

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. Nos.17767 to 17771 of 2015 and  
17891 to 17895 of 2015 and  
connected Miscellaneous Petitions

W.P.No.17767 of 2015

- 1 The Assistant Executive Engineer  
Sub Division 1 2 3 4  
K.W.S.P. P.W.D.  
Poondi, Thiruvallur District.
- 2 The Executive Engineer  
K.W.S.P. Division-1  
P.W.D., Chepauk,  
Chennai-600 005.
- 3 The Chief Engineer  
W.R.O., P.W.D.  
Chepauk, Chennai-600 005.
- 4 The Government of Tamil Nadu  
Rep. by its Secretary  
Public Works Department  
Chennai-9.
- 5 The Engineer-in-Chief  
Water Resources Organisation and  
Chief Engineer (General)  
Public Works Department  
Chepauk, Chennai-600 005.
- 6 The Superintending Engineer  
Water Resources Organisation  
Chennai Region,  
Chepauk, Chennai-600 005.
- 7 The Superintending Engineer  
Water Resources Organization  
Palar Basin Circle, Chepauk, Chennai-600 005.
- 8 The Executive Engineer  
Water Resources Organisation  
Krishna Water Supply Project Division VIII  
Public Works Department  
Chepauk, Chennai-5.

[PETITIONERS IN ALL WPS]

Vs

W.P.Nos.17767 to 17771 of 2015

A.Jeyapal ...1st Respondent in W.P.17767/15  
R. Selvaraj ...1st Respondent in W.P.17768/15  
V. Samikannu ...1st Respondent in W.P.17769/15  
N. Sankar ...1st Respondent in W.P.17770/15  
J. Robinson ...1st Respondent in W.P.17771/15

2 The Presiding Officer  
1st Addl. Labour Court  
Chennai-104. ...2nd Respondent in all the petitions

W.P.Nos.17891 to 17895 of 2015

R. Rajamani ...1st Respondent in W.P.17891/15  
B. Palani ...1st Respondent in W.P.17892/15  
G. Rajendran ...1st Respondent in W.P.17893/15  
N. Selvam ...1st Respondent in W.P.17894/15  
G. Appadurai ...1st Respondent in W.P.17895/15

The Presiding officer  
1st Additional Labour Court  
Chennai-104 ....2nd Respondent in all the petitions

PRAYER: Petition filed Under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records in connection with the order dated 07.02.2015 made in I.D. No.688 of 2010, 689 of 2010, 690 of 2010, 691 of 2010, 692 of 2010, 698 of 2010, 700 of 2010, 701 of 2010, 702 of 2010, 704 of 2010, on the file of the 1st Additional Labour Court Chennai the 2nd respondent herein and quash the same.

For Petitioners : Mr.R.Rajeswaran  
(in all WPs) Special Government Pleader

For Respondents :Mr.K.Raja - R2  
(in all WPs)

C O M M O N O R D E R

Heard Mr.R.Rajeswaran, learned Special Government Pleader appearing for the petitioners and Mr.K.Raja, learned Counsel appearing for the second respondent/workmen in all these Writ Petitions and with their consent, the Writ Petitions are taken up for final disposal.

2.The petitioners in these Writ Petitions are eight in number and they are the Public Works Department, represented by its Secretary, Superintending Engineer, Officials and other Engineers of the Water Resources Organisation of the Public Works Department. The challenge in all the Writ Petitions is to the common Award passed by the First Additional Labour Court, Chennai, in I.D.Nos. 688 to 692, 698 & 700 to 702 and 704 of 2010 dated 07.02.2015.

<https://hcservices.ecourts.gov.in/hcservices/> 3.The first respondent in all these Writ Petitions have raised

Industrial Disputes before the Labour Court stating that they have been working as N.M.R. workers from different dates commencing from 01.01.1984 in the Krishna Water Project and the petitioner Department failed to absorb them as permanent employees and in spite of several representations, as nothing had transpired, the respondents/workmen and others filed a Writ Petition before this Court in W.P.No.7374 of 2006, through their Workers' Union requesting for regularisation of their services. The said Writ Petition was disposed of by an order dated 25.02.2008, by directing the representation of the Workers' Union be considered in the light of G.O.Ms.No.22 dated 28.02.2006. It is an admitted fact that the respondents therein did not obey the order and no orders were passed on the representation submitted by the Workers' Union. It is thereafter, Industrial Disputes were raised, which were taken on file by the Labour Court for adjudication.

