

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 10.12.2014

DATED: .01.2015

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.18588 of 2004

and

M.P.No.22160 of 2004

G.Ganessan @Manogaran

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Petitioner

Vs.

1.The Secretary to Government
Rural Development, chief Secretariat,
Pondicherry.

2.The Project Director,
District Rural Development Agency,
Pondicherry.

3.V.P.Danesh,
Technical Assistant,
District Rural Development Agency,
Pondicherry.

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Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a Writ of declaration or any other writ, order or direction to declare that the regularization of services of the 3rd respondent in the post of Technical Assistant is illegal and consequently to direct the respondents 1 and 2 to regularize the service of the petitioner in the post of Technical Assistant with effect from 07.05.1999 with all other consequential benefits including arrears of wages seniority etc.

For Petitioner : Mr.T.V.Ajaya Kumar

For Respondents : Mr.P.Gunaraj
Govt Advocate (Pondicherry)
for R1 and R2
M/s.Sai Bharat Ilan for R3

O R D E R

The short facts of the case are as follows:

The petitioner submits that he is working as a Technical Assistant on daily rated basis and he joined the service on 11.09.1989 on a daily wages of Rs.30/-. He is fully qualified for the post of technical Assistant and he passed with a Diploma in Civil Engineering and so he is entitled to obtain regular appointment against the vacancy which is available in the 2nd respondent's authority.

2. The petitioner submits that the wages of Technical Assistant (Daily Rated) has been revised from time to time and now the daily rated Technical Assistant is paid Rs.180/- per day. He is the Senior most Technical Assistant (Daily rated) in the 2nd respondent Agency. In 1999 five regular vacancies arose in the 2nd respondent Agency in the post of Technical Assistant and the 2nd respondent has regularized the services of 4 daily rated Technical Assistant including the services of the 3rd respondent herein, even though he has joined service in the 2nd respondent Agency subsequent to him. The 2nd respondent ought to have considered for regularization against the vacancy in which the 3rd respondent has regularized.

3. The petitioner submits that even though there were five vacancies arising in 1999 and the 2nd respondent has filled only four vacancies and one post is kept vacant. It is reliably learnt that a proposal was sent by the 2nd respondent for regularizing his services against the available vacancy with File No.6774/BDO(o)/03-04. The 1st respondent has not taken any action on the said file. It is submitted that the 2nd respondent has kept him on daily rated basis and even though from 01.01.2004 onwards wages were not paid to him till date. Being a daily rated employee, it becomes very difficult for him and to maintain his family and so he had made several representations to the authority to release his wages and for regularization. No action has been taken by the 2nd respondent for payment of his wages and for regularization. No action has been taken by the 2nd respondent for payment of his wages from 01.01.2004 and the petitioner submitted that since he has made several representations for payment of wages from 01.01.2004 and also for regularization of his services in view of regularization of his junior and the 2nd respondent has developed ill feeling towards him and the 2nd respondent has taken a decision to terminate his services. Without any reason at all. It is the fact that a number of Technical Assistants who have joined subsequent to his joining are still working in the 2nd respondent's Agency and so the decision to

terminate his services, retaining his Juniors in service is most arbitrary and discriminatory. Hence, he is forced to approach this Court for redressal.

4. It is submitted that he was appointed as a Technical Assistant (Daily Rated Basis) on 11.09.1989 and he denied the averments in para No.3 of the Counter Affidavit wherein it is stated that he joined in 11/1989 which is highly objectionable and is unbecoming of a model employer. The last column in the table given in para No.3 shows only the year with some other figures without mentioning whether it is date or month. The third respondent who is his junior is shown as joined in 8/1989 which is also factually incorrect and the respondent is liable to be punished for making false information in the affidavit. The files regarding District Rural Development Agency shows that V.P.Dhanesh joined service on 18.12.1989 with the qualification of Diploma in Civil Engineering and he joined in service on 11.09.1989 and so he is senior to the third respondent.

5. The averments in para No.4 are also factually incorrect, false and so denied. The averments that he is not a senior most Technical Assistant(Daily Rated basis) is wrong because he joined in his service on 11.09.1989 and the third respondent joined his service on 18.12.1989 and the respondents 1 and 2 are concealing the said fact. The averments that he might have worked in the office upto February 1993 is also highly unfortunate, false and baseless. He is appointed by District Rural Development Agency and he has been carrying out the duties and responsibilities entrusted by District Rural Development Agency irrespective of the Blocks in which he is transferred as in the case of the other similar employees. The details of his service from the date of joining are as follows:

11.09.1989 to 12.11.1989 - Karaikal Block
13.11.1989 to 12.08.1990 - Oulgaret Block
13.08.1990 to 11.08.1993 - Karaikal Block
12.08.1993 to 03.12.1997 - Ariankuppam Block
04.12.1997 to 26.05.2005 - Oulgaret Block
27.05.2005 to till date - Bahour Commune Panchayat

6. Hence, the averments in para No.4 which creates an impression that there is a break of service is totally false and baseless and also highly unfortunate. The averments that he has not been engaged from 27.02.1983 to 04.01.1995 is totally false and baseless because he joined service only on 11.09.1989 and from the date of his appointment to date there is no break of service at all.

