

In the High Court of Judicature at Madras

Dated: 01.06.2015

Coram:

The Hon'ble Mr. Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr. Justice M. VENUGOPAL

W.A.No.716 of 2015

C. Murugan ..Appellant/Petitioner
Vs.

The Managing Director
Tamilnadu Water Supply and
Drainage Board, Chepauk,
Chennai - 600 005 ..Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent
Appeal against the Order of this Court dated 23.12.2009 made in
W.P. No. 3398 of 2005.

W.P.No.3398/2005:- Petition under Article 226 of the
constitution of India to issue a writ of mandamus directing the
respondent to regularise the services of the petitioner from
11.12.1975 on the completion of 480 days of continuous service in
24 calendar months and consequently to disburse the petitioner
all the benefits arising out of it.

For Appellant : Mr.L.Chandrakumar

For Respondent : Mrs.S.Thamizharasi

JUDGMENT

[Judgment of the Court was Delivered By
M.VENUGOPAL, J.]

The Appellant / Petitioner has preferred the instant intra
court Writ Appeal as against the order dated 23.12.2009 passed by
the Learned Single Judge in W.P.No.3398 of 2005.

2.The Learned Single Judge while passing the Impugned Order
on 23.12.2009 in W.P.No.3398 of 2005 filed by the
Appellant/Petitioner in Paragraph No.5 had interalia observed the
following:-

"5.....Hence, the question of now considering the
relevancy and the applicability of settlement under

Section 12(3) of the Industrial Disputes Act reached on 8.8.1996 does not arise. A reading of the said settlement shows the decision of the management to regularise 386 temporary employees on completion of 480 days continuously in 24 calendar months from the date when they completed 480 days of service. The agreement further pointed out that 351 employees during October 1994 and April 1995; 600 employees during August 1996 and 1990; and further 67 employees in the year 1992 have to be made permanent and their services have to be regularised. Taking note of these workers, the regularisation was granted on the completion of 480 days in 24 calendar months. As regards clause 7 of the agreement, on which heavy reliance was placed by the learned counsel for the petitioner, a reading of the same shows that the agreement contemplated regularisation of workers other than those who are referred to in the earlier paragraphs and if they acquired the required qualification and completed 480 days of 24 calendar months. As far as the present petitioner is concerned, the regularisation having taken place as early as 1.1.1980, the question of further regularisation and to confer the benefit of clause 7 hence does not arise...."

and resultantly dismissed the Writ Petition without costs.

3. Assailing the correctness of the Order dated 23.12.2009 passed in W.P.No.3398 of 2005 by the Learned Single Judge, the Learned Counsel for the Appellant/Petitioner contends that the Impugned Order of the Learned Single Judge is against all canons of law, violative of settled principles and therefore is liable to be quashed.

4. The Learned Counsel for the Appellant submits that in the instant case, the Appellant/Petitioner is working from 19.08.1974 and on completion of 480 days, with effect from 11.12.1975, the Appellant should have been extended with all benefits, though not monetarily, at least, notional benefits from the said date.

5. According to the Learned Counsel for the Appellant, placing on reliance of Section 12(3) Settlement of the Industrial Disputes Act, 1947 is only for a limited purpose and infact the Respondent/Department has chosen to act in a discriminating fashion towards similarly placed persons.

6. Expatiating his contention, the Learned Counsel for the Appellant projects an argument that for nearly about 1000 employees, who came to be recruited subsequently, a conferment of permanent status was to be showered and that the yardstick of non-extension to the Appellant, who is similarly placed is an untenable one in the Eye of Law.

7.The primordial stand of the Appellant is that the status of the Appellant was more than that of an 'NMR' and he was routed through an Employment Exchange as per rule, thereby entitling him to get all consequential service rights on completion of declaration of probation. That apart, since the Appellant's appointment is as per Rules, the consequential benefit of regularisation shall automatically follow.

8.It is not in dispute that the Section 12(3) Settlement under the Industrial Disputes Act, 1947 was arrived at on 08.08.1996. At this stage, it is worthwhile for this Court to extract Clause Nos. 6 and 7 of the Settlement, which read as under:-

"6. Among the 386 workers who are going to be conferred permanency as per Demand 1 would be given Rs.500/- so as to compensate the legal expense to each individual who have approached the Hon'ble Court for conferment of permanency and has also succeeded in the case. But it cannot be taken as a precedent. It is given considering the overall outcome of the cases.

7. Apart from this, if any of the workers who are legally eligible for conferment of permanency and are working would be conferred permanency from the date of completion of 480 days of service in a period of 24 calendar months and salary would be paid in the refixed Scale of Pay from 01-08-1996."

9.It is to be remembered that a settlement arrived at in the course of conciliation proceedings cannot subsequently be nullified by any party to it in an unilateral fashion.

10.Insofar as the Appellant/Petitioner is concerned, his regularisation took place on 01.01.1980 and therefore, the issue of further regularisation and to confer the benefit of Clause 7 of the Settlement does not arise on any score in the considered opinion of this Court.

11.Apart from the above, it cannot be denied that the Appellant was granted the Relief of Promotion to the post of Assistant Engineer on the basis of regularisation by placing him in the appropriate Serial number in the order of seniority list.

12.Looking at from any angle, the view taken by the Learned Single Judge in dismissing the W.P.No.3398 of 2015 by an Order dated 23.12.2009 filed by the Appellant / Petitioner holding that

Section 12(3) Settlement of Industrial Disputes Act, 1947 is legal and has no relevance to his case on the facts of the present case does not suffer from any material irregularity or patent illegality in the Eye of Law. Per contra, the same is just and a valid one in Law. Consequently, the Writ Appeal fails.

In the result, the Writ Appeal is dismissed leaving the parties to bear their own cost.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ssd

To

The Managing Director
Tamilnadu Water Supply and
Drainage Board, Chepauk,
Chennai - 600 005

1 cc to mr.L. Chandrakumar, Advocate, Sr. 25721
1 cc to M/s.S. Thamizharasi, Advocate, Sr. 25727

W.A.No.716 of 2015

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