4.The petitioner Department resisted the disputes by contending that the respondents/workmen were engaged only on day today basis and they were paid at the rates specified in the Schedule of rates, which is the standard rate fixed every year by the Superintending Engineer of the territorial circle and the workmen have not substantiated as to when and where they worked in the Krishna Water Supply Project Scheme and the workmen engaged in the petitioner Department are unorganised category who could not be regularised without a Government Order by relaxing the provisions of the recruitment rules. Further, it is contended that the project itself had come to an end and the question of absorbing the respondent/workmen as permanent employees does not arise, as their engagement is co-terminus with the completion of the work and such labourers are not covered under the provisions of the Industrial Disputes Act.

5.Further, by placing reliance on the decision of the Hon'ble Supreme Court in the case of Executive Engineer (State of Karnataka V. V.K.Somasetty and others [ AIR 1997 SC 2663], it is contended that the Irrigation Department is not an Industry and therefore, a plea was raised that the Labour Court has no jurisdiction on the matter.

6.Before the Labour Court on the side of workmen, two of them namely A.Jayapal and P.Jayavaradhan, were examined as W.W.1 & W.W.2 and marked 12 documents as Ex.W1 to W12. On the side of the Management, one Mr.R.Prithivi Raj was examined as M.W.1 and they marked only the copy of the Judgment of the Hon'ble Supreme Court as Ex.M1.

7.Based on the above evidence placed before the Labour Court, it framed four issues for consideration viz.

"(i)Whether the Court has jurisdiction to decide the issue ?

<https://hcservices.ecourts.gov.in/hcservices/> (ii)Whether the respondents/workmen were

engaged by the petitioner/ Department continuously for more than 240 days to claim the benefit of the I.D.Act ?

(iii) Whether the respondents/workmen are entitled to get the benefit of G.O.Ms.No.22 dated 28.02.2006 ? and

(iv) Whether the workmen are entitled for the relief as prayed for ? "

8(i) So far as the first issue regarding the jurisdiction of the Labour Court is concerned, the Labour Court placed reliance on the subsequent decision of the Hon'ble Supreme Court in the case of S.M.NILAJKAR v. TELECOM DISTRICT MANAGER [(2003) 4 SCC 27] and held that the Court has jurisdiction.

(ii) With regard to the second issue, the Labour Court took into consideration the deposition of W.W.1 and the deposition of the Management Witness M.W.1 and the categorical admission made on the side of the Management, decided the issue No.2 in favour of the workmen.

(iii) With regard to issue No.3, after referring to G.O.Ms.No.22, the Labour Court took into consideration the other Government Orders in G.O.No.39, G.O.No.334 and G.O.No.134, which were marked by the workmen as Exs.W3, W4 & W5 and held that they are entitled to the relief and accordingly, Issue Nos.3 & 4 were decided in favour of the workmen and the Government was directed to reinstate the workmen into service within a period of sixty days from the date of Award and directed them to give continuity of service from the date of completion of ten years of service as per G.O.Ms.No.22, however, denied backwages. The said award has been challenged in these Writ Petitions.

9.I have elaborately heard the learned Special Government Pleader appearing for the petitioners and Mr.K.Raja, learned counsel appearing for the respondents/workmen.

10.Referring to the first issue regarding the jurisdiction of the Labour Court, to decide the matter, the Labour Court rightly took into consideration the decision in the case of S.M.NILAJKAR (supra) and held that it has got sufficient jurisdiction to entertain the dispute. In fact in the said decision, the earlier decision in the case of V.K.Somasetty, was also referred to and it was held that the Labour Court is not denude of jurisdiction. The said finding having been rendered following the decision of the Hon'ble Supreme Court, calls for no interference.

