filed by the second respondent, it is stated that the petitioner was employed temporarily as practical Sericulturist under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules and he was paid daily wages for the period he worked and he was never sanctioned with any periodical increment. According to the second respondent, the petitioner has worked only up to 1.5.1997 and thereafter he did not turn up for work. It is stated that the said fact could not be explained in the proceedings before the Tribunal and also before this Court in the earlier proceedings and by that time, the second respondent had already sent the proposal to the first respondent for regularisation. It is also stated that at the time when the petitioner was appointed temporarily in the post of practical Sericulturist, the salary payable to the said post was less than the wages payable to casual labourers working in various units of the department and therefore, the petitioner opted for drawing wages on contingent basis and the service of the petitioner in the post of practical Sericulturist was not regularised.

5. It is also denied that the Assistant Director of Sericulture, Kancheepuram has recommended for bringing the service of the petitioner into regular establishment and what was recommended by the Assistant Director of Sericulture, Kancheepuram by letter dated 1.4.1986 was to increase his wages as that of the skilled workers. The other allegations made by the petitioner in the affidavit filed in support of the writ petition are denied. It is also stated that as per G.O.Ms.No.22 P & AR Department dated 28.2.2006, one must complete 10 years of service as on 1.1.2006 for being considered for regularisation, whereas the petitioner did not turn up for duty from 2.5.1997 and therefore, he is not entitled to be considered for regularisation. As far as two cases mentioned by the petitioner in the affidavit regarding K.Mani and K.Raju, it is stated by the second respondent that they were appointed as practical Sericulturist and Reader respectively through the Employment Exchange and they joined duty on 1.5.1972 and 1.5.1973 and they completed 5 years of service as per G.O.Ms.No.436, Industries Department, dated 30.3.1984, whereas the petitioner joined duty only on 1.11.1979.

6. Mr.Rengaramanujam, learned counsel appearing for the petitioner would submit that the petitioner has worked as N.M.R. from 1979 for 18 years. It is his contention that even when the Tamil Nadu State Administrative Tribunal has passed orders on 24.6.2003 directing the second respondent to consider the case of the petitioner on the basis of Government Orders and also to send proposals to the Government for regularisation, the respondents have never raised the new point raised in the impugned order for the first time that the petitioner failed to turn up for duty from 2.5.1997. It is his case that even subsequently when the writ petition was filed and disposed of on 15.2.2005, the respondents have not taken the said stand that the petitioner had abandoned his job with effect from 2.5.1997.

7. On the other hand, Ms.Lita Srinivasan, learned counsel appearing for the respondents would submit that while it is true that the petitioner was employed on N.M.R. basis from 22.10.1979 to 1.5.1997, but the fact remains that after 1997, the petitioner has never complained about the stoppage of his employment by the respondents and therefore, the delay is attributable to the petitioner and in view of the same, the writ petition is liable to be dismissed.

8. On perusal of the entire records and on careful consideration of the arguments advanced on behalf of the petitioner as well as the respondents, it is seen that the employment of the petitioner on temporary basis viz., under rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules from 22.10.1979 to 1.5.1997 is not disputed. In fact, a written appointment order was issued by the Assistant Director of Sericulture, Vaniyampadi on 22.10.1979. In the letter of the Assistant Director dated 1.4.1986 addressed to the Director of Sericulture, viz., the second respondent herein, even though a proposal was made for the purpose of increasing the salary of the petitioner and another skilled worker, one of the letters which



was referred to in the said proceedings viz., the letter of the Assistant Director, Vaniyampadi dated 12.2.1990 states that the petitioner and another person were appointed through Employment Exchange on temporary basis and in the said letter, the Assistant Director recommended not only for increase in daily wages, but also to treat them as skilled workers.

9. It is also relevant to point out at this stage that in the said letter the Assistant Director has in fact made such proposals taking into consideration that the petitioner and another person have been performing their functions efficiently. In fact, the Tamil Nadu State Administrative Tribunal in O.A.No.4403 of 1991 filed by the petitioner and another person, while disposing of the said application by order dated 24.6.2003, has directed the second respondent to consider the case of the petitioner in the light of various Government Orders and also send proposals to the Government for regularisation of petitioner's service who is said to have put in more than 25 years of service.