7. The averments in para No.5 of the counter affidavit are also false and baseless and so denied. The averments that the petitioner was not conferred with temporary status and so cannot be considered

for regularization is illegal because the petitioner was entitled to get temporary status and even though the petitioner asked for temporary status. Persons who joined subsequent to the petitioner were conferred with temporary status and with a view to take revenge on the petitioner for some known reason, temporary status was not conferred since temporary status is not relevant because persons who are conferred with temporary status are not regularized only on the ground of conferring of temporary status. Regularization is governed by the provisions of G.O.Ms.No.92 and also the provisions of Recruitment Rules for the post of Technical Assistant which provides that Daily Rated Casual Labourers having the prescribed qualification have to be considered for regular appointment. The respondents are trying to deny regularization to him by raising false and baseless reasons. The petitioner has been continuing in service as a Technical Assistant from 11.09.1989 onwards and he is squarely covered by para No.53 of the judgment in Uma Devi's case. The similarly placed Technical Assistant in the Puducherry Municipality was directed to be regularized in the post of Junior Engineer by the Division Bench of this Court, since he was working for the last 10 years. He is also entitled to get the same benefit. The attempt made by the respondents to deny him regularization on the basis of non grant of Temporary Status is illegal and not sustainable.

8. The averments in para No.5 that he was not under engagement from 27.02.1993 to 04.01.1995 is false and baseless and so denied. He has produced proof to show that he was in service right from the day one of his joining service.

9. It is further submitted that conferment of Temporary Status is available only in the case of Group 'D' employees whereas the post of Technical Assistant is a Group 'C' post, for which there is no provision for grant of Temporary Status. He was not granted Temporary Status because he was working as Technical Assistant which is Group 'C' post, whereas the other persons were conferred Temporary Status because they were treated on par with Group 'D' Casual Labourers, which he refused to accept. The Technical Assistant in P.W.D. who was offered Temporary Status treating them as Group 'D' Casual Labourers approached the Central Administrative Tribunal for regularization which was allowed and the Writ Petition filed by the Government against the order of the Central Administrative Tribunal was dismissed and all the Technical Assistants were regularized as Work Assistant's on par with Draughtsman. He is also entitled to get the same treatment because, he is also working under the same Administration as Technical Assistant. The respondents have not stated whether the post of Technical Assistant is equivalent to Group 'D' Casual Labourers post or is equivalent to Draughtsman which is Group 'C' post in the Counter Affidavit at all.

10. The averment in para No.8 that the Government has not accepted the proposal for regular appointment because of the Government of India policy is factually incorrect and so denied. In fact, the Government has issued directions to the Union Territory Administration to regularize the services of the District Rural Development Agency employees and to transfer them to other Departments. On the basis of the same several employees were transferred to District Rural Development, Department of Personnel and Administrative Reforms (Personnel Wing) and Local Administrative Department on regular basis. Except him all others were absorbed in the regular establishment and were transferred to the above stated Departments with the benefit of the service rendered by them in the District Rural Development Agency employees. so that after absorption, they become eligible for pension and other benefits. The other averments in para No.8 of the Reply Affidavit is factually incorrect and so denied.

11. The averments in para No.9 that six Technical Assistants were terminated from service on 10.09.2004 cannot be taken as a ground to unsuit him because the other Technical Assistants joined service in 2000 and afterwards, whereas, he joined service as a Technical Assistant on 11.09.1989. Even otherwise, he is entitled to get the benefit of para No.53 of Uma Devi's case and also the judgment rendered by the Hon'ble Division Bench in the case of Technical Assistant in the Pondicherry Municipality who was directed to be regularized as Junior Engineer with back wages.

12. The averments in para Nos.10 and 11 are also denied since they are not fully correct. The averments in para Nos.10, 11 and 12 are against the orders passed by this Court in W.P.M.P.No.22160 of 2004 in which it was stated that "Interim Injunction if not already terminated". The respondents have played on the words "if not already terminated" and have taken the stand that he has been terminated from service on 10.09.2004 and subsequently the said stand was not accepted by this Court in the Contempt Petition which was filed by him. The respondents are not entitled to play the same technique by using the words "if not all already terminated" which amounts to a clear case of Contempt of Court. Even after the orders passed by this Court, he was not paid his salaries from 01.01.2004 to 26.05.2005 for which the respondent cannot take the technical plea at all because the question of termination arises only on 10.09.2004 and reason for refusal of paying his salaries from 01.01.2004 onwards is unknown. He denies all the averments in para Nos.12 and 13 of the Reply Affidavit as false and baseless.

13. Hence, it is most humbly prayed that this Court may be pleased to allow the writ petition and to direct the respondents to regularize his service with effect from 11.09.1989 with effect from the date of joining with all other consequential benefits including arrears of wages and seniority.

14. The 2nd respondent has filed a counter statement on behalf of the 1st respondent himself. The respondent submits that the District Development Agency is an agency fraud under the Societies Registration Act, to use funds received from the Government of India for Rural Development activities through the existing Government apparatus including the Block Development Officers. The block Development Officers sometimes engage persons in various categories only on purely temporarily casual, contingent and daily rated basis for the implementation of the programmes. The wages have been paid from the petty surrender charges available in each work executed by the Block Development Officers. In this way, the petitioner had been engaged by the Block Development Officer, Karaikkal on 11.09.1989. He was engaged as Technical Assistant. It may be noted that he was neither engaged with the approval of District Rural Development Agency nor paid wages directly by the District Rural Development Agency.

