

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.19368 of 2009

R.Calidasse

.. Petitioner

vs

1. The Union of India rep.by
the Government of Pondicherry
Through the Chief Engineer
Public Works Department
Pondicherry.

2. The Registrar
Central Administrative Tribunal
Madras Bench
Chennai 600 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the second respondent in respect of its decision in O.A.No.931 of 2006 dated 13.08.2009; to quash the same and consequently to direct the first respondent to regularize the services of the petitioner in the post of Work Assistant/D'Man/Junior Engineer with effect from 23.10.2003, the date on which the Technical Assistants are absorbed as Work Assistant/D'Man with all other consequential benefits including seniority.

For Petitioner

:Mr.V.Ajayakumar

For Respondents

:Mr.Syed Mustafa
Additional Government Pleader
(Puducherry) for R1
R2- Tribunal

O R D E R

(Order of the Court was made by K.RAVICHANDRABAABU, J.,)

This writ petition is filed against the order passed by the Central Administrative Tribunal, Madras Bench in O.A.No.931 of 2006 dated 13.08.2009.

2. The writ petitioner herein was the applicant before the Tribunal and challenged the proceedings dated 02.08.2006 issued by the Chief Engineer, PWD, Pondicherry and consequently sought for a direction to absorb him in the post of Works Assistant/D'Man with effect from 23.10.2003, the date on which the Technical Assistants were absorbed as Works Assistant/D'Man with all other consequential reliefs.

3. The case of the petitioner, who was the applicant before the Tribunal is as follows:

He joined the service on 02.05.1991 as Technical Assistant and thereafter was deputed to ECR Project in Pondicherry Region along with other regular staff on 11.01.1994. Again he was repatriated to PWD on 28.05.1998. He is a Diploma holder in Civil Engineering. The Technical Assistants working as NMR in the Puducherry Public Works Department were conferred with temporary status along with Grade D staff, even though they were holding Degree or Diploma in Engineering. Therefore, the petitioner is also entitled to such benefit. Similarly situated persons viz., Technical Assistants in the Pondicherry Union Territory approached the Tribunal earlier in the year 1996 and filed O.A.No.1129 of 1996 wherein an order came to be passed on 09.12.1999 directing the respondent/Puducherry Government to absorb the Technical Assistants in equivalent post of D'Man/Junior Engineer etc. However, the case of the petitioner was not considered since he was away in ECR Project. Even though he was repatriated on 28.05.1998, he was not allowed to join as Technical Assistant where he was working prior to the deputation. The post of Works Assistant is equivalent to that of D'Man in the same scale of pay with some duties and responsibilities. Therefore, appointing the petitioner as Mazdoor is against the order of the Tribunal made in O.A.No.1129 of 1996 dated 09.12.1999. Therefore, he approached the Tribunal challenging the order of the respondent therein dated 02.08.2006 as stated supra with consequential reliefs.

4. The above application was resisted by the respondents by contending as follows:

The applicant was engaged as NMR from 06.05.1991 to 30.04.1992 and thereafter he left the administration and he was engaged as NMR only on 09.04.2004. The order passed in O.A.No.1129 of 1996 is not applicable to the case of the petitioner as the same is in respect of Technical Assistants, who were working in the Public Works Department of the Puducherry Government at the relevant point of time. Since the applicant was not engaged on the date of issuance of the Government Order passed, in pursuance to the order passed by the Tribunal in O.A.No.1129 of 1996, he was not considered for absorption as Works Assistant. However, he was engaged as a Casual Labourer with effect from 09.06.2004 in National Highways Division, Public Works Department Puducherry and further he was absorbed against Group D post of Mazdoor with effect from 14.08.2006.

5. The Tribunal, after considering the contention of rival parties and finding that the applicant/petitioner herein had worked in the Public Works Department from 06.05.1991 to 30.04.1992 and thereafter he was engaged as NMR only on 09.06.2004 and further finding that the benefit of the order passed in O.A.No.1129 of 1996 cannot be given to the applicant as the facts are distinguishable, rejected the application filed by the petitioner also by observing that it is for the Government to decide with regard to the regularization of a candidate in service with which, the Tribunal cannot interfere.

