

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.15301 to 15315 of 2014

A.Balasubramaniam ... Petitioner in W.P.No.15301 of 2014
K.Lakshmi ... Petitioner in W.P.No.15302 of 2014
R.Sakunthala ... Petitioner in W.P.No.15303 of 2014
M.Jeevakala ... Petitioner in W.P.No.15304 of 2014
***T.Soundararajan** ... Petitioner in W.P.No.15305 of 2014
R.Sivasankaran ... Petitioner in W.P.No.15306 of 2014
S.Evuri ... Petitioner in W.P.No.15307 of 2014
R.Savithriamma ... Petitioner in W.P.No.15308 of 2014
K.Renganathan ... Petitioner in W.P.No.15309 of 2014
V.AmsaRaj ... Petitioner in W.P.No.15310 of 2014
M.RaviSelvi ... Petitioner in W.P.No.15311 of 2014
C.Kalamani ... Petitioner in W.P.No.15312 of 2014
K.Ravichandran ... Petitioner in W.P.No.15313 of 2014
S.Munirathinam ... Petitioner in W.P.No.15314 of 2014
G.Manoharan ... Petitioner in W.P.No.15315 of 2014

Vs.

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1. **The Member Secretary,**
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy, Chennai - 600 032. ...1st Respondent in all the
Writ Petition
2. **The Assistant Director (Lab),**
Advanced Environmental Laboratory (AEL),
Tamil Nadu Pollution Control Board,
Cuddalore - 607 001. ...2nd Respondent in
W.Ps.15301,15306 & 15315/2014
3. **The District Environment Engineer,**
TamilNadu Pollution Control Board,
Trichy Division,
Tirichirapalli District. ...2nd Respondent in
W.P.No.15302 of 2014
4. **The Division Environmental Engineer,**
TamilNadu Pollution Control Board,
Coimbatore (North) District. ...2nd Respondent in
W.P.No.15303 of 2014

5. The District Environmental Engineer,
TamilNadu Pollution Control Board,
Salem - 4, Salem District. ...2nd Respondent in
W.P.No.15304 of 2014
6. The District Environmental Engineer,
TamilNadu Pollution Control Board,
Karur, Karur District. ...2nd Respondent in
W.Ps.15305 & 15307 of 2014
7. The District Environmental Engineer,
TamilNadu Pollution Control Board,
Hosur, Krishnagiri District. ...2nd Respondent in
W.P.No.15308 of 2014
8. The District Environmental Engineer,
TamilNadu Pollution Control Board,
Tuticorin District. ...2nd Respondent in
W.P.No.15309 of 2014
9. The District Environmental Engineer,
TamilNadu Pollution Control Board,
Tiruppur District2nd Respondent in
W.P.No.15312 of 2014
- 10.The District Environmental Engineer,
TamilNadu Pollution Control Board,
Tiruppur South, Palladam. ...2nd Respondent in
W.Ps.15310 & 15311 of 2014
- 11.The District Environmental Engineer,
TamilNadu Pollution Control Board,
Perundurai, Erode District. ...2nd Respondent in
W.P.No.15313 of 2014
- 12.The District Environmental Engineer,
TamilNadu Pollution Control Board,
Advanced Environmental Laboratory,
Salem-4, Salem District. ...2nd Respondent in
W.P.No.15314 of 2014

PRAYER IN ALL THE W.P.NoS.15301 to 15315 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus to call for the entire records which culminated in issuing the proceedings in Memo No.TNPCB/Per/P7/003646/13, dated 24.02.2014 on the file of the first respondent, quash the same and consequently direct the

respondents to regularize the service of the petitioner from the date of his initial appointment with all consequential service and monetary benefits and to issue revised orders to that effect within a time limit.

For Petitioner in all WPs. : Mr.P.Ganesan

For Respondents in all WPs. : Mrs.Rita Chandrasekaran
Standing Counsel

COMMON ORDER

By way of filing these writ petitions, the petitioners seek to quash the impugned proceedings dated 24.02.2014 of the first respondent, with a consequential direction to the respondents to regularize their services from the date of their respective initial appointment with all consequential service and monetary benefits.

2. Since the facts leading to all the writ petitions are one and the same, they are disposed of by this common order. For better appreciation, facts leading to the filing of Writ Petition No.15301 of 2014 are stated below:

The petitioner was initially appointed by the respondent Board under Non-Muster Roll (NMR) category on 12.10.1995. Thereafter, he was absorbed and appointed as a Typist in the respondent Board on 30.10.1999. In these background, it is the grievance of the petitioner that the respondent Board ought to have regularised his services with retrospective effect from the date of his initial appointment i.e. 12.10.1995, however, since that has not been done, services rendered in the Non-Muster Roll category for about four years from 12.10.1995 has become meaningless.

