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Writ Petition No.2363 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM

**THE HON'BLE DR. JUSTICE D.NAGARJUN**

Writ Petition No.2363 of 2014

The Managing Director,  
Tamil Nadu Water Supply and Drainage Board,  
31, Kamarajar Salai,  
Chepauk, Chennai – 600 005.

...Petitioner

Versus

- 1.The Presiding Officer  
The 2<sup>nd</sup> Additional Labour Court Madars High  
Court Buildings Chennai-600 104.
- 2.S.Govindaraj,  
Pump Operator,  
Tamil Nadu Water Supply and Drainage Board,  
1/94, Silamarathupatty Village Post,  
Bodinayakanur Taluk,  
Theni District – 525 528.
- 3.G.Rasathi  
W/o. Govindaraj
- 4.G.Anbarasan  
S/o.Govindaraj
- 5.Azhagu Sangeetha  
D/o.Govindaraj  
(R3 to R5 are residing at B1/44, Soundravel Street, Sillamarathupatty  
Village Post, Bondinayakanur Taluk, Theni District – 625 528. R3 to R5  
are substituted as LR's of R2 deceased Govindaraj, as per order dated  
09.08.2019 by SVNJ in WMP.No.13520 of 2019 in WP.No.2363 of  
2014.)

Prayer: This writ petition is filed under Article 226 of the Constitution of



Writ Petition No.2363 of 2014

India, with a prayer to issue a writ of certiorari calling for the records the award passed in CP No.151 of 2009 by the 1<sup>st</sup> respondent pertaining to the officer and quash the same.

|                 |   |                                          |
|-----------------|---|------------------------------------------|
| For Petitioner  | : | Mr.M.Pradeep Shankar                     |
| For Respondents | : |                                          |
| R1              | : | Labour Court                             |
| R2              | : | Deceased                                 |
| R3 to R5        | : | Mr.GP.Arivuchander<br>for M/s.Law Square |

### O R D E R

This writ petition has been filed for issuance of writ of certiorari to call for the records of the award passed in CP.No.151 of 2009 by the 1<sup>st</sup> respondent and to quash the same.

2. The facts in brief as per affidavit enclosed to the writ petition are as under:

The 2<sup>nd</sup> respondent by name S.Govindaraj was appointed as NMR Watchman on 05.10.1998 for the execution of tiny-petty schemes during year 1981-88, more particularly in combined water supply scheme Silamarathupatty and other habitats. After the completion of execution, the schemes were handed over to respective local bodies for their maintenance, along with scheme the 2<sup>nd</sup> respondent was also transferred to Bodinayakanur Panchayat.



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3. The Government has issued GOMS.No.454 dated 22.08.1995 and GOMS.No.261 dated 14.10.1996 and accorded approval for transfer and maintenance of the schemes from the local bodies to the TWAD Board vide GOMS.No.261 dated 14.10.1996. The Government has sanctioned 2037 posts for maintenance of the schemes and who would be appointed on consolidated pay for a period of five years with 10% income.

4. The 2<sup>nd</sup> respondent was appointed by TWAD Board with effect from 01.04.1998 along with the others as per GOMS No.261 dated 14.10.1996, in the sanctioned posts on consolidated pay. The 2<sup>nd</sup> respondent has filed proceedings before the Inspector of Labour, Theni to regularize his services on completion of 480 days. The said application was allowed. Aggrieved by the same the TWAD Board has filed WP.No.4205 of 2005 and WP.No.6000 of 2005 and they were dismissed on 19.11.2009. The Petitioner Board has preferred Writ Appeal (MD).Nos.665 & 666 of 2010, the said appeals were partly allowed with an observation as under:

*"The Learned Single Judge mainly proceeded*



WEB COPY



Writ Petition No.2363 of 2014

*under the footing that the management witness himself has admitted that recommendations have been made to the higher authorities concerned for appointment of the employees on permanent basis on the ground that they have completed 480 days of service. As pointed out earlier, M.W.1. the Executive Engineer has sent the proposals 22.10.1999 and 8.2.2000 recommending on regularization on completion of 480 days service commencing from 1.4.1998. The 1st respondent did not keep in view that previously the contesting respondents were working in local bodies under CWSS on honorarium / daily wages and joined in the Board only on 1.4.1998. The regularization in TWAD Board could only be from 1.4.1998 i.e. the date of their joining in TWAD Board and not earlier than that.*

