

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.1052 of 2015

1. The Joint Chief Engineer
Tamil Nadu Water Supply and Drainage Board
No.31, Kamarajar Salai
Chepauk
Chennai-15.
2. The Executive Engineer
Tamil Nadu Water Supply and Drainage Board
Maintenance Assistant Division
Tuticorin.
3. The Superintending Engineer
Tamil Nadu Water Supply and Drainage Board
TV Circle, Kovilpatti
Tuticorin.

... Appellants

Vs.

1. S. Shanmuga Sigamani
2. Murugan
3. Kulaikathan

... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 12.03.2013 in W.P.No.15625 of 2005 on the file of this Court.

Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records of the First Respondent in order dated 30.03.2005 passed in Letter No. 66111/W05/2004 the proceedings of the Second Respondent proceedings No. 3878/K05/V/3/2004 dated 17.01.2005 and the third

respondent proceedings N. No.Ko.60/O/N-1/2004 dated 25.06.2004 and quash the said orders consequently direct the respondents to regularise the services of the petitioners with effect from 29.08.1986, 12.08.1989 and 02.02.1987 and pass such further orders.

For Appellants : Ms.S. Thamizharasi

For Respondents : Mr.S.Anbazhagan

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J)

This writ appeal is directed against the order dated 12 March 2013 in W.P.No.15625 of 2005, whereby and whereunder the learned Single Judge allowed the writ petition and quashed the recovery order passed by the appellants.

2. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the respondents.

3. The respondents were appointed as Watchman on NMR basis by the Tamil Nadu Water Supply and Drainage Board. Though the respondents were entitled to be regularised from their initial date of engagement as per the settlement arrived at between the employer and the Union, their services were not regularised. Subsequently, the second appellant passed an order dated 12 August 2003 bringing the respondents into the time scale of pay. The order dated 12 August 2003 was communicated to them. Thereafter, the respondents were paid arrears taking into account their time scale of pay.

4. While so, the third appellant issued an order dated 15 June 2004 cancelling the earlier order and directing recovery of the excess amount paid to the respondents. The order was challenged before the writ court in W.P.No.15625 of 22005.

5. The learned Single Judge having found that notice was not issued to the respondents before cancelling the earlier order, quashed the impugned order.

6. According to the appellants, the services of the respondents were regularised on 17 September 1992 and as such they ceased to be NMRs. In view of the said factual position, the respondents are not entitled to claim benefit of the settlement made under Section 12(3) of the Industrial Disputes Act.

7. The appellants have taken up a specific contention that retrospective regularisation was mistakenly given to the respondents and as such the order was rightly recalled.

8. The learned Single Judge allowed the writ petition primarily on the ground that notice was not issued to the respondents. While allowing the writ petition liberty was not given to the appellants to issue notice to the respondents for the purpose of passing a fresh order on merits.

9. We are therefore the view that liberty should be given to the appellants to consider the matter afresh after issuing notice to the respondents.

10. In the result, the impugned order dated 12 March 2013 is modified. The appellants are given liberty to issue notice to the respondents and pass a fresh order on merits and as per law.

11. The intra court appeal is allowed to the extent indicated above. Consequently, the connected MP is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Tr/

To

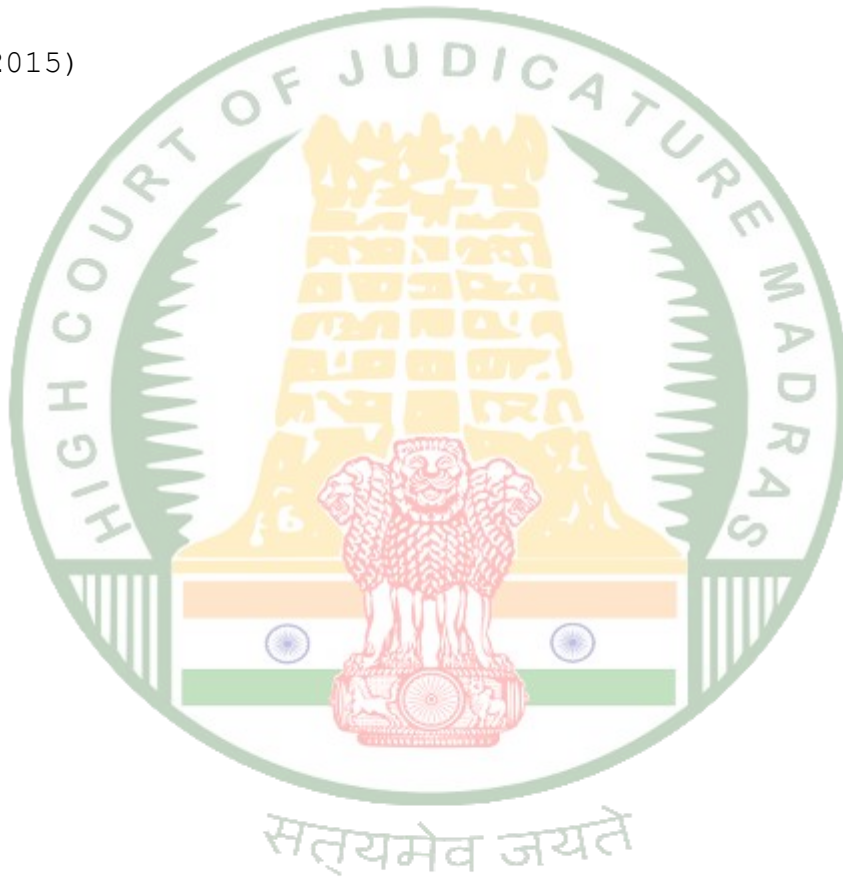
1. The Joint Chief Engineer
Tamil Nadu Water Supply and Drainage Board
No.31, Kamarajar Salai
Chepauk
Chennai-15.
2. The Executive Engineer
Tamil Nadu Water Supply and Drainage Board
Maintenance Assistant Division
Tuticorin.

3. The Superintending Engineer
Tamil Nadu Water Supply and Drainage Board
TV Circle, Kovilpatti
Tuticorin.

+lcc to Ms.S.Thamizharasi, Advocate, S.R.No.41508

W.A.No.1052 of 2015

TEJ (CO)
CA (04/09/2015)



WEB COPY