10. It is astonishing to note that even at the time when the Tribunal passed the order in the year 2003 the first respondent who was heard, did not raise any point that the petitioner had not turned up for duty from 2.5.1997. It is seen that the conduct of the second respondent in not permitting the petitioner to work has been complained of by the petitioner in various representations starting from 2.5.1997 and in fact, in one of the representations, it has been stated that the then Assistant Director, Vellore has compelled the petitioner to withdraw the application filed by the petitioner before the Tribunal and such representations have been continuously made by the petitioner, for which the respondents have not chosen to reply or to state that the petitioner has failed to appear for duty from 2.5.1997.

11. It is strange to note that even in the year 2005, when the petitioner filed W.P.No.4716 of 2005 for the purpose of direction to the respondents to implement the Tribunal order, the respondents have not raised any point about the so-called refusal of the petitioner to continue to attend duty from 2.5.1997. On the other hand, there were continuous representations from the petitioner even after the order passed by this Court stating that the officials denied to provide employment to him in spite of the fact that the petitioner was ready to work and that point was never answered in the reply given by any of the authorities. In such circumstances, there is no difficulty to come to the conclusion that the present stand taken in the impugned order as if the petitioner has refused to come for employment from 2.5.1997 can only be treated as a clear case of after-thought and this Court is able to sense the patent mala fide attitude on the part of the respondents in somehow or other denying the legitimate benefit to the petitioner, if he is otherwise entitled to.

12. It is further relevant to point out that the subsequent writ petition in W.P.No.5574 of 2007 which was disposed of by this Court on 14.3.2007, was filed by the petitioner for direction against the first respondent, viz., the Government to pass orders based on the recommendations of the second respondent as it is seen in the letter sent by the second respondent dated 2.1.2007 and in the said writ petition, a direction was given by this Court to the first respondent to pass orders on the proposal sent by the second respondent. Even at that time, the respondents have not chosen to state anything about the present allegation that the petitioner failed to appear for duty from 2.5.1997. In such view of the same, there is no difficulty to come to the conclusion that it is a clear after-thought.

13. Adding to that, in the communication of the second respondent dated 2.1.2007 to the petitioner it is clearly stated that the proposal regarding regularisation of petitioner's service has already been sent to the Government and the orders of the Government are awaited. Even at that time, the second respondent has not chosen to state about the present allegation that the petitioner has himself absented from duty from 2.5.1997.

14. In view of the above said factual aspect, the stand of the first respondent as communicated by the second respondent that the petitioner has failed to attend duty from 2.5.1997 has to be summarily rejected. In the circumstances that the petitioner has not been permitted to continue to serve from 2.5.1997 which cannot be attributed to the petitioner for the reasons stated above and when the respondents have denied the monetary benefits to the petitioner during the period from 2.5.1997 till date on the basis of 'no work no pay', the right of the petitioner for regularisation of service placing him in time scale of pay has to be considered based on various Government orders.

15. That apart, as it is seen in various Government Orders, it is clear that the petitioner having worked for 18 years is certainly entitled for consideration to put him under regular employment and the denial of the same is not only arbitrary, but also unjust. In view of the same, the impugned order dated 17.7.2007 is set aside. The respondents are directed to take into consideration the continuous service of the petitioner under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules from 22.10.1979 to 1.5.1997 and pass appropriate orders regularising the petitioner and placing him in time scale of pay for the services rendered from 22.10.1979 to 1.5.1997 in accordance with law and such orders shall be passed within a period of six weeks from the date of receipt of a copy of the order. However, the respondents need not pay salary to the petitioner from 02.05.1997 till date of his regularisation on the basis of "no work no pay".

The writ petition stands allowed with the above direction.  
No costs. Connected miscellaneous petition is closed.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

kh

To

1.The Secretary to Government  
Government of Tamil Nadu  
Handlooms, Handicrafts  
Textiles and Khadi Department  
Fort St.George  
Chennai 600 009.

2.The Commissioner of Sericulture  
Salem District  
Salem 631 001.

1 cc To The Government Pleader, SR.60899.

1 cc To Mr.R.Rengaramanujam, Advocate, SR.60693.

W.P.No.19926 of 2008

BK(CO)  
RVL 10.11.2008

सत्यमेव जयते

WEB COPY