6. Learned counsel appearing for the petitioner contended that as the petitioner joined the service in the Public Works Department as early as 02.05.1991 and continued to be in the service even on the date of passing the order in O.A.No.1129 of 1996 dated 09.12.1999, the respondents should have considered the case of the petitioner also for regularizing the services as given in the case of others, who are the applicants in O.A.No.1129 of 1996 by applying G.O.Ms.No.56, Local Administration and Public Works Department dated 23.10.2003. He further contended that as the petitioner was sent on deputation to ECR project and further repatriated to PWD in the year 1998, he cannot be found fault with and consequently the benefit cannot be denied as has been given in the case of others.

7. Per contra, the learned Additional Government Pleader appearing for the Puducherry Government submitted that the petitioner was not continuously working in the PWD as contended by him; that he left the services of the PWD on 30.04.1992; that

he was given fresh appointment as NMR only on 09.06.2004 and that he was given the benefit of the regularization also in the year 2006. Thus, he contended that the petitioner cannot claim benefit of the order passed in O.A.No.1129 of 1996, since the applicants therein were employed in the PWD continuously at the relevant point of time as Casual labourer on NMR basis. Therefore, the learned Additional Government Pleader contended that the case of the petitioner is not covered by the earlier order passed by the Tribunal and consequently, the present impugned order of the Tribunal, does not warrant any interference.

8. We have heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. It is seen that the petitioner joined the service of the PWD, Puducherry Government on 02.05.1991. It is an admitted fact that the petitioner was engaged thereafter by the Highways and Rural Works Department of the Assistant Divisional Engineer from 11.01.1994 onwards to 15.06.1996 and thereafter from 16.06.1996 to 28.05.1998 as seen from the certificates issued by the said officials made available in the typed set of papers at page Nos.8 and 9 in respect of a particular project. No doubt, though it is sought to be contended by the learned counsel for the petitioner that these certificates issued by the above said official would show that the petitioner is in continuous service of the respondent, we are unable to accept the said contention for the simple reason that the original appointment given to the petitioner as NMR was by the PWD Puducherry Government and thereafter, the petitioner was taken into the other project by the Highways and Rural Works Department of the Assistant Divisional Engineer of the Puducherry Government. If really there was deputation and repatriation, as contended by the petitioner from PWD to other Department and vice versa, the petitioner ought not to have accepted the fresh appointment as NMR in the year 2004 and the consequential regularisation given only from the year 2006.

10. On the other hand, the order of appointment appointing him as NMR in the year 2004 was not put to challenge and consequently the petitioner cannot be permitted to contend now that he was in continuous service of PWD even after 30.04.1992. Moreover, from the order passed by the Tribunal in O.A.No.1129 of 1996, it is evident that the benefit was given in respect of the applicants who were working in the Public Works Department, Puducherry as Casual labourers on NMR basis. The specific contention of the respondent therein in the above said O.A. was to the effect that those applicants who were employed in the PWD as Casual labourers on NMR basis and the Government of India has issued instructions in 1993 with regard to the temporary status to casual labourers and all casual labourers

who satisfied the conditions prescribed in the said instructions, were conferred temporary status with effect from 05.04.1995 and thereafter. Therefore, when the benefit of temporary status given to those persons with effect from 05.04.1995 was not sought for by the petitioner at the relevant point of time, if at all, the petitioner is also similarly situated person, and on the other hand, he only kept quiet and allowed the Department to take him only as NMR in the year 2004 as a fresh entrant and thereafter granting regularisation in the year 2006, the present attempt of the petitioner cannot be justified.

11. Therefore we are of the view that the order passed by the Tribunal in the earlier case in O.A.No.1129 of 1996 is not applicable to the case of the petitioner and that the petitioner was not in service continuously and in view of the break in service and interruption, the relief sought by the petitioner was not granted, with which we find no ground to interfere.

12. Accordingly, this writ petition is dismissed. No costs..

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Engineer
Union of India
Government of Pondicherry
Public Works Department
Pondicherry.

2. The Registrar
Central Administrative Tribunal
Madras Bench
Chennai 600 104.

+1cc to the Government Pleader Sr.27106
+1cc to Mr.V.Ajayakumar, Advocate Sr.26778

W.P.No.19368 of 2009

nr(CO)
srg(17/05/2016)