

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.07.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

WP.No.12707 of 2012

&

and MP.1 of 2015

1.R.Viswanathan
2.R.Muthumanickam
3.S.Velankanni
4.N.R.Balasubramani
5.R.Ravi
6.S.G.Sekar
7.S.Ganesh
8.S.Palanivel Senthilkumar
9.K.Palanisamy

..Petitioners

Vs

The State of Tamil Nadu,
Rep.by its Secretary to Government,
Public Works Department,
Fort St.George,
Chennai-600 009.

...Respondent

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus calling for the records relating to the order in G.O.(D) No.402, Public Works (C2) Department dated 25.07.2007 on the file of the respondent quash the same insofar as the order of regularization will take effect only from the date of the order passed by the Government Viz. 25.07.2007 and also not provided suitable posts as per their qualification and the consequential order in letter No.21609/C2/2008-2020 dated 09.01.2012 on the file of the respondent quash the same and direct the respondent to regularize the services of the petitioners with effect from the date of completion of 10 years of their service and to place the petitioners in the suitable posts according to their educational qualifications with all benefits as in the case of i) G.O.(Ms) No.334 dated 19.10.2007, 2) G.O.(D) 209 dated 04.06.2009, 3) G.O.(Ms) No.117 dated 15.04.2010, 4) G.O.(Ms) No.134 dated 07.05.2010, 5) G.O.(Ms) No.286 dated 06.10.2010 6) G.O.(Ms) No.351 dated 05.08.2010, 7) G.O.(Ms) No.73 dated 01.04.2011 and 8) G.O.(Ms) No.119 dated 29.06.2011, Public Works (C2) Department.

For Petitioners : Mr.L.Chandrakumar

For Respondent : Mr.R.Vijayakumar, AGP

ORDER

Heard Mr.L.Chandrakumar, learned counsel appearing for the petitioners and Mr.R.Vijayakumar, learned Additional Government Pleader appearing on behalf of the respondent and with the consent of either side, this Writ Petition is taken up for disposal.

2. The petitioner seeks for issuance of writ of certiorarified mandamus to quash the G.O.(D) No.402, Public Works (C2) Department dated 25.07.2007 in so far as it states that the regularisation of the service of the petitioner will take effect only from the date of the Government Order viz., 25.07.2007 and the consequential order dated 09.01.2012 passed by the respondent and to direct the service of the petitioners to be regularised from the date of completion of 10 years of service.

3. The petitioners were all originally employed on daily wages as N.M.R (Normal Muster Roll) in various Sub Divisions in Dindigul Division in the Public Works Department. As the petitioners services were not regularised and they were not granted permanent status, they have approached the State Administrative Tribunal and filed O.A.No.2988 of 1999 for a direction to absorb them on permanent basis. The Tribunal while entertaining the Original Application, granted an interim order not to terminate the petitioners till the disposal of the Original Application. While so, the Government passed an order regularising the services of daily wage employees, who have rendered 10 years of service as on 01.01.2006. Since, the petitioners were not extended the benefit of said Government Order, filed a writ petition before the Madurai Bench of this Court in W.P.(MD)No.3471 of 2006 and an order was passed on 24.05.2006 directing the authorities to regularise the service of the petitioners in accordance with the said Government Order. Since, the order was not complied with, a contempt petition was filed and after which, the Government passed an order in G.O. (D)No.402, Public Works (C2) Department, dated 25.07.2007 regularising the service of the petitioners as "Mazdoor" with effect from the date of the Government Order. The petitioners are not aggrieved by the entire Government Order, but their grievances is only with regard to the date of regularization.

4. The petitioners would plead that when several similarly placed persons have been granted regularization on completion of 10 years of service, such benefit should be extended to them. Therefore, the petitioners submitted a representation requesting for regularization of their services with effect from the date of completion of 10 years of service. Since, the representation was not considered, the petitioners filed a writ petition before this

Court in W.P.No.12421 of 2010, wherein a prayer was made to regularise their services on completion of 10 years of service by taking into consideration the various Government Orders. This Court, by order dated 16.06.2010, disposed of the writ petition by directing the respondent to consider the representation dated 03.06.2008, based on the report of the Chief Engineer dated 25.08.2009, within a period of twelve weeks. Subsequently, the Government vide letter dated 09.01.2012 declined to extend the benefit and while doing so, referred to a decision of this Court in W.P.No.1286 of 2009 etc. batch, wherein, a similar prayer sought for was negatived. Thus challenging that portion of the impugned Government Order and consequential Government letter dated 09.01.2012, denying the regularization on completion of 10 years, the petitioners are before this Court.

5. The respondent in their counter affidavit, after referring the factual averments, have stated that after a direction was issued by this Court in W.P.No.12421 of 2010 dated 16.06.2010, the Government examined the matter and they took note of the decision in W.P.No.1286 of 2009 etc. batch dated 29.08.2011 and rejected the request. This averment is reiterated in the counter in more than one place. Thus the reason for rejection of the petitioners claim appears to be solely based on the decision in W.P.No.1286 of 2009 etc. batch dated 29.08.2011.