15. The following persons have been engaged as Technical Assistant both in District Rural Development Agency & Blocks.

Daily Rated Technical Assistant during 1989			
Sl.No.	Name of the Daily Rated Technical Assistants	Block in which engaged	Engaged w.e.f.
1	R.Vengadachalabathy	BDO-Ariankuppam	1989
2	E.Parasuraman	BDO-Ariankuppam	07-1989
3	R.Natarajan	BDO-Karaikal	07-1989
4	A.Balasubramanian	DRDA-Engineering Cell	08-1989
5	V.P.Dhanesh	DRDA-Engineering Cell	12-1989
6	G.Ganesan @ Manogaran	BDO - Oulgaret	11-1989
7	Ramalingeshwara Rao	BDO - Yanam	07-1989
8	G.Suresh	BDO - Yanam	05-1998

16. He submits that the contention of the petitioner that he is the senior most daily rated Technical Assistant is patently false. From the records available with the respondents, it is seen that while the petitioner was engaged in the year 1989, the records shows that the petitioner had worked from 1989-1992 as Technical Assistant on daily rated basis paid under Petty Sundry Charges in the Block Development Office, Karaikal. Records from the Block Development Office, Karaikal shows that he might have worked in that office even upto February 1993. From the available records, the respondents would state that the petitioner was not engaged in any of the Block Development Offices / District Rural Development Agency in the Union Territory of Pondicherry from 27.02.1993 to 04.01.1995 i.e., one year

ten months and six days. Hence he cannot make any claim for regularization. Even afterwards, when the petitioner joined the Block Development Office, Ariankuppam on a de nova basis, on 05.01.1995, he was taken in as a Mazdoor Grade-I, which had a daily rated wages of Rs.50/- per day as against Rs.68/- per day for Technical Assistant. Hence he joined again in a post which had a lower wage and cannot claim service even in the category of Technical Assistant. He was engaged as Technical Assistant again only on 04.12.1997 by the Block Development Office, Oulgaret.

17. He submits that in December 1997, this Agency had proposed to grant Temporary Status to the persons who were working on daily rated basis according to the conditions laid down in the G.O.Ms.No.20, dated 05.04.1995 of Development of Personnel and Administrative Reforms (Personnel Wing), Pondicherry. Under the scheme formulated by the Government of India Grant of Temporary Status to Casual Labourers) "Temporary Status" would be conferred on all casual labourers, who were in employment on the date of issue of the order and who have rendered a continuous service of at least one year which means that they should have been engaged for a period of at least 240 days prior to the issue of the G.O. viz., 05.04.1995. Accordingly as per the records available in the office, this Agency had called for the particulars of various categories of employees from the Block Development Offices. Based on the particulars furnished by the Block Development Offices and the Assistant Engineer, District Rural Development Agency, Temporary Status was granted to 7 Technical Assistants and one driver. At that time, the petitioner was not considered, since he was not under any engagement for the period from 27.02.1993 to 04.01.1995, and he could not fulfill the criteria for the grant of Temporary Status i.e., continuous one year service of not less than 240 days in the position of Technical Assistant. The petitioner was not considered for grant of Temporary Status because of this stipulation in the G.O. It was from 04.01.1995 he was engaged as Mazdoor Grade-I and not Technical Assistant.

18. He submits that during 1999 based on the service and educational qualification, 4 Technical Assistants who had been granted Temporary Status from 05.04.1995 were offered the appointment of Technical Assistant on regular basis in the pay scale of Rs.4000-100-6000. Since the offer of appointment considered only the Technical Assistant who was granted Temporary Status on the earlier occasion, the petitioner, could not be considered for regular appointment, since he had not been granted Temporary Status.

19. Subsequently four more persons were engaged as Technical Assistants on daily rated basis in 2000.

20. He submits that due to frequent representations of the petitioner and other Technical Assistants engaged on daily rated basis, action had been initiated to regularize their services in the year 2004. The Government has not accepted the proposal as there is a policy decision communicated by Government of India stating that District Rural Development Agency should not have no longer allowed to make any direct recruitments vide para 4.2 of Government of India Guidelines on District Rural Development Agency Administration issued by the Government of India during 1999 with effect from 01.04.1999. In the meantime, their wages had been paid from the Petty Sundray charges available under the Member of Parliament Local Area Development and Swarnajayanthi Gram Rozgar Yojana Schemes. As per the Audit Report communicated by Government of India, Ministry of Statistics & Programme Implementation vide Letter No.C/23/01/MPLADS/TN dated 01.04.2003 supervision charges are not permissible under the Guidelines of Member of Parliament Local Area Development Scheme. Due to the above objection, clarification had been sought from Government of India whether the wages for Technical Assistants on daily rated basis could be made from Swarnajayanthi Gram Rozgar Yojana vide this Office letter No.DRDA/IAAY/04-05 dated 14.07.2004. In their reply the Government of India, Ministry of Rural Development (SGRY Division) has not allowed the engagement of Technical Assistant on daily Rated Basis under contingency fund of Swarnajayanthi Gram Rozgar Yojana Scheme.

21. He submits that faced with no alternative, the respondents, with a heavy heart, issued the order for termination of Six Technical Assistants to the respective Block Development Offices on 10.09.2004. The petitioner along with five other Technical Assistant working in various Block Development Offices were terminated from service with effect from 10.09.2004. The petitioner did not come to office on 15, 16, 17, 20 & 21st September 2004.

