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W.P.Nos.24797 of 2015 & 24040



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.24797 of 2015 & 24040 of 2012

W.P.No.24797 of 2015:

Tamilnadu Highways Road Employees
Association, (Regn.No.97/2001),
Rep by its General Secretary,
No.3/1076-2, Muthuramalingam Nagar,
Virudhunagar – 626 001.

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by the Secretary to Government,
Highways Department,
Fort St. George, Chennai – 600 009.

2.The Chief Engineer (General),
Highways Department,
Chepauk, Chennai – 600 005.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned orders passed by the 1st respondent in G.O.Ms.No.133 Highways (HM2) Department dated 21.08.2006 and Government letter No.6417/HM2/2011-5, Highways and Minor Ports (HM2) Department dated



29.09.2011 and quash that portion of the order relating to the treating of the period of absence for about 41 months from the date of termination i.e., 05.09.2002 to till the date of re-joining as extraordinary leave without pay and allowances and consequently direct the 1st respondent to treat the above period “with continuity of service” as duty without any arrears of pay and allowances which will count for notional pay fixation and pensionary benefits as per the judgment of this Hon'ble Court dated 08.09.2004 in W.P.No.16128 of 2003 etc. to the members of the Petitioner Association.

For Petitioner : Mr.K.M.Ramesh

For R1 & R2 : Mr.Vadivelu Deenadayalan
Additional Government Pleader.

W.P.No.24040 of 2012:

- 1.N.Murugesan
- 2.K.Devarasu
- 3.P.Krishnan
- 4.L.Chandran
- 5.A.Ponnusamy
- 6.A.Baskar
- 7.M.Suresh Kumar
- 8.A.Sundaram
- 9.K.Ravikumar
- 10.A.Jagannathan
- 11.P.Ramasamy
- 12.S.Sellamuthu



13.L.Madheswaran

14.S.Subramani

15.S.Palanivel

... Petitioners

Vs.

1.The Secretary to Government of Tamil Nadu
Highways Department
Secretariat,
Chennai – 600 009.

2.The Chief Engineer (General)
Highways Department,
Chennai – 600 005.

3.T.Arjunan

4.K.Settu

5.P.Perumal

6.G.Barani

7.S.Murugesan

8.V.Rajaram

9.M.Pazhaniyapan

10.S.Sanmugam

11.R.Marimuthu

12.S.Sellapan

13.C.Kannan

14.P.Skylop

15.A.Sekar

16.A.Abifulla

17.P.Magendran



- 18.K.Sathiyamoorthi
- 19.N.Ramakrishnan
- 20.S.Sasikumar
- 21.P.Murugan
- 22.P.Balakrishnan
- 23.C.P.Murugesan
- 24.K.P.Pazhanisamy
- 25.S.Venkatasalam
- 26.R.Selvam
- 27.C.Chinnathambi
- 28.P.Kuppusamy
- 29.S.Senthil Kumar
- 30.K.Murugesan
- 31.M.Karthikeyan
- 32.V.Pazhanivel
- 33.A.Kumaradevarajan
- 34.S.Babu Kennady
- 35.R.Selvarasu
- 36.C.Vasudevan
- 37.P.Pazhanichamy
- 38.M.Porselvan
- 39.P.Govindasamy
- 40.V.Kozhandhai Velu
- 41.S.Subramaniyan
- 42.S.Thangavel



- 43.S.Magalingam
- 44.R.Sanmugam
- 45.G.Rajendran
- 46.S.Thangaraj
- 47.R.Anbu
- 48.V.Seenivasan
- 49.M.Nallamuthu
- 50.K.Murugesan
- 51.M.A.Najumudheen
- 52.C.Pazhanimuthu
- 53.M.Manogaran
- 54.G.Pazhanivel
- 55.T.Venkadesan
- 56.S.Murugesan
- 57.M.Murugesan
- 58.C.Madeshwaran
- 59.T.Govindarasu
- 60.P.Pazhanichamy
- 61.R.Muthusamy
- 62.M.Balan
- 63.M.Balasubramaniyan
- 64.A.John Basha
- 65.K.Paneer Selvam
- 66.P.Balamurali
- 67.N.Selvadurai