6. It is brought to the notice of this Court by the learned counsel for the petitioner that the petitioners in the said batch of cases in W.P.No.1286 of 2009 etc. batch preferred writ appeals before the Honourable Division Bench of this Court in W.A.Nos.168 and 169 of 2012 and the Honourable Division Bench in the case of A.Baby Sabeena and Others Vs. State of Tamil Nadu reported in (2014) 6 MLJ 210 allowed the writ appeals with a direction to notionally fix the pay of the appellant therein retrospectively with effect from the date of completion of 10 years as NMRs with monetary benefits from the date of the relevant Government Order. The operative portion of the order reads as follows:

"15. In our considered view granting of such notional fixation of pay retrospectively without monetary benefit is not going to affect the Government in any way, especially when such benefit was given to other similarly placed persons numbering more than 600 as has been seen in the above referred proceedings. The learned Single Judge failed to consider this aspect of discrimination and dismissed the writ petitions only on the reason that the appellants/petitioners having benefited by regularising of their service through impugned Government Order, cannot seek to improve upon the scheme. In our considered view such finding of the learned Single Judge is not correct in view of the fact that the appellants/petitioners are not seeking

to improve the scheme and on the other hand seek the benefit conferred to similarly placed persons based on the very same Government Order as has been discussed supra. The action of the respondents in treating the appellants differently is in violation of Article 14 of the Constitution of India. Right to treat similarly placed persons equally is a fundamental right guaranteed under the Constitution of India.

17. In fine, the Writ Appeals are allowed and the respondents are directed to notionally fix the pay of the appellants/petitioners retrospectively with effect from the date of completion of 10 years of service as NMRs, with monetary benefits from the date of the Government Order."

7. The learned Additional Government Pleader also does not dispute the above legal position.

8. The learned counsel for the petitioner further submitted that the Government is also taking steps to implement the order passed by the Honourable Division Bench of this Court. However, there is no record to substantiate the said submission. Be that as it may, the legal issue raised in this writ petition is squarely covered by the decision of the Hon'ble Division Bench in the case of A.Baby Sabeena and others, referred supra.

9. Accordingly, following the decision of the Hon'ble Division Bench this writ petition is allowed and the respondent is directed to notionally fix the pay of the petitioners retrospectively with effect from the date of completion of 10 years of service as NMRs with monetary benefits from the date of the Government Order dated 25.07.2007. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsm

To

The Secretary,
Government of Tamil Nadu,
Public Works Department,
Fort St.George,
Chennai-600 009.

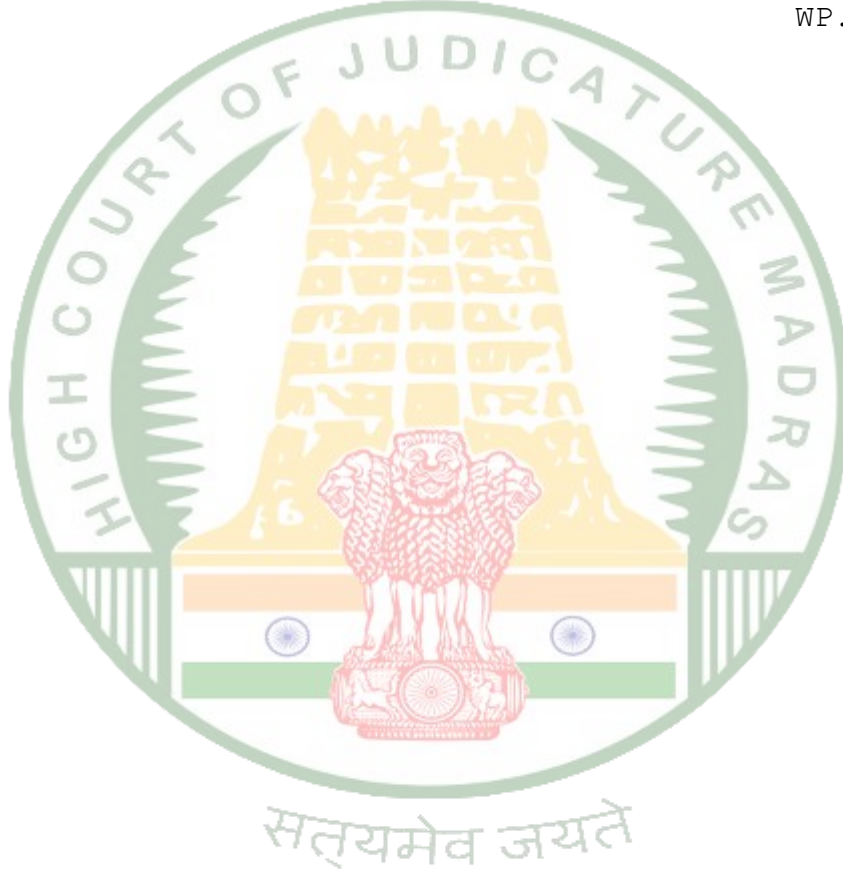
1 cc to M/s. S. Doraisamy, Advocate, Sr. 37399

1 cc to Government Pleader, Sr. 37360

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