22. He submits that as an afterthought the petitioner has moved before this Court in W.P.Miscellaneous Petition No.22160 of 2004 in W.P.No.18588 of 2004, wherein this court was pleased to grant an "interim injunction", if not already terminated" on 17.09.2004. It was a fact that the petitioner was terminated on 15.09.2004 i.e., before date of issue of the interim injunction of the Hon'ble Court.

23. He submits that he denied that they have not paid the petitioner his wages since 10.01.2004. The respondents submit that the wages of the petitioner from 01.01.2004 to 10.09.2004 has been paid by making special arrangements from the date of issue of the order calling for his termination. The proceeds were sent to the residential address of the petitioner by Register Post on 16.11.2004 for an amount of Rs.30,974/- by banker's cheque bearing No.816791, dated 16.11.2004 of Indian Bank, Mettupalayam. In spite of this, the petitioner ensured that the letter with cheque was returned with the

following observations return by the postal staff on the envelope as "addressee left without instruction". All the while the petitioner has been in residence at that same address.

24. He submits that they had received the notice of contempt of the court from the petitioner's Advocate on 14.02.2005, he was shocked by the allegation and called for the officials of the Oulgaret Block for an inquiry.

25. On going deep into the matter, he submits that the petitioner with the deliberate intent has tried to get around the fact that he had already been terminated on 15.09.2004 by fabricating the attendance records. He was informed that he was terminated on 15.09.2004. Even after the petitioner surreptitiously fixed his initials in the attendance register kept for this purpose in the open, in the office of the Assistant Engineer, Oulgaret Block on 22 and 23 September 2004 alone. This is significant since, there has been no signature in the attendance register on 15,16,17,20 and 21 of September 2004. The Assistant Engineer on noticing this, has drawn a thick line in the register from 14.09.2004 onwards and kept the attendance under his personnel custody. The Assistant Engineer has also noted in the attendance register that the petitioner was terminated with effect from 15.09.2004. Further, the petitioner's name was not included in the attendance register from October 2004 onwards. The Assistant Engineer and Junior Engineers have also certified in writing that the petitioner had not been engaged beyond 15.09.2004.

26. He submits that to his chagrin and this may on further investigation reveal that there was connivance of the Engineering Staff of the Oulgaret Block Development Office and the petitioner too thwart the bonafide orders of the Government and have conspired, aided and abetted the petitioner in fabricating records to show as if the petitioner had been doing work in the office after 15.09.2004. The petitioner had approached the Block Development Office, Oulgaret with a formal request to sign in the attendance register on 18.10.2004, a month and 3 days since he had been terminated. In this, the Junior Engineer had made a statement that the petitioner had been working since 13.09.2004 and that he was of good character. This has further been elaborated by the Assistant Engineer in that Office who, had made and endorsement which was out of place that the entries made in the nominal Muster Roll would indicate that the person had been working, although there is no Nominal Muster Roll maintained in the Block Development Office, Oulgaret. Further investigation showed the real reason: The Assistant Engineer and Junior Engineer had allowed the petitioner to write the bills for payment of work in the Measurement Book Register after 15.09.2004 and signed at the end of such bills. Similarly in the Tender Register, EMD Register, the petitioner had written several tender proformas in his own handwriting to create the impression that he has been working in the

office. These profomas have been filled in by other officials subsequently and signed by the unsuspecting BDO, Oulgaret who could not be aware that this register had been prepared by the terminated petitioner. The Block Development Officer who communicated the termination retired on 31.10.2004. Subsequently, the post of BDO, was held as an additional charge by the BDO, Villianur until 17.01.2005 and then by the BDO, Ariankuppam until 18.02.2005. He further submits that due to this, none of the Block Development Offices had any inkling that some of the official documents they had signed were made by a terminated worker, when in fact they were put up with the connivance of the Assistant Engineer and Junior Engineers.

27. He submits that the Assistant Engineer and Junior Engineers of the Block cannot plead any ignorance of the fact of termination since the direction to terminate the petitioner from service on 15.09.2004, was transmitted to the petitioner through them. Further, the Assistant Engineer himself has signed in the attendance register, where he has scored out the space between 16th September to 30th September 2004 and noted "not to attend office after 15.09.2004". This was done in September 2004 and after this point of time the Assistant Engineer has signed the alleged bills and registers written by the petitioner after the crucial date i.e., 15.09.2004. His deliberate act in concert with other two Junior Engineers and the petitioner to fabricate evidence is to get around the infirmity to the petitioners claim that he had not been terminated on the date of the interim injunction, 17.09.2004.

28. He humbly submits that it may be noted that the office of the first respondent is 7 Kms away from the place of work of the petitioner and the second respondent office is about 4 Kms away from the original working spot of the petitioner and the third petitioner alleged contemtor viz., Mr.Uthaman, Block Development Officer, Ariankuppam, who subsequently held the post of BDO, Oulgaret, as an additional charge between 18.01.2005 and 25.01.2005 worked in his office 14 Kms away from the petitioner. Hence, all the three petitioner alleged contemnors had no way of knowing these activities of the petitioner and the officers who helped the petitioner to fabricate documents and thereby create an impression before this Court of contempt on the part of the respondents.