68.R.Senthil Kumar

69.R.Sinnu Samy

70.P.Pradeep Sravanakumar

71.M.Krishnan

72.M.Sadhasivam

73.V.Mariyappan

74.K.Anbazzhagan

75.S.Muthukumar

76.E.Arivazhagan

77.P.Periyasamy

78.M.Senthil Kumar

79.R.Manickam

80.K.Senthil Kumar

81.G.Sekar

82.N.Ponnusamy

83.N.Sandhiramogan

84.V.Dhanasekaran

85.K.Sasikumar

86.V.Sangameshwaran

87.K.Ramesh

88.M.Prakash

89.K.Selvarasu

90.D.Ramesh

91.K.Jayaraj

92.K.Ramesh Kumar



93.R.Kalyanasundaram

94.E.P.Suresh

95.P.Manogaran

96.Selvaraji

97.M.Mogandass

98.P.Kandasamy

99.P.Jaisankar

100.S.Pandiyan

101.P.Arumugam

102.P.Anbarasan

103.M.Rajendran

104.K.Muthusamy

105.A.Ragu

106.A.Veeramuthu

107.S.Durai

108.S.Sakthivel

109.M.Subramaniyan

110.V.Arumugam

111.M.Dhanarasu

112.K.Ravi

113.R.Kalimuthu

114.K.Thanियarasu

115.K.Ramdass

116.M.Karuppannan

117.R.Pazhanisamy



118.V.Kanagasekaran

119.P.Rajendran

120.A.Angamuthu

121.C.Palan

122.P.Karunanidhi

123.S.Naraynan

124.A.Madhayan

125.A.Senthil Kumar

126.K.Rajan

127.M.Govindasamy

128.K.Sivakumar

129.A.Selvaraj

130.N.Ravi

131.K.Kumaravel

132.A.Kannan

133.K.Kesavakumar

134.M.Mahalingam

135.P.Kumar

136.M.Kandasamy

137.M.Ganesan

... Respondents

*R3 to R137 are impleaded as per order dated 10.03.2017 in W.M.P.No.13124/2016 in W.P.No.2040/2012

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned orders passed by the 1st respondent in G.O.Ms.No.133 Highways (HM2) Department dated 21.08.2006 and Government letter Highways and



Minor Ports (HM2) Department dated 29.09.2011 and quash that portion of the order relating to the treating of the period of absence for about 41 months from the date of termination i.e., 05.09.2002 to till the date of re-joining as extraordinary leave without pay and allowances and consequently direct the 1st respondent to treat the above period “with continuity of service” as duty without any arrears of pay and allowances which will count for notional pay fixation and pensionary benefits as per the judgment of this Hon'ble Court dated 08.09.2004 in W.P.No.16128 of 2003 etc. in so far as the petitioners concerned.

For Petitioners : Mr.R.Rengaramanujam

For R1 & R2 : Mr.Vadivelu Deenadayalan
Additional Government Pleader.

COMMON ORDER

These two writ petitions have been filed by the petitioners challenging G.O.Ms.No.133, Highways (HM2) Department dated 21.08.2006, and the consequential Letter No.6417/HM2/2011-5, dated 29.09.2011, whereby the period during which the members of the petitioners' association were out of service due to termination of their services was treated as extraordinary leave, on the ground that the said impugned Government order is contrary to the order passed by this Court in W.P.No.14661 of 2004 and batch dated 08.09.2004.

2. The brief facts of the case are, the petitioner, in W.P.No.24797 of



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2015 is an association of Gang Mazdoors working in the Tamil Nadu Highways Department, whereas, the petitioners in W.P.No.24040 of 2012 are the persons worked as Gang Mazdoors in Tamil Nadu Highways Department. When the respondent State have abolished the services of Gang Mazdoors working in Highways Department by issuing G.O.Ms.No.160, Highways (HM) Department, dated 05.09.2002, the said order was challenged before the then Tamil Nadu Administrative Tribunal in O.A.No.5028 of 2002 and batch etc. The said batch of O.As were dismissed by the then Tribunal granting six months salary to the Gang Mazdoors whose services were abolished. Aggrieved by the same, the petitioner association and other Gang Mazdoors approached this Court by filing W.P.No.14661 of 2004 and batch and the said batch of writ petitions were allowed by the learned Division Bench of this Court by an order dated 08.09.2004. The operative portion of the said order reads as under:

“[99] Therefore, on an over all analysis of the stand of the State Government, we find that its various submissions are without any sound basis and the challenge of the Gang Mazdoors to their orders of termination being well justified, in normal course, there can be no other relief to the said Gang Mazdoors except directing the respondent State to reinstate all of them with continuity of service and all other



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attendant benefits and even full back wages. Yet we have some hesitation regarding payment of full back wages, not because we have any doubt regarding the illegality and imprudence of the State's a misadventure but because of the financial impact. The State was obviously at fault and the individuals (albeit in thousands) were the hapless victims. However, the difficult and delicate question remains- should the entire burden be borne by the entire public of the State? It is obvious that the State Government had made some alternate arrangements for maintenance of roads by incurring certain expenditure. If the employees would be paid the entire back wages, obviously, there would be huge burden on the public exchequer. Even though the State Government is responsible for such a situation and not the employees, having regard to the facts and circumstances of the case, we feel interest of justice would be served by directing payment of back wages for a period of six months, which would roughly be equivalent to one fourth of the entire back wages, and ordered accordingly. We accordingly direct the State Government to reinstate all the Gang Mazdoors, with continuity of service, but with six months backwages."

3. From the above, it is evident that this Court, directed the respondent State to reinstate all the Gang Mazdoors with continuity of service



but with six months back wages only. Then, implementing the said order, the respondent State issued impugned order in G.O.Ms.No.133 Highways (HM2) Department dated 21.08.2006. The operative portion of the impugned Government order reads as under:

"3.பணிநீக்க காலத்தில் இறந்த மேற்கண்ட சாலைப்பணியாளர்களின் சட்டப்பூர்வ வாரிககளுக்கு உரிமையுடைய குடும்ப ஓய்வூதியம், பணிக்கொடை, குடும்ப நல நிதி போன்ற சலுகைகளை உடனே வழங்க நடவடிக்கை எடுக்குமாறும், அவர்களின் தகுதிகேற்ப, முன்னுரிமை அளித்து கருணை அடிப்படையிலான பணி நியமனம் வழங்குமாறும் தலைமைப் பொறியாளர் (பொது), நெடுஞ்சாலைத் துறை அறிவுறுப்படுகிறார்."

4. From the above, it is evident that the period from the date of termination till the date of reinstatement into service is now sought to be treated as extraordinary leave, thereby dis-entitling the petitioners to count the said services for the purpose of fixation of pay, continuity of service, terminal benefits, etc. Under those circumstances, the petitioners made a claim for treating the said period as in-service for all practical purposes. But the said request of the petitioners was rejected by passing impugned Letter dated 29.09.2011 stating that the same would be contrary to the Tamil Nadu Pension



Rules.

W.P.Nos.24797 of 2015 & 24040



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5. From the order dated 08.09.2004 passed by the learned Division Bench of this Court, it is evident that, Gang Mazdoors were granted the benefit of continuity of service from the date of termination till the date of reinstatement. The said order has become final and the respondent State have taken decision to implement the said order. Having taken note of the said order and having issued G.O.Ms.No.133 dated 21.08.2006, the respondent State erroneously intended to treat the period during which the Gang Mazdoors were out of service, as extraordinary leave. Such an approach by the respondent State is totally contrary to the order passed by the learned Division Bench of this Court as noted above. Hence, that portion of the Government order is liable to be declared as illegal and arbitrary.

6. Further, it is also necessary to notice that, in response to the notice issued by this Court, the respondent State filed counter affidavit, wherein at paragraph 16 they have stated as under:

“16. It is submitted that the allegations in paragraph 14 of the affidavit are denied as false and untrue. The allegations made in the grounds of the affidavit under counter are denied as false, frivolous, baseless and



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vexatious. With regard to the averments made in the grounds of the affidavit, it is submitted as follows:-

(a) [G.O.Ms.No.](#) 133, Highways Department, dated 21.08.2006 and the Government Letter, dated 29.09.2011 are fair, just and have been passed based on law, the order of this Hon'ble Court, after proper application of mind by the Government.

