

In the High Court of Judicature at Madras

Dated: 08.07.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI

and

The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.850 of 2015

and M.P.No.1 of 2015

D.Sankaran

... Appellant

Vs.

1. The Chief Secretary to
Government of Tamil Nadu,
F.S.G., Chennai-600 009.

2. The Secretary to Government,
Public Works Department,
F.S.G., Chennai-600 009.

3. The Engineer-in-Chief (Buildings),
Chief Engineer (Buildings) Chennai Region
and the Chief Engineer (Genl.),
P.W.D., Chennai-600 005.

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 05.08.2013 and made in W.P.No.21517 of 2013 by the learned Judge of this Court. Petition filed under Article 226 of the constitution of India for the issuance of writ of mandamus to direct the respondents herein more particularly the 2nd respondent to regularise the petitioners service in the Daily wage Category of Mazdoor (i.e.NMR) within a reasonable period consequently to show petitioners service under NMR Roll for purposes of all service benefits.

For Appellant : Mr.A.L.Namasivayam

For Respondents : Mr.P.S.Shivashanmuga Sundaram
Special Government Pleader

J U D G E M E N T

[Judgment of the Court was made by

M.VENUGOPAL, J.]

The Appellant/Petitioner has preferred the instant intra-Court Writ Appeal before this Court as against the order dated 05.08.2013 in W.P.No.21570 of 2013 passed by the Learned Single Judge.

2.The learned Single Judge while passing the impugned order in W.P.No.21570 of 2013 on 05.08.2013 filed by the Appellant/Petitioner in para2 had observed the following:

"Even according to his own affidavit, he is not in service. A person, who is not in service, cannot seek for regularisation of service. Hence, I am not inclined to issue the direction sought for by the Petitioner." and resultantly, dismissed the Writ Petition.

3.Assailing the legality and validity of the order of dismissal dated 05.08.2013 in W.P.No.21570 of 2013 passed by the Learned Single Judge, the Learned counsel for the Appellant submits that the Learned Single Judge had failed to take note of the vital facts that the Appellant/Petitioner had entered the service as a 'NMR Worker' on 01.03.1995 in the Public Works Department and continued as such till 31.03.2003, he was employed as a contract labourer in the Public Works Department upto 31.07.2006 and thereafter, from March 2007 to June 2008 based on the order dated 30.04.2004 in O.A.No.2017 of 2004 passed by the Tamil Nadu Administrative Tribunal, the Appellant was rightly placed on the nominal roll and pay and allowances were allowed. Further, he was allowed to continue in service.

4.The Learned counsel for the Appellant contends that although the Appellant continued in the service in the same nominal roll of NMR and at the instigation of one Ashokan, A.E.E., Public Works Department, his name was de-listed from the 'Nominal Roll' of NMR, thereby, the order passed in O.A.No.2017 of 2004 dated 30.04.2004 was violated and that apart, his pay and allowances were not disbursed.

5.The Learned counsel for the Appellant brings it to the notice of this Court that only after periodical representations made by the Appellant to the Respondents, the Appellant was provided with a job on contract basis in DPI Section from 01.08.2009.

6.It is the submission of the Learned counsel for the Appellant that the Appellant is a lowest paid employee in the bottom of service and bringing him in the regular category of 'Mazdoor', there is no loss to the Government as he is already in employment and paid in the wages list as daily wages worker.

7.Lastly, it is contended on behalf of the Appellant that the Appellant's service book was opened on 15.02.2012 in the Sub division itself and the proposal was already sent through letter No.345 AEE/SW/2012 dated 15.02.2012 to the Second Respondent/Secretary to Government, Public Works Department, F.S.G., Chennai-9 and the same is pending.

8.It is not in dispute that the Petitioner entered service as a worker under NMR on 01.03.1995 and continued in that category till 30.05.1999. Further, a break was given to him and he was again taken back on 01.01.2000 and was allowed to continue as such till 31.02.2003. Moreover, from 01.04.2003 to 31.07.2003, he was employed as a Contract labourer.

9.It is the further case of the Appellant that he managed to get himself an entry in Public Works Department Section in Government Stanley Hospital, Chennai-4 as a Contract Labourer on 10.10.2003 and was allowed to function as such till 31.07.2006.

10.Further, since regularisation was not done either under the posts of 'NMR' or under 'Contract Basis', his association filed an O.A.No.2017 of 2004 in respect of 61 workers (including himself) in which directions were given on 30.04.2004 to regularise their service and thereafter, he was taken in service in Public Works Department in Valluvar Kottam Section in March 2007 and further, he worked as daily wage labour (Mazdoor under NMR) in Valluvar Kottam Section, South Presidency Division, Chennai-5 for the period from March 2007 to June 2008.

11.It is to be pointed out that a casual/daily rated/stop gap worker appointee has no right to the post and as such, question of regularisation does not arise. To put it differently, a daily wager has no right to claim for absorption. Furthermore, casual workers engaged on daily basis are not entitled to seek regularisation when there are no sanctioned posts in which they could be absorbed as per decision of the Hon'ble Supreme Court in Dhirendra Chamoli and another Vs. State of Uttar Pradesh reported in 1986 (1) Supreme Court Cases 637. In short, a temporary employee/worker has no right to the post and hence, has no right to be absorbed in service. Moreover, as

a daily wager or a casual worker against a particular post, when acquires temporary status, having worked against the said post for a specified number of days does not acquire a right to be regularised. Even a person appointed temporarily on an adhoc-basis has no right to the post as per decision of the Hon'ble Supreme Court in Triveni Shankar Saxena Vs. State of Uttar Pradesh and others reported in AIR 1992 Supreme Court 496.

12.It cannot be gainsaid that successive extension of temporary appointment does not give rise to legitimate expectation of regularisation as per decision of the Hon'ble Supreme Court in Dr.(Mrs.) Chanchal Goyal Vs. State of Rajasthan reported in AIR 2003 Supreme Court 1713.

13.Admittedly, the Appellant is not in service. When he is not in service as per his own averments mentioned in the affidavit filed in the writ petition, then, this Court is of the considered view that he cannot seek the relief of regularisation of his service in the daily wage category of Mazdoor (i.e., NMR). Viewed in that perspective, the conclusion arrived at by the Learned Single Judge in dismissing the Writ Petition by holding that "a person who is not in service cannot seek for regularisation" does not suffer from any material irregularity or patent illegality in the eye of law. Consequently, the Writ Appeal fails.

14.In the result, the Writ Appeal is dismissed. However, there shall be no orders as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

DP
To

1. The Chief Secretary to
Government of Tamil Nadu,
F.S.G., Chennai-600 009.
2. The Secretary to Government,
Public works Department,
F.S.G., Chennai-600 009.

3. The Engineer-in-Chief (Buildings),
Chief Engineer (Buildings) Chennai Region
and the Chief Engineer (Genl.),
P.W.D., Chennai-600 005.

+1cc to Mr.A.L. Namasivayam Advocate sr.no.34139.
+1cc to Government pleader sr.no.34719.

W.A.No.850 of 2015
and M.P.No.1 of 2015

vsn[col]
srg 26.07



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