29. He humbly submits before this Court that there can be no contempt of the Court without intention to commit contempt. The respondents have no way of knowing that the deliberate attempt was being made by the petitioner and their efforts to get around the fact that the petitioner was indeed terminated on 15.09.2004. The familiarity of the petitioner with his superiors viz., the Assistant Engineer and the Junior Engineer whom he had worked for several years enabled the petitioner's entry to the office and to free access to the documents, in fact it is now understood that these officials

allowed the petitioner to whom they had communicated the fact of termination to sit in the office and carry out these patently fraudulent and criminal acts. The above mentioned documents enabled him to create bills and proformas which have been falsely authenticated by the Assistant Engineer and Junior Engineer with the deliberate intent to mislead this Court and put the respondents into apparent contempt of the order of the Hon'ble court.

30. He submits that the contempt petition No.122/2005 filed by the petitioner has been closed by ordering the respondents to pay the wages on receipt of the representation received from the petitioner according to law and merits. On receipt of the representation, the petitioner has been intimated vide Memorandum dated 30.10.2006 of District Rural Development Agency that the wages of the petitioner are kept ready in the office of the Block Development Officer, Oulgaret and had instructed to collect the same. The Block Development Officer, Oulgaret has also intimated the individual to collect the wages on 22.12.2006 and 01.02.2007. It has been clearly indicated in the order why the petitioner's claim for salary after 10.09.2004 cannot be accepted. The petitioner has not turned up to receive the wages. The wages of the petitioner is kept ready from 16.11.2004. But the petitioner is trying to get the sympathy of the Hon'ble Court, that he has not been paid wages and filed the contempt petition vide No.557/2007 in the Hon'ble Court that the respondents have not paid his wages. The contempt petition is also closed. The petitioner is in the habit of misleading the Hon'ble Court.

31. He respectfully submits that far from the respondents committing contempt of Court, it is the petitioner who is guilty of massive abuse of Judicial process. After being terminated from service and not come to office until after he had obtained an order of interim stay which had then become infructuous, he had engaged in a plan to fabricate evidence to show that he had been in the employ of the office, with the help of his former superiors who were fully aware that he had been terminated from service and yet allowed him entry into the office on a sustained basis and allowed him access to, fabricate documents with which to mislead this Court. He prays that this Hon'ble Court hold the petitioner in contempt of Court and impose exemplary costs on him.

32. Further he respectfully submits before the Court that the petitioner has been trying to fabricate evidence and create an impression that he has continued to be in the employment of the Block Office even after 15.09.2004. He has been regularly appearing at the office to create an impression that he was still in the employ of the Block. The respondents most respectfully submit that this being the case, no case can be made out for contempt of Court by the respondents, since the petitioner was disengaged from daily wage activity by 15.09.2004 finally.

33. He submits in conclusion, that it was their clear intention to disengage the petitioner and five other Technical Assistants. It was occasioned because Government instruction did not allow their wages to be paid from the sources, from which they were hitherto paid because of Audit objections and the clear guidelines of the Government of India disallowing this practice.

34. He submits that they had disengaged all 6 persons, with a heavy heart and not with any ill will or motive.

35. He submits that in view of the facts submitted in the preceding paras the prayer made in the petition is devoid of any merit and the petition is devoid of any merit hence the petition is liable to be dismissed.

36. The 3rd respondent has filed a counter statement stating that he is a holder of Diploma in Civil Engineering, which is the qualification necessary for appointment to the post of Technical Assistant in the District Rural Development Agency, Pondicherry. This respondent was appointed as a daily rated Technical Assistant with effect from 18.12.1989 and was continuously engaged as a daily rated Technical Assistant till 05.04.1995 from which date, this respondent was confirmed with temporarily status under the Government of India, Casual Labourer (grant of temporary status and regularization) Scheme. The respondent was granted a time scale of pay Rs.2,550-3,200/- plus other allowance admissible under the rules confirmment of temporary status.

37. He respectfully submits that while it was so by a Memo No.3009/99/A, dated 07.05.1999, this respondent was offered a post of Technical Assistant on regular basis in the scale of pay Rs.4000-100-6000/- plus allowances admissible under the rules and on the same being accepted by this respondent, this respondent was appointed as Technical Assistant with effect from 07.05.1999 that an office order No.3009/99/A, dated 21.05.1999 on the Deputy Director, District Rural development Agency and posted to the Block Development Office, Villianur. It is to declare this regular appointment as illegal and consequently to direct the respondents 1 and 2 to regularize the services of the petitioner with effect from 07.05.1999, the petitioner has filed the above writ petition before this Court invoking their extraordinary jurisdictional power under Article 226 of the Constitution of India.

38. He respectfully submits that the writ petition does not only lack merit but has also been filed four years after the regular appointment of this respondent. The petitioner is therefore guilty of laches and the above writ petition is therefore liable to be

dismissed in limini on this ground alone and he further respectfully submits that even though the petitioner has claimed to have been appointed from 11.09.1989, the petitioner has not been even conferred with temporary status when this respondent and six others were so conferred with temporary status in January, 1998. It therefore, stands to reason that the respondents 1 and 2 did not find the petitioner fit and eligible to be conferred with temporary status. The petitioner has not also laid any claim or agitated denial of temporary status to him. While it is so, the petitioner cannot be heard to complain that his services have not been regularized. The writ petition is liable to be dismissed on this ground also.

