



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.12389 of 2014

and

M.P(MD)Nos.2 and 3 of 2014

D.Ramakrishnan

... Petitioner

vs.

1)The Secretary to Government,
Public Works Department,
Secretariat, Chennai -9.

2)The Engineer-in-Chief (General)
Public Works Department,
Chepauk, Chennai - 5.

3)The Chief Engineer,
Public Works Department,
Water Resources Organisation,
Madurai Region, Madurai.

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the first respondent pertaining to its order in Letter No.22622/C2/2012-8 dated 17.01.2014 and to quash the same and consequently direct the respondents to regularises the service of the petitioner and to grant all monetary in service within the time frame that may be stipulated by this Court.

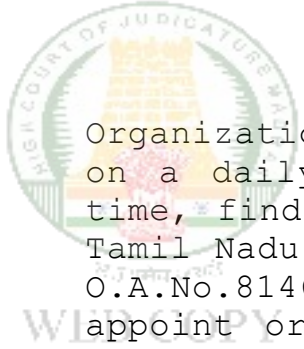
For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.R.Anandaraj, Government Advocate

ORDER

D.Ramakrishnan has filed this writ petition challenging the order passed by the 1st respondent in Letter No.22622/C2/2012-8 dated 17.01.2014 to quash the same with a consequential direction to the respondents to regularises his services and to grant all monetary benefits within a time frame.

2. Learned counsel for the petitioner would submit that the petitioner was appointed as a Daily Wages Masdoor Grade-I by the Chief Engineer, Public Works Department, Water Resources



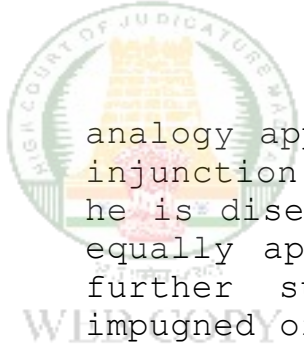
Organization, Madurai Region, Madurai, as early as on 01.04.1996 on a daily wages of Rs.47/-. While he was working quite long time, finding no symptom of regularization, he has approached the Tamil Nadu Administrative Tribunal along with 14 others, by filing O.A.No.8146 of 1999 seeking a prayer to direct the respondents to appoint or absorb the applicants as Irrigation Assistants or in any eligible post in the regular time scale of pay in any of the existing or next arising vacancies with reference to their services rendered as NMRs. The said Original Application was transferred to the Principal Seat of this Court and renumbered as W.P.No.38509 of 2006. By order dated 26.02.2010, the said writ petition was disposed of directing the petitioners to make representations seeking regularisation with a further direction to the respondents therein, to pass orders thereon within a period of three months from the date of receipt of the representations.

3.Adding further, he would submit that in the light of the abovesaid order, the petitioner made a representation seeking regularization or absorption. During the pendency of the said representation, the Government issued G.O.Ms.No.334, dated 19.10.2007 regularizing 1056 members. Again, one another G.O.Ms.No.134, dated 07.05.2010 was issued proposing to regularise another 985 persons, however, only 746 persons were regularized. Thereafter, G.O.Ms.No.202, dated 01.08.2012 was also issued regularizing the services of the rest of the persons, but the name of the petitioner was not found in the list of the persons for regularization, hence, the petitioner again came to this Court with W.P.No.6552 of 2010, praying for a Mandamus directing the second respondent to regularize his services in the cadre of daily wage employee, based on the proposal sent by the 3rd respondent in his proceedings Na.Ka.No.C-4/895/06 dated 28.08.2006. When the said writ petition was taken up for hearing on 22.08.2012, again a direction was issued to the second respondent to send a proposal to the first respondent and get appropriate orders on the same within a period of three months. Finally, the first respondent has passed the present impugned order rejecting the request of the petitioner seeking regularisation.

4.Continuing his arguments, he would submit that considering the apprehension of the petitioner that pursuant to the impugned order declining regularisation, he would be disengaged by the respondents and taking note of the entries in the Service Register of the petitioner to the effect that he has been in employment with effect from 01.04.1996, while admitting the writ petition, this Court by order dated 30.07.2014 has granted an order of interim injunction, restraining the respondents from in any way terminating the petitioner from service without following the due process of law.

<https://hcservices.ecourts.gov.in/hcservices/>

5.According to the learned counsel for the petitioner, the



analogy applied by this Court while granting the order of interim injunction that the petitioner would be put to great prejudice, if he is disengaged during the pendency of this writ petition, would equally apply even now, as the petitioner is still working. He further submitted that the first respondent who passed the impugned order rejecting regularisation, has completely overlooked the proposal sent by the third respondent/Chief Engineer, Public Works Department, Water Resources Organization, Madurai Region, Madurai, who after considering the fact that the petitioner has put in service for more than two decades has sent the proposal, therefore, he pleaded, this Court shall not hesitate to allow this writ petition with a direction to the respondents to regularise the services of the petitioner.

6.Relying upon the entries in the Service Register of the petitioner, learned counsel for the petitioner would submit that when the Assistant Executive Engineer, PWD/WRO, Periyar-Vaigai Basin Sub Division No.II, Madurai, who has issued the Service Register, has certified that the petitioner from the date of his appointment made by the Chief Engineer, Public Works Department, 01.04.1996 has been continuously working till 2011, further, taking note of the same, the third respondent also sent a proposal to the first respondent recommending the petitioner for regularisation, the first respondent ought not to have declined regularisation, hence, the impugned order is liable to be set aside.

7.Finally, by placing reliance on an order passed by this Court in W.P.No.37024 of 2006, dated 20.05.2012, learned counsel for the petitioner has submitted that in identical circumstances, when N.Kumaresan along with 11 others came to this Court, seeking a direction to the respondents therein to regularize their services, this Court, after referring to G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and considering the fact that some of the petitioners therein were working as NMRs for more than 10 years, issued a direction to regularize the services of 6 persons on completion of 5/10 years of services keeping in tune with G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and based on the other Government Orders, if any. Pursuant to the said order, G.O.(2D)No.29, Public Works (C2) Department, dated 09.02.2016 has been issued regularising only five persons who have completed 10 years of service as NMRs. In the present case, since the petitioner has completed almost 20 years of service, he pleaded, a similar direction may be given.

8.To vacate the interim injunction granted by this Court, the respondents have filed M.P(MD)No.3 of 2014. Learned Government appearing for the respondents would submit that the petitioner worked only as a contract labour, moreover, he was not appointed



through the employment exchange, therefore, he is not entitled to get regularisation, although he has put in 20 long years of service. It is further submitted that by virtue of the order of interim injunction, the petitioner has been continuing in service.

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9. Adding further, he would submit that as per G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, daily wage employees working in all Government departments shall have rendered 10 years of service as on 01.01.2006 for regularisation, however, the petitioner who was appointed as a Daily Wages Masdoor Grade-I by the Chief Engineer, Public Works Department, Water Resources Organization, Madurai Region, Madurai, on 01.04.1996 does not have completion of 10 years of service as on 01.01.2006 to seek regularisation as per the said G.O, therefore, he pleaded, the writ petition is liable to be dismissed.

10. Heard both sides.

11. It is not in dispute that the petitioner was appointed as Daily Wage Masdoor Grade-I by the Chief Engineer, Public Works Department, as early as on 01.04.1996. After working for long time continuously for not regularising his services, he approached the Tamil Nadu Administrative Tribunal along with 14 others by filing O.A.No.8146 of 1999 seeking a direction to the respondents to absorb them as Irrigation Assistants. The said O.A. stood