10.With regard to the Issue Nos. 2 & 3, there is no dispute to the fact that the workmen were employed in the Project as NMRs. Their date of initial engagement was from 1984 to 1989 and as on 03.12.2006, all the respondents/workmen have completed ten years of

service. The said statement is not an oral statement by the workmen, but, it is supported by the proceedings of the Superintending Engineer dated 3.12.2006, marked as Ex.W1. In the said settlement, it has been clearly stated that persons whose names found placed in the order, have all worked for more than ten years and waiting for regular recruitment.

11.It is not in dispute that the names of the respondents/workmen are found in the said order-Ex.W1. In spite of the same nothing transpired. Therefore, their employees Union filed a Writ Petition in the year 2006, to regularise their services in W.P.No.7374 of 2006, the Writ Petition was pending till 2008 and the Court directed the petitioner Department to consider their representation in the light of G.O.Ms.No.22, by an order dated 25.02.2008.

12.Admittedly, the said order was not complied with and no orders were passed either accepting or rejecting the request of the Employees Union. Parallely, the Government had regularised in a phased manner similarly placed persons as that of the respondents/workmen. The allegation is that persons who were appointed as NMRS subsequent to the respondents/workmen were given permanent employment earlier. The three crucial documents marked before the Labour Court to substantiate such contentions are Ex. W3-G.O.Ms.No.39, Ex. W4-G.O.Ms.No.334 and Ex.W5-G.O.Ms.No.134. The last of the three Government Orders was passed on 07.5.2010. Therefore, until that date, the Government had been regularising such similarly placed persons in a phased manner and that cannot be denied by the petitioner Department.

13.One more document which is very crucial is the proceedings of the Chief Engineer dated 18.12.2007, which according to the workmen was marked as Ex.W13 and shown in the proof affidavit, however, it does not find place in the list of Exhibits. That cannot be a reason to throw out the document, since it is the very relevant document, by which 361 similarly placed persons were ordered to be regularised.

14.In the light of the factual matrix, no error can be attributed to the reasoning in the impugned award. This is coupled with the fact that M.W.1 had accepted in his cross examination that the records relating to the respondents/workmen were not submitted by the District Unit Head and similarly placed persons who were juniors to the respondents/workmen were regularised by submitting a proposal. Hence, for no fault committed by the respondents/workmen, they could not be denied the benefit of regularisation which was extended to the other similarly placed persons. Thus, in the absence of any perversity or error in approach and reasoning given by the Labour Court, this Court is not inclined to interfere with the reasons assigned by the Labour Court.

15.This leaves us with the last issue, as to whether the Labour Court was justified in directing reinstatement with continuity of service from the date of completion of ten years as

per G.O.Ms.No.22, dated 28.02.2006.

16.As could be seen from Exs. W3, W4 & W5 and the proceedings of the Chief Engineer dated 18.12.2007, the absorption has been done in a phased manner. Therefore, the Labour Court was not justified in issuing a positive direction to reinstate the respondents/workmen with continuity of service from the date of completion of ten years. However, they can be considered for absorption in a phased manner by framing a Scheme. In fact this is the manner in which the Government in G.O.Ms.No.134 dated 07.05.2010, has directed regularisation of the N.M.R. employees in the Public Works Department. In fact in the said Government Order at paragraph NO.6, the Government has stated as to how the ten year period should be reckoned.

17.In the light of the above discussions, the Writ Petitions are partly allowed and the impugned common Award passed in I.D.Nos.688 to 692, 698 & 700 to 702 of 2010 & 704 of 2010 dated 07.02.2015, is quashed only in respect of the relief granted to the respondents/workmen and the petitioner Department is directed to frame a Scheme for regularisation of the respondents/workmen, taking note of all the facts and also the various Government Orders in G.O.No.39, G.O.No.334 and G.O.No.134 and also the proceedings of the Chief Engineer dated 18.12.2007, and pass necessary orders so as to enable the respondents/workmen to be regularly absorbed in the service of the petitioner Department. The above direction shall be complied with by the competent authority of the petitioner Department within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

rpa

To

The Presiding Officer  
1st Addl. Labour Court  
Chennai-104.

+ 1 cc to Mr.K.Raja, Advocate Sr 20040 (25/4/16)

+ 1 cc to The Govt.Pleader, Sr 20158 (25/4/16)

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17771 of 2015 and  
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