*The next point to be considered is as to the monetary benefit to be given to the contesting private respondents. The Learned Counsel for TWAD Board has drawn our attention to G.O.Ms.No.111/MA & WS Department, dated 29.9.2006, whereby the Government has accepted the proposal of the Managing Director, TWAD Board and permitted the Managing Director to regularize the services of 872 consolidated pay employees of TWAD Board in the category of Electricians, Fitters and Maintenance Assistants who were appointed prior to 2.3.2001 and bring them into regular time scale of pay with effect from 1.8.2006. When similarly placed employees have been given benefit of regularization with effect from 1.8.2006, the contesting private respondents are entitled for the same monetary benefit only from 1.8.2006, as per the said G.O.Ms.No.111, dated 29.9.2006. It was submitted that some of the contesting private respondents are not having the requisite qualification or age relaxation as required and TWAD Board has written to the Government for obtaining After obtaining necessary relaxation from the Government. necessary relaxation from the Government, the appellant shall regularize the services of the contesting respondents*



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Writ Petition No.2363 of 2014

*from 1.4.1998 by giving them monetary benefit from 1.8.2006.*

*In view of the above, the order of the Learned Single Judge in W.P.(MD) Nos. 4205 and 6000 of 2005, dated 19.11.2009 and also the order of the 1st respondent authority are modified and these writ appeals are partly allowed. The appellants are directed to regularize the services of the contesting private respondents with effect from 1.4.1998, the date on which they joined in TWAD Board in the time scale of pay, with monetary benefit from 1.8.2006 as per G.O.Ms.No.111/MA & WS Department, dated 29.9.2006”.*

5. As per the orders of above referred Division Bench in WA (MD).Nos.665 & 666 of 2010, the Managing Director has issued orders under Regulation 50 of TWAD Board Service Regulation 1972, regularizing the services of the 2<sup>nd</sup> respondent with effect from 01.04.1998, as per the proceedings bearing No.53765/WCE5/2006 dated 08.02.2012. Necessary entries were also made in the service register of the second respondent to the effect that the probationary period of two years were completed on 31.03.2000. The pay of the 2<sup>nd</sup> respondent was fixed at Rs.2550/- at the scale of pay Rs.2550-55-60-3200. Increments were also sanctioned during the period 01.04.1999 to 01.04.2003, and that 2<sup>nd</sup> respondent has also exercised the option to revise his pay as per the 6<sup>th</sup> pay commission, accordingly his pay was also fixed at Rs.5510 + Gr.Pay.1300/- with effect from 01.01.2006. The arrears of fixation of pay



Writ Petition No.2363 of 2014

of Rs.3,37,290/- was also paid to the 2<sup>nd</sup> respondent on 30.03.2012 excluding the suspension period from 06.01.2004 to 05.03.2008.

6. 12 (3) settlement was arrived at between the TWAD Board and TWAD Board Worker's Union on 08.08.1996. The said settlement was not applicable to the 2<sup>nd</sup> respondent as he was not working in TWAD Board at the time of the settlement, as the 2<sup>nd</sup> respondent was appointed on 01.04.1998 as per GOMS.No.261 dated 14.10.1996, also on the ground that the 2<sup>nd</sup> respondent was not an employee of TWAD Board during the period 1991 to 1995. Thereby he cannot be treated with other permanent employees.

7. On 06.01.2004, the 2<sup>nd</sup> respondent was placed under suspension as per the proceedings of the Executive Engineer, TWAD Board, Maintenance Division, Madurai Proc.No.91/A4/F.Honorarium/2004 dated 06.01.2004 for allegedly involving in CC.No.141 of 2004. After full fledged trial, the 2<sup>nd</sup> respondent was acquitted of charges. in CC.No.141 of 2004 and he was released from jail on 02.04.2007. The individual was reinstated into service on 06.03.2008 as per the orders of the Managing Director, TWAD Board, Head Office, Chennai as per the



Writ Petition No.2363 of 2014

proceedings dated 04.03.2008. However, the suspension period from 06.01.2004 to 05.03.2008 was not regularized.