(b) [G.O.Ms.No.](#) 160, dated 05.09.2002 was not cancelled by the Government, but set-aside by this Hon'ble Court. The G.O.(Ms). No. 22, Highways Department, dated 10.02.2006 was passed to comply with the directions of this Hon'ble Court. In consonance with the said G.O. (Ms). No. 22, dated 10.02.2006 and in compliance of the order of this Hon'ble Court, [G.O.Ms.](#) No. 133, Highways Department, dated 21.08.2006, was passed. There is no contravention and/or contrariness. The dismissal period has not been treated as break in service for all practical purposes, but as continuity of service by which the service before the dismissal and the service after joining are taken into consideration for calculating the service period for all attendant benefits, including pensionary benefits. There is no illegality in the said Government order and the same is not liable to be set-aside.

(c) All the Gang Mazdoors are getting all monetary and service benefits and not otherwise as alleged by the petitioner Association. The petitioner Association have



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attempted to mislead this Hon'ble Court by their after thoughts. The dismissal period has already been regulated as extra ordinary leave without pay. There cannot be any further regularization as claimed by the petitioner Association. By getting the continuity of service, the petitioner Association is not affected in any manner including in getting their terminal benefits. The respondents have not misconstrued the order of this Hon'ble Court and no damage, much less any great damage, has been done. Instead the petitioner Association wanted to illegally enrich themselves at the cost of Government exchequer, which is in violation of the order of this Hon'ble Court. The Government Order and the rejection of representation of the Association are valid and are not violative of any service norms and there is no malice of whatsoever nature in law.

(d) No punishment of whatsoever nature has been imposed on the Gang Mazdoors by the Government through G.O.(Ms). No.133, Highways Department, dated 21.08.2006, as alleged. The Government have regulated the dismissal period with continuity of service. The GO is not against the scope of the order of this Hon'ble Court and is not arbitrary, but just and there is no malafide of whatsoever nature on the part of Government/respondents."



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7. From the above it is evident that, the true intend of the order passed by the learned Division Bench of this Court is rightly understood by the respondent State, and they have also expressed that all the benefits as narrated in the paragraph 16 of the counter affidavit will be extended to the petitioners.

8. If that be the case, the language used in paragraph 3 of G.O.Ms.No.133 dated 21.08.2006 to treat the period during which the Gang Mazdoors were out of service as extraordinary leave is totally meaningless. In the light of categorical stand taken by the respondent State in paragraph 16 of the counter affidavit filed before this Court, and in the light of the order passed by the learned Division Bench of this Court as noted above, the petitioners are entitled for treating the period during which the Gang Mazdoors were out of service as in-service for all practical purposes including continuity of service, terminal benefits, fixation of pay, etc.

9. In the light of the above, the action of the respondent State in treating the period during which the Gang Mazdoors in question were out of service as leave on loss of pay is declared as illegal and the said period is liable to be treated as in-service for all practical purposes including fixation of pay,



grant of increments, continuity of service for the purpose of terminal benefits,
etc.

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10. Accordingly, the impugned orders viz, G.O.Ms.No.133 Highways Department, dated 21.08.2006 is quashed to the extent as indicated above, and the consequential Letter No.6417/HM2/2011-5, Highways and Minor Ports (HM2) Department dated 29.09.2011 is also quashed. The respondent State is further directed to extend the benefits to all the persons, who are entitled for the benefits under the orders passed by the learned Division Bench in W.P.No.14661 of 2004 and batch dated 08.09.2004, as expeditiously as possible at any rate within a period of eight (8) weeks from the date of receipt of a copy of this order.

11. Accordingly, these writ petitions are allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

23.10.2024
(¹/₂)

dpa
Index : Yes / No
Speaking order / Non-speaking order



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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Highways Department,
Fort St. George, Chennai – 600 009.
- 2.The Chief Engineer (General),
Highways Department,
Chepauk, Chennai – 600 005.

W.P.Nos.24797 of 2015 & 24040



MUMMINENI SUDHEER KUMAR, J.

dpa

W.P.Nos.24797 of 2015 & 24040 of 2012

23.10.2024