3. Mr.P.Ganesan, learned counsel appearing for the petitioners submitted that all the petitioners were appointed under the NMR category through the employment exchange, followed by an interview conducted by the respondent Board. Further, on the basis of the order passed by this Court on 18.04.2011 in W.P.No.9969 of 2010 filed by one Mr.S.Aruldoss, who is similarly placed person like the petitioners, the respondents have regularised his services with retrospective effect from the date of his initial appointment. That part, the respondent Board, vide their proceeding dated 17.02.2012, have regularised the services of one Mr.M.Manivannan, who is also similarly placed person like the petitioners, from the date of his initial appointment. Thus, there is absolutely no bar for the respondents to restrict the date of regularisation in the petitioners' case with retrospective effect, otherwise, such

arbitrary action of the respondent Board would not pass the test of Article 14 of the Constitution of India.

4. It is further submitted that after the petitioners have made several representations, the first respondent had passed an order dated 01.06.2012 stating that only those employees, who secured orders from the High Court in their favour for regularisation of their services with retrospective effect from the date of their initial appointment, were given regularisation orders. Therefore, the petitioners have filed a Writ Petition No.19822 of 2012, whereby this Court, by order dated 06.01.2014, set aside the said proceedings dated 01.06.2012 of the second respondent, by terming such mention made by the first respondent as not fit within the parameters of law and thereby directed the second respondent Board to consider the representation dated 01.05.2012 of the petitioners afresh on merits and also after taking into account the order of this Court dated 18.04.2011, made in W.P.No.9969 of 2010, and to pass a reasoned speaking order within a period of six weeks. In spite of such direction of this Court, he pleaded, the first respondent has rejected the claim of the petitioners, that too, without advertng to the above said order of this Court. Adding further, it is submitted that while passing the impugned order, the first respondent did not make any distinction between the case of Mr.S.Aruldoss and the petitioners. On this basis, he submitted that when the respondent Board has come forward to give the benefit of retrospective effect from the date of original appointment in favour of Mr.S.Aruldoss, who is working as Electrician, the same benefit of regularisation with retrospective effect from the date of initial appointment in favour of the petitioners cannot be denied, hence, such approach of the respondent Board will tantamount to discriminative treatment. With these submissions, he prayed for allowing the writ petitions.

5. Per contra, Mrs.Rita Chandrasekaran, learned standing counsel appearing for the respondents Board, by filing a detailed counter affidavit, submitted that the petitioners cannot claim parity with Mr.S.Aruldoss, as the post of Electrician falls under technical category, whereas the post held by the petitioners fall under the ministerial category, therefore, it is not open to the petitioners to seek the benefit given to the said Mr.S.Aruldoss. Moreover, the post of Electrician was created on 23.12.1996, in which Mr.S.Aruldoss was appointed. Considering the fact that the post of Electrician was created with effect from 23.12.1996, the benefit of retrospective has been given to the said Mr.S.Aruldoss. So far as the petitioners are concerned, no such post was created. On earlier occasion, the petitioners have wrongly filed a Writ Petition No.19822 of 2012 challenging the proceedings dated 01.06.2012 of the second respondent, for, the said proceeding

was not at all signed by the authority concerned, therefore, the stand of the petitioners that they should be given the benefit of regularisation with retrospective effect on the basis of the order passed by this Court in the above said writ petition cannot be sustained. With these submissions, she prayed for a dismissal of the writ petitions.

6. Heard the learned counsel appearing on either side and perused the materials available before this Court.

7. It is an admitted fact that all the writ petitioners were initially appointed by the respondent Board under Non-Muster Roll (NMR) category during the year 1995 and thereafter, they were absorbed and appointed as Typist in the respondent Board during the year 1999. The grievance of the petitioners is that the respondent Board ought to have regularised their services from the date of their respective initial appointment, for, the respondent Board have already regularised the services of one similarly placed person Mr.S.Aruldoss from the date of his initial appointment, who was initially appointed under NMR category on 31.01.1996, like the petitioners, however, since such a regularisation order giving effect to retrospectively has not been passed in the case of the petitioners, their four year services rendered under NMR category have become meaningless. Although the learned standing counsel for the respondent Board submitted that since the post of Electrician was created on 23.12.1996 in which the said Mr.S.Aruldoss was appointed, the respondent Board has come forward to give the benefit of retrospective effect from the date of creation of the post, however, as there was no such post created in the case of the petitioners, they cannot be put on par with the said Mr.S.Aruldoss, she was not able to state on what date the post of Typist was created in which the petitioners were appointed. Therefore, this Court has to place the case of the petitioners on par with the said Mr.S.Aruldoss, inasmuch the respondent Board, being an authority under Article 12 of the Constitution of India, cannot discriminate one employee with others in the matters of regularisation of their services, hence, such an action of the respondent Board, in my considered opinion, would not pass the test of reasonableness.