8. The 2<sup>nd</sup> respondent has filed claim petition No.151 of 2009 before the 1<sup>st</sup> respondent Labour Court and it was strongly opposed by the petitioner TWAD Board stating that during the period 1991 to 1995, the 2<sup>nd</sup> respondent was not an employee as was appointed only on 01.04.1998 as per GOMS.No.261 dated 14.10.1996. However, CP No.151 of 2009 was allowed, directing the petitioner to pay a sum of Rs.10,42,467/- to the 2<sup>nd</sup> respondent. Aggrieved by the same, the present writ petition is filed.

9. It is submitted by the learned counsel for the petitioner that the 1<sup>st</sup> respondent/Labour Court has considered even the period from 1991 to 1995 while computing the money to be paid to the 2<sup>nd</sup> respondent, erroneously as the petitioner was never the employee of the TWAD Board and that he was appointed only on 01.04.1998. It is also submitted further that the 1<sup>st</sup> respondent/Labour Court has not considered the suspension period from 06.04.2004 to 05.03.2008 and the said period was also considered while computing the money to be paid to the 2<sup>nd</sup> respondent.



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10. It is further submitted that the 1<sup>st</sup> respondent/Labour Court has failed to consider that the Division Bench of this Court has though granted the regularization of service to the individual including the 2<sup>nd</sup> respondent with effect from 01.04.1998, however, the monetary benefit was only awarded from 01.08.2006.

11. Subsequent to filing of this writ petition, the 2<sup>nd</sup> respondent died, in his place, his LRs were brought on record as R3 to R5.

12. Respondent Nos.3 to 5 have filed their counter-affidavit stating that the 2<sup>nd</sup> respondent was appointed as NMR on 05.10.1998 for execution of combined water supply scheme at Sillamarathupatty and other habitations and on completion of the execution works, he was transferred to Bodinayakanur Panchayat Union, Theni District along with the water supply schemes for further operations and maintenance. The 2<sup>nd</sup> respondent was appointed with effect from 01.04.1998 by TWAD Board as per GOMS No.261 dated 14.10.1996. The 2<sup>nd</sup> respondent has approached the Inspector of Labour, Theni for regularization of his services and the same was allowed. Aggrieved by the same the TWAD



Writ Petition No.2363 of 2014

Board has filed WP Nos.4205 of 2005 and 6000 of 2005 both of them were dismissed and subsequently, the TWAD has filed WA.MD.Nos.665 & 666 of 2010, the same were allowed on 10.12.2010 with certain directions.

13. It is further stated in the counter affidavit that the TWAD Board has passed several orders as per 12 (3) settlement dated 08.08.1996 read with Board proceedings 264 dated 19.09.2006 conferring permanent status to more than 2500 workmen who were similarly placed duly counting the services initially rendered in TWAD Board, local bodies and the services rendered in TWAD Board consequent their transfer to TWAD Board as per Board Proceedings No.454 dated 22.08.1995. The Executive Engineer has submitted proposals on 22.10.1999 and 08.02.2000 recommending to confer permanent status to 2<sup>nd</sup> respondent and others on completion of 480 days in a period of 24 calendar months from 01.04.1998. The 2<sup>nd</sup> respondent was appointed as per the GOMS.No.261 dated 14.10.1996, by TWAD Board. However, he was initially appointed on 05.10.1998 as NMR.

14. The petitioner has though challenged the Award dated



09.10.2013 passed by the 1<sup>st</sup> respondent, there is no challenge for the orders passed in EP.No.238 of 2013 in CP No.151 of 2009. It is contended by the counsel for Respondent Nos.3 to 5 that though monetary benefit given from 01.08.2006 as per GOMS.No.111 dated 29.09.1996. The service rendered by him previously for a period of 9 years and 5 months were omitted. It is further contended that his suspension period for more than 4 years was not treated as duty period, it is further contended that consequent of acquittal of false criminal case.