39. It is respectfully submitted that this respondent was conferred with temporary status as early as 1995 by an order issued in 1998 and this respondent was regularized in service by an order issued in May 1999. The petitioner cannot at this distant time seek to dislodge this respondent from the post. This respondent puts the petitioner to strict proof of the allegation that the petitioner is senior to this respondent. In all other respects this respondent craves leave to adopt the counter affidavit that would be filed on behalf of the first and second respondents.

40. In view of the above, it is respectfully submitted that the above writ petition has no merits in so far as this respondent is concerned and it is therefore respectfully prayed that this Court may be pleased to dismiss the same.

41. The highly competent counsel Mr. Ajaya Kumar, appearing for the petitioner submits that the petitioner was appointed as a Technical Assistant on 11.09.1989. The 3rd respondent herein was appointed as a Technical Assistant on daily rated basis on 18.12.1989. Thereafter, on 08.04.1999 four Technical Assistants were appointed on regular basis and at the relevant period to regularize vacancies layed vacant. The very competent counsel vehemently argued that the petitioner is working from 11.09.1989 with the respondents 1+2 without any break. The same was confirmed through details furnished by the District Rural Development Agency dated 21.02.2000. On 05.04.1995 order was issued to grant temporary status to Casual Labourers. Further, as per the recruitment rules, it provides that the post of Technical Assistant is a group "C" post. Further at the time of passing orders in Contempt Petition dated 17.09.2005 and the respondents 1 and 2 categorically admits before this Court on 17.09.2005 stating that the petitioner is working without any break. The learned counsel in order to prove his contention and he annexed documentary proof in typed set of papers at page Nos.27 and 28. Further, the petitioner is continuing in service from 11.09.1989 onwards till as of now ie., a period of 26 years having rendered his service without any break.

42. The very competent counsel Mr.Ajayakumar, further submits that as per the G.O.Ms.No.92 dated 05.12.1988, it reveals that the regularization of daily rated employees when completing of two years of continuous service. The Central Government had issued order dated 23.01.2006 for observation of all staff in District Rural Development Agency into regular service. Based on this all the employees regularized except the petition herein. As such, the respondents have committed an irregularity, discrimination and failed to maintain equality. As such the petitioner will be prejudiced. Further on 20.08.2007, Technical Assistants have been in absorption by the Local Administrative Department. On 04.09.2007, the order issued by the Local Administrative Department regarding absorption of Technical Assistant in District Rural Development Agency i.e., the 2nd respondent herein. One Mr.Krishnamoorthy a Technical Assistant as Junior Engineer in Local Administrative Department has been regularized by this Court in an order passed in Writ petition No.16009 of 2009, dated 20.10.2011, which became final and also implemented, similarly the petitioner herein is entitled to obtain the same relief.

43. The very competent counsel further submits that the 2nd respondent herein had observed four Technical Assistants as Junior Engineers in the permanent cadre, for which the 2nd respondent herein had issued proceedings dated 08.04.1999. Further, there was proceedings issued by the 1st respondent regarding the petitioner appointment as Grade-II Assistants. The petitioner also submitted a proforma to the respondent for his permanent status. Further, the petitioner has been appointed as Technical Assistant on 11.09.1989 and from the date of appointment and as of now he is working without a break at the various blocks under the respondent namely Karaikal Block, Oulgaret Block and Bahour Commune Panchayat. Further, the 3rd respondent is a Junior to the petitioner and he had joined service on 18.12.1989 with the qualification of Diploma in Civil Engineering, the petitioner is also possessing the same educational qualification but the petitioner was not confirmed with either temporary or permanent status. Further, the provisions of G.O.Ms.No.92 and also the provisions of recruitment rules for the post of Technical Assistant. Accordingly, the petitioner is entitled to secure regular employment. The Hon'ble Division Bench had dealt within a similar case in Uma Devi's case wherein this Court had given directions for the Pondicherry Municipality to give recognition the post of Junior Engineer. Further, the confront of temporary status is available only in the case of clause D employee, whereas the post of Technical Assistant is a clause C post. Further, the Government of India had issued directions to the Union of Territory Administration to regularize the service of the District Rural Development Agency employees and to transfer them to other departments, the same direction have been implemented except the writ petition herein, as such the respondents have treated the petitioner in a discriminative manner.

44. The highly competent counsel further submits that as per the attendance register of the petitioner and other corresponding communication clearly proves that the petitioner is working under the respondent without any break. In order to prove the same, the learned counsel had filed additional typed set of papers which contains sixteen documents pertaining to the petitioner's employment nature. The highly competent counsel has cited a judgment in W.P.No.1609 of 2009, wherein the Hon'ble Division Bench directed the respondents/Pondicherry Government to regularize the writ petitioner's services. The said Division Bench Judgment is squarely applicable in the instant case. The petitioner had passed in I Class Diploma in Civil Engineering and he has been working with the respondents without any adverse remarks and he has submitted several representations to the respondents for his regularization. Further, there is vacant posts of regular Technical Assistant available in the respondent's Department. Hence, the highly competent counsel entreats the Court to allow the above writ petition.

