



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No. 1071 OF 2016

A. VELAYUTHAM

...APPELLANT

VERSUS

**THE STATE OF TAMIL NADU
REP. BY ITS PRINCIPAL SECRETARY
TO GOVERNMENT LABOUR AND
EMPLOYMENT (E2) DEPARTMENT AND ORS.**

...RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

- 1.** This appeal, by special leave granted on 8th February, 2016, is directed against a judgment and order of reversal.
- 2.** The dispute centres around the date from which the appellant is entitled to regularisation of his service.
- 3.** Name of the appellant along with others was sponsored by the local employment exchange¹ for appointment as a watchman in the office of the respondent no.3. Having succeeded in the process of selection,

¹ District Employment Officer, Tirunelveli

on 26th August, 1992, the appellant was appointed as “daily wages watchman” on purely temporary basis. Appellant joined the post and continued to serve as watchman without any blemish.

- 4.** G.O. No. 22 dated 28th February, 2006², was issued by the Personnel and Administrative Reforms (F) Department in the Government of Tamil Nadu. The order reads as follows:

1. The Hon’ble Chief Minister had announced during the Tamil Nadu Government Officials Union and Government Servants and Teachers Associations General Conference held on 08.02.2006, that the services of employees working in various Government Departments on daily wages basis who completed more than 10 years of service as on 01.01.2006 will be regularized.

2. Based on the announcement made by the Hon’ble Chief Minister on 08.02.2006, the Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 01.01.2006 be regularized by appointing them in the time scale to pay of the post in accordance with the service conditions prescribed for the post concerned, subject to their otherwise qualified for the post.

3. The Departments of Secretariat may, therefore, be directed to pursue action to regularize the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 01.01.2006 as ordered in para 2 above, in consultation with the respective Heads of Departments wherever necessary. In special cases wherein relaxation of rules is required, proposal shall be sent to Government.

4. The order issues with the concurrence of Finance Department vide its U.O.No.985/FS/P/2006 Dated 28.02.2006.

- 5.** Despite G.O. No.22 being plain and clear that daily wages employees, working in all the government departments having rendered at least ten years of service as on 1st January, 2006, be regularised, the appellant’s service was not regularised immediately upon issuance thereof; instead, his service was regularised in terms of Government

² G.O. No. 22

Order No. 187 dated 17th September, 2010³ with effect from 17th September, 2010, that is, after 18 years of continuous service rendered by the appellant.

6. Aggrieved by the omission and / or neglect of the respondents to regularise his service on completion of ten years with effect from 26th August, 1992, the appellant invoked the writ jurisdiction of the High Court of Judicature at Madras. His writ petition⁴ was allowed by a Single Judge *vide* a judgment and order dated 02nd July, 2012. The Single Judge noted that writ petitions of several other similarly placed daily-wages employees were allowed by coordinate Benches which, in appeal, were upheld by Division Benches⁵ and such orders were also not disturbed by this Court, resulting in regularisation upon completion of ten years' service. Accordingly, the Single Judge proceeded to pass the following order:

7. On perusal of the above referred orders, it is evident that persons similarly placed i.e., part Time Sweepers employed in government Schools 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&AR Department dated 28.02.2006 and they were paid arrears of full time salary. The Government having passed such an order has to be apply the same to all similarly placed persons without any discrimination.

8. In the light of the above cited decisions, the writ petition is allowed and the Impugned order in G.O.Ms.No.187, Labour and Employment (E2) Department dated 17.09.2010 of the first respondent insofar as it restricts the regularisation of petitioner's services from the date of the order, is set aside and the first respondent is directed to pass orders regularising the services of the petitioner from the date of completion of ten years of service with time scale of pay applicable at the relevant period and pay arrears of salary to him. Necessary

³ G.O. No. 187

⁴ W.P. No. 11640 of 2012

⁵ one such decision being W.A. (SR) No. 75291 of 2009

revised order is directed to be passed by the first respondent within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

7. The order of the Single Judge upon being carried in appeal⁶ by the respondents, they argued before the Division Bench that G.O. (MS) No. 74 dated 27th June, 2013⁷, ought to be considered. Appellant contended that on the date the writ petition was allowed, G.O. No. 74 was not in existence and, thus, need not be considered.
8. However, *vide* the impugned judgment and order dated 17th April, 2015, the Division Bench allowed the appeal and set aside the order of the Single Judge. It is against such judgment and order that the appellant obtained leave to appeal.
9. The Division Bench held that the choice of the effective date for regularisation falls squarely within the policy wisdom of the Government and that it cannot be deemed arbitrary or discriminatory under Article 14 simply because the State chose the date of issuance of G.O. No. 187 rather than backdating it to the completion of ten years of service. Applying the ratio of the High Court's own Full Bench decision in ***S. Dhanasekaran v. Government of Tamil Nadu***⁸, it was held that regularisation schemes take effect exactly from the date the enabling G.O. is passed, confirming that the prospective operation of G.O. No. 187 was legally sound to hold that the same was in the nature of a clarification of G.O. No. 22; therefore, the