15. While considering the W.A.(MD).Nos.665 & 666 of 2010 and the same has been partly allowed as follows:-

*"The Learned Single Judge mainly proceeded under the footing that the management witness himself has admitted that recommendations have been made to the higher authorities concerned for appointment of the employees on permanent basis on the ground that they have completed 480 days of service. As pointed out earlier, M.W.1. the Executive Engineer has sent the proposals 22.10.1999 and 8.2.2000 recommending on regularization on completion of 480 days service commencing from 1.4.1998. The 1st respondent did not keep in view that previously the contesting respondents were working in local bodies under CWSS on honorarium / daily wages and joined in the Board only on 1.4.1998. The regularization in TWAD Board could only be from 1.4.1998 i.e. the date of their joining in TWAD Board and not earlier than that.*



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Writ Petition No.2363 of 2014

*The next point to be considered is as to the monetary benefit to be given to the contesting private respondents. The Learned Counsel for TWAD Board has drawn our attention to G.O.Ms.No.111/MA & WS Department, dated 29.9.2006, whereby the Government has accepted the proposal of the Managing Director, TWAD Board and permitted the Managing Director to regularize the services of 872 consolidated pay employees of TWAD Board in the category of Electricians, Fitters and Maintenance Assistants who were appointed prior to 2.3.2001 and bring them into regular time scale of pay with effect from 1.8.2006. When similarly placed employees have been given benefit of regularization with effect from 1.8.2006, the contesting private respondents are entitled for the same monetary benefit only from 1.8.2006, as per the said G.O.Ms.No.111, dated 29.9.2006. It was submitted that some of the contesting private respondents are not having the requisite qualification or age relaxation as required and TWAD Board has written to the Government for obtaining After obtaining necessary relaxation from the Government, the appellant shall regularize the services of the contesting respondents from 1.4.1998 by giving them monetary benefit from 1.8.2006.*

*In view of the above, the order of the Learned Single Judge in W.P.(MD) Nos. 4205 and 6000 of 2005, dated 19.11.2009 and also the order of the 1st respondent authority are modified and these writ appeals are partly allowed. The appellants are directed to regularize the services of the contesting private respondents with effect from 1.4.1998, the date on which they joined in TWAD Board in the time scale of pay, with monetary benefit from 1.8.2006 as per G.O.Ms.No.111/MA & WS Department, dated 29.9.2006”.*

16. There is no doubt that the 2<sup>nd</sup> respondent was under suspension

during the period of pendency of criminal case against the petitioner, and



Writ Petition No.2363 of 2014

he was acquitted, he was placed under suspension only for involving in the criminal case. As the 2<sup>nd</sup> respondent was acquitted of charges, orders should have been passed regularizing the suspension period of the second respondent. However, since this Court in Writ Appeal Nos.665 & 666 of 2010 directed to regularize the services from 01.04.1998 and the said period includes suspension period and that those order have become final, the petitioner cannot say that his suspension period has to be excluded from regularization.

17. Considering the above, the impugned order passed by the 1<sup>st</sup> respondent is set aside and the petitioner is directed to regularize the services of the 2<sup>nd</sup> respondent/Late.S.Govindaraj with effect from 01.04.1998 until 08.08.1996 and to pay all the monetary benefits for which he is entitled for.

18. It is submitted by learned counsel for the petitioner that an amount of Rs.3,37,290/- was already paid vide cheque No.18105 dated 13.03.2012, and that the 2<sup>nd</sup> respondent has also withdrawn an amount of Rs.2,00,000/- deposited amount by the petitioner as per the directions of this Court.



Writ Petition No.2363 of 2014

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19. In view of the above discussions, this writ petition is disposed of directing the petitioner to pay the balance amount to the legal heirs of Respondent No.2 within a period of eight (8) weeks from the date of receipt of copy of this order. There shall be no order as to costs.

21.03.2024

Speaking Order : Yes/No

Index Case : Yes/No

Neutral Citation : Yes/No

***nst***

To:

The Presiding Officer

The 2<sup>nd</sup> Additional Labour Court Madars High  
Court Buildings Chennai-600 104.

**DR.D.NAGARJUN,J.**

*nst*

Writ Petition No.2363 of 2014



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Writ Petition No.2363 of 2014

21.03.2024