8. Further, it is also relevant to refer to the order passed by this Court in W.P.No.9969 of 2010, dated 18.04.2011 (S.Arul Doss v. the Government of Tamil Nadu and another), whereby, it is seen that the petitioner-Mr.S.Aruldoss therein was initially appointed through the employment exchange as Electrician on 31.01.1996 under NMR category. Like the petitioners herein, the said Mr.S.Aruldoss was also initially regularised prospectively instead of retrospectively. Aggrieved by the same, when the said Mr.S.Aruldoss filed the above said writ petition, this Court, by order dated 18.04.2011, directed

the respondent Board to regularise his services from the date of his initial appointment. For better appreciation, the relevant portion of the said order is extracted hereunder:

"8. Therefore, in view of the similar orders passed by this Court as cited supra as well as the proceedings dated 11.04.2001 passed by the 1st respondent, this Court is constrained to allow the present writ petition and accordingly, the present writ petition is allowed as prayed for by setting aside the impugned order passed by the 1st respondent. In view of the above reasons, the respondents are directed to regularise his services from the date of his initial appointment i.e. 12.02.1996 or from 23.12.1996 with all consequential benefits within a period of eight weeks from the date of receipt of a copy of this order. No Costs. M.P.No.1 of 2010 is closed."

9. In the cases on hand also, as stated above, like Mr.S.Aruldoss, all the petitioners were appointed through the employment exchange under NMR category during the year 1995, whileso, it is not known why the respondent Board has restricted the claim of the petitioners alone, inspite of a specific direction of this Court in W.P.No.19822 of 2012 to consider the claim of the petitioners by taking note of the order passed in Aruldoss's case (cited supra). Thus, the contention of the learned standing counsel for the respondent Board that the the petitioners cannot claim parity with the said Mr.S.Aruldoss is fully devoid of any merit.

10. Yet another contention of the learned standing counsel for the respondent Board is that the proceeding dated 01.06.2012 passed by the second respondent in directing the petitioners to approach the Court for getting the benefit of regularisation cannot be relied upon by them, since the said proceeding has not been signed by any of the respondents, therefore, any order passed on the said proceeding cannot be relied upon. Such contention, in my view, does not carry any merit, for, when this Court, by order dated 06.01.2014, passed in W.P.No.19822 of 2012, has already set aside the proceeding dated 01.06.2012 of the second respondent, the respondent Board has not till date challenged the said order of this Court and it has become final and concluded. Hence, the above said stand of the learned standing counsel for the respondent Board cannot be sustained.

11. It is also further seen that though this Court in W.P.No.19822 of 2012, dated 06.01.2014, specifically directed

the first respondent to consider the claim of the petitioners in terms of the passed in Aruldoss's case (cited supra), the first respondent, while passing the impugned order, has not at all taken note of the order passed in Aruldoss's case, nor the said official has made any distinction between the case of Mr.S.Aruldoss and the petitioners.

12. In such view of the matter, for the reasons stated above, this Court is inclined to set aside the impugned order passed by the first respondent, as the same is bereft of any reason, accordingly, the same is set aside. Consequently, the respondents are directed to regularise the services of the petitioners from the date of their respective initial appointment with all consequential service and monetary benefits. The respondents are directed to complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order.

13. In fine, for the reasons stated above, the writ petitions stand allowed. No Costs.

Sd/-
Assistant Registrar(CS II)
DATED : 09.03.2016

***Corrected as per Letter
dated 01.06.2015 and made
in WP.Nos.15301 to 15314 of 2014
Sd/- Assistant Registrar(CS VII)
Dated : 08.06.2016**

//True Copy//

Sub Assistant Registrar

To

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|---|-------------------------------------|
| 1. The Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy, Chennai - 600 032. | To be Substituted |
| 2. The Assistant Director (Lab),
Advanced Environmental Laboratory (AEL),
Tamil Nadu Pollution Control Board,
Cuddalore - 607 001. | to the Order |
| 3. The District Environment Engineer,
TamilNadu Pollution Control Board,
Trichy Division,
Tirichirapalli District. | already despatched
on 10.03.2016 |

4. The Division Environmental Engineer,
TamilNadu Pollution Control Board,
Coimbatore (North) District.

***5.The District Environmental Engineer,
TamilNadu Pollution Control Board,
Salem - 4, Salem District.**

6. The District Environmental Engineer,
TamilNadu Pollution Control Board,
Karur, Karur District.

To be Substituted to

7. The District Environmental Engineer,
TamilNadu Pollution Control Board,
Harur, Krishnagiri District.

the Order already

8. The District Environmental Engineer,
TamilNadu Pollution Control Board,
Tuticorin District.

despatched on

9. The District Environmental Engineer,
TamilNadu Pollution Control Board,
Tiruppur District.

10.03.2016

10.The District Environmental Engineer,
TamilNadu Pollution Control Board,
Tiruppur South Palladam.

11.The District Environmental Engineer,
TamilNadu Pollution Control Board,
Perundurai, Erode District.

12.The District Environmental Engineer,
TamilNadu Pollution Control Board,
Advanced Environmental Laboratory,
Salem-4, Salem District.

+1cc to Mr.S.Vijayan, Advocate Sr.11579

+15 cc to M/S.Rita Chandrasekar, Advocate Sr.10938

W.P.Nos.15301 to 15315 of 2014

ug[co]
srg 09/03/2016

CA(08.06.2016)