45. The very competent Government Pleader appearing for the 1st and 2nd respondents submits that the Block Development Officers, sometimes engaged persons in various categories only on temporary, casual, contingent, daily rated basis for the implementation of the programmes. The wages have been paid from the petty surrender charges available in each work executed by the Block Development Officers. The petitioner was neither engaged with the approval of the District Rural Development Agency nor paid wages directly by the District Rural Development Agency. Further, the petitioner was not engaged in any of the Block Development Officers/District Rural Development Agency in the Union Territory of Pondicherry, as such he cannot claim for regularization. The petitioner was taken as a Mazdoor Grade - I under daily rated wage. Further, the Government of India grant of temporary status to casual labourers who are in employment on the date of issue of G.O.Ms.No.20 dated 05.04.1995, who had rendered a continuous service of atleast one year which means that they should have been engaged for atleast 240 days prior of the issue of the said Government Order. During the year of 1999 based on his service and educational qualification and four Technical Assistants who had been granted temporary service from 05.04.1995 and fixed the pay scale of Rs.4,000-100-6000/-. Since, the offer of appointment considered only the Technical Assistant who were granted temporary status on the earlier occasion, in the instant case, the petitioner had not been granted temporary status. In the year of 2000 four more persons were engaged as Technical Assistants on daily rated basis. Further, as per the qualification by the Government of India, the District Rural Development Agency, should not have any permanent staff, as such the petitioner's claim is not maintainable. Further, the petitioner along with five other Technical Assistants were terminated from service with effect from 10.09.2004. Further the petitioner has been paid wages for the period from 01.01.2004 to 10.09.2004 by way of

banker's cheque, the same was returned since the petitioner left from the said address. Actually, the petitioner had been terminated on 15.09.2004, thereafter, he had fabricated the attendance register and seeking remedy. Further, the petitioner had created self serving documents and making the impression that he has been working with the respondent department. Hence, the learned Government Pleader entreats the Court to dismiss the above writ petition.

46. The learned counsel had cited a judgment reported in (2006) 4 Supreme Court Cases 1 (Secretary, State of Karnataka and others v. Umadevi (3) and others)

A. Constitution of India - Arts. 32, 136, 141, 142 and 226 and 16, 14 and 309 and 38 and 39(a) - Public employment - Absorption, regularisation, or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment - Issuance of directions for, and for stay of regular recruitment process for the posts concerned - Impermissibility of - Need for addressing concerns of equity for all, and not of just the few before the court, by upholding of constitutional scheme of public employment, whose hallmark is equality of opportunity - Held, Supreme Court and High Courts should not issue such directions unless the recruitment itself was made regularly and in terms of the constitutional scheme - Reasons for, discussed extensively - Financial/economic impact of such directions, as a factor - The wide powers under Art. 226 are not intended to be used for issuance of such directions, certain to defeat the concept of social justice, equal opportunity for all and the constitutional scheme of public employment - Supreme Court is bound to insist on the State making regular recruitments and appointments and not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment - It is erroneous for Supreme Court to merely consider equity for the handful of people who have approached the court with a claim whilst ignoring equity for the teeming millions seeking employment and a fair opportunity for competing for employment - Further, courts must be careful in ensuring that they do not interfere unduly with the economic/financial arrangement of the affairs of the State or its instrumentalities

- Phenomenon of "litigious employment" which had arisen due to issuance of such directions by High Courts, and even Supreme Court, highlighted - Held, merely because an employee had continued under cover of an order of the court, under "litigious employment" or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by

following a due process of selection as envisaged by the relevant rules - It is further not open to the court to prevent regular recruitment at the instance of such employees - Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail

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- Held, decisions of the Supreme Court running counter to or containing directions counter to these principles will stand denuded of their status as precedents - Union and State Governments and their instrumentalities directed to set in motion the process for regular recruitment in cases where temporary or daily-wagers were employed against vacant sanctioned posts, within six months of the date of this judgment - Further, cases of irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts, who had continued to work for ten years or more, but without the intervention of orders of courts or tribunals, may have to be considered for regularisation on merits in light of the principles laid down in this case, as a one-time measure, within six months of the date of this judgment - Service Law

B. Constitution of India - Arts. 142, 32 and 136 and Parts III and IV - Role of Supreme Court - Individualising of justice to suit a given situation - Scope for Assumption re parties before the court being representative of the cause - Propriety - Need for balancing of rights of the numerous not before the court as against the few who are before the court - Held, We have given unto ourselves a system of governance by rule of law - The role of the Supreme Court is to render justice according to law - It is expected to decide questions of law for the country and not to decide individual cases without reference to principles of law - In the name of individualising justice it is not possible for the Supreme Court to shut its eyes to the constitutional scheme and the rights of the numerous as against the few who are before the court - Directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III and the obligation of the State to one and all and not to a particular group of citizens - Practice and Procedure - Rule of law - Meaning of - Implications of a system of governance by rule of law, for Apex Court of the land

C. Constitution of India - Arts. 141, 32, 136 and 142 - Duty of Supreme Court acting as Constitutional Court - Role and approach of a Constitutional Bench of Supreme Court - Uncertainty and divergence of approach and views in decisions of Supreme Court - Need for firm decision by Supreme Court one way or another, emphasised - Held, in such cases it is

necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily the law thus laid down - A Constitution Bench has to lay down the law - It has to approach the question as a constitutional court should - Precedents

D. Constitution of India - Art. 142 - Exercise of power under - Scope - "Complete justice" - Meaning of - Held, complete justice would be justice according to law, and though it would be open to Supreme Court to mould the relief, it would not grant relief which would amount to perpetuating an illegality - Hence in doing complete justice under Art. 142, Supreme Court would not normally give a go-by to the procedure established by law in the matter of public employment

E. Constitution of India - Arts. 226, 32, 236 and 142 - Interference in service matters - Interim directions - Scope for - Absorption, regularisation, or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees appointed/recruited dehors the constitutional scheme of public employment - Scope for issuance of interim directions for - Held, in such cases High Court may not be justified in issuing interim directions - Reasons for, discussed - Service Law - Interim relief - Service Law.