⁶ W.A. No. 14 of 2015

⁷ G.O. No. 74

⁸ 2013 SCC OnLine Mad 3624

appellant's case could only be considered in terms thereof. The Division Bench of the High Court, thus, set aside the order of the Single Judge reasoning that the order of regularisation of the appellant's service passed in accordance with G.O. No. 187 was just, valid and proper.

- 10.** Learned counsel for the respondents was called upon by us to justify the impugned judgment. She relied on G.O. No. 74. Reliance was also placed by her on the decision of this Court in ***State of Tamil Nadu v. A. Singamuthu***⁹ where this Court had the occasion to consider G.O. No. 74 in some detail.
- 11.** At the outset, we record having noted that the Division Bench did not rely on G.O. No. 74 to record any adverse finding against the appellant.
- 12.** However, since we were referred to G.O. No. 74, we have read it and are of the considered opinion that the same can have no application on facts and in the circumstances of the present appeal.
- 13.** First, G.O. No. 74 was issued not only after regularisation of the appellant's service with effect from 17th September, 2010 but also at a point of time when his writ petition stood disposed of by the Single Judge. Law is well-settled that the right of a party is determined by the facts as they exist on the date the action is instituted unless the statute or equity otherwise requires. Issuance of G.O. No. 74 after

⁹ (2017) 4 SCC 113

the appellant entered the portals of this Court cannot and did not curtail his right.

14. Secondly, the reason necessitating issuance of G.O. No. 74 appears in paragraphs 3 to 5 thereof which do not apply to the appellant.
15. Thirdly, G.O. No. 74 was issued to regulate services of daily wage employees yet to be regularised; hence, reliance placed thereon is wholly misplaced.
16. The decision in **Singamuthu** (*supra*) has been perused. Although this Court read the words "full time" in G.O. No.22, with respect, we find no warrant therefor. G.O. No. 22 does not refer to work rendered in part-time or full-time capacity. The intention expressed in G.O. No. 22 admits of no ambiguity. Those employees working on daily wages for more than 10 years and having requisite qualification for the post on which they were working were assured of regularisation. Even if we entirely agree with the decision in **Singamuthu** (*supra*), the same does not aid the respondents since the appellant was not engaged in voluntary part-time duties. His name was sponsored by the employment exchange, he participated in a process of selection and emerged successful. Part-time service was in no way involved.
17. Moving on to the decision in **S. Dhanasekaran** (*supra*), what we find is that, factually, the Full Bench was called upon to deal with daily-wage or consolidated-pay engagements lacking statutory sanction, i.e., classic 'backdoor entries' where initial appointments bypassed open competition and recruitment rules. Juxtapose this decision with

the case of the appellant before us: his initial induction in 1992 was neither clandestine nor informal, having been channelled through the local employment exchange against a sanctioned post. The State cannot pick and choose – give one employee only prospective absorption and give his peers retrospective regularisation after 10 years of service – and then hide behind the decision in **S. Dhanasekaran** (supra) to avoid Article 14. To permit a rule of policy conceived for illegal appointments to subvert the accrued equitable rights of an employee recruited upon substantial compliance with the relevant service rules would be to mistake form for substance.

- 18.** Reverting to G.O. No. 22, we find that the stipulation is unambiguous. The date 1st January, 2006, constitutes the cut-off date. Those daily wage employees who had completed ten years of continued service on or before such date were entitled to be regularised.
- 19.** Submission of learned counsel that regularisation could amidst be effective from 1st January, 2006, does not appear to us to be sound. The interpretation sought to be placed is misconceived in view of the several judgments of the same High Court which the Single Judge relied on and which were not disturbed even by this Court. In our considered opinion, the Division Bench was in error in its interference with the order of the Single Judge.
- 20.** We have earlier held why G.O. No.74 is not applicable here. For the reasons aforesaid, it is also held that there was no valid reason for the Division Bench to interfere with the order of the Single Judge. The

impugned judgment, thus, cannot be sustained and is hereby set aside with the result that the order of the Single Judge shall stand restored. Appellant shall be entitled to all the benefits in terms thereof, which have to be released in his favour within three months from date.

21. The civil appeal stands allowed. No costs.

.....J.
(DIPANKAR DATTA)

.....J.
(SHEEL NAGU)

**NEW DELHI;
JULY 28, 2026.**