F. Constitution of India - Art. 226 - Exercise of power under - Relief that may be granted - Role of High Courts under - Held, the wide powers under Art. 226 are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties - Role of High Courts as sentinels and as guardians of equal rights protection should not be forgotten

G. Service Law - Casual Labour/Temporary Employee - Status and rights of - Unequal bargaining power - Effect - Held, such employees do not have any right to regular or permanent public employment - Further, temporary, contractual, casual, ad hoc or daily-wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it - Reasons for, discussed in detail - Labour Law

H. Constitution of India - Arts. 136, 32 and 141 - Adverse effect of trying to individualise justice on inconsistent precedents constituting the binding law of the land - Jurisprudence - Justice versus law - Equity - Equity versus law

I. Constitution of India - Arts. 141 and 142 - Direction given by Constitutional Bench for overruling of all past

precedents which ran counter to principles laid down as law herein

J. Service Law - Appointment - Modes of appointment - Permissible modes - Absorption, regularization, or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees appointed/recruited dehors the constitutional scheme of public employment on issuance of directions by court therefore - Held, issuance of such directions amount to creating another mode of public appointment, which is not permissible.

47. The very competent counsel Mr.Sai Bharath, appearing for the 3rd respondent submits that the 3rd respondent is a holder of Diploma in Civil Engineering which is the qualification necessary for appointment to the post of Technical Assistant in the 2nd respondent department. Initially, he was appointed as a daily rated Technical Assistant with effect from 18.12.1989. Thereafter, he was confirmed with temporary status under the Government of India Casual Labourers Scheme and he was granted time scale of pay and other allowances admissible under the rules. Further, the writ petitioner has not secured any remedy against the 3rd respondent herein. Further, the petitioner has not been even confirmed with temporary status. The respondents 1 & 2 did not find the petitioner fit and eligible to be conferred with temporary status. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

48. From the above discussion this Court is of the view that:

(i) The petitioner has been appointed as a Technical Assistant on 11.09.1989 on a daily wages basis. Further as per records namely attendance register and other connected records clearly shows that the petitioner has been working until now with the respondents departments, as such the petitioner's service for around 26 years without break. As such, the petitioner is entitled for a regulation in his service;

(ii) The 3rd respondent herein, a holder of Diploma in Civil Engineering has been appointed on 18.12.1989 on a daily rated basis as a Technical Assistant. He has been conferred with a temporary status with affect from 05.04.1995 and was granted a time scale of pay of Rs.2,550-3,200/- and other allowances. Similar position had not been granted to the petitioner since he is also possessing educational qualification, as Diploma in Civil Engineering besides the petitioner has been appointed about three months earlier to the 3rd respondent. As such the respondents 1 and 2 have treated the petitioner in a discriminatory manner, which tantamounts to a blatant violation of discrimination;

(iii) The petitioner has been working with the respondent as a Technical Assistant on a daily rated basis continuously for the last 26 years in the original position on an appointment as a daily rated Technical Assistant, which is causing grave injustice and also permanent mental agony to the petitioner since his status in his employed position is not upgraded;

(iv) It is difficult to comprehend how a daily rated Technical Assistant working continuously for 26 years is being denied a rightful appreciation. The continuation of service of the petitioner is proved before this Court in an order passed in the Contempt Petition dated 17.09.2005;

(v) The 1st and 2nd respondents are Government Authorities/State Machinery, who are the protectors of their employees as per the rules and regulations of their respective departments. The petitioner has rendered his service and continues to do so for the past 26 years without any adverse remarks. Further, the petitioner is a capable person having acquired a Diploma, as a Technical Assistant such a valuable employer is certainly not bound to receive such a shabby treatment, which is causing much hardship and mental agony to the petitioner.

49. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on all sides and on perusing the typed set of papers and the views of this Court as mentioned in (i) to (v), the above writ petition is allowed and directs the 1st and 2nd respondent to regularize the petitioner's service with effect from 11.09.1989 i.e., the date of petitioner's joining service, with all other consequential benefits including arrears of wages and seniority etc., within a period of two months from the date of receipt of a copy of this order. If the respondents 1 and 2 are not satisfied with this Court's findings, they are at liberty to file an appeal on condition that the petitioner shall be paid arrears of salary corresponding to the treatment noted out to the 3rd respondent, including the 3rd respondent's status position as of now. This Court directs the Registry to rely on this condition. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar(CO)

Dt:10/2/2015

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government
Rural Development, chief Secretariat,
Pondicherry.

2.The Project Director,
District Rural Development Agency,
Pondicherry.

3.V.P.Danesh,
Technical Assistant,
District Rural Development Agency,
Pondicherry.

+ 1 cc to Senior Govt. Pleader cum Senior P.P. (Pondy) High Court,
Madras SR 3612.

+ 1 cc to M/s.Sai Bharath and Ilan, Advocate SR 3321

+ 1 cc to M/s.V.Ajayakumar, Advocate SR 3046

ca(co)
prk10/2

W.P.No.18588 of 2004
and
M.P.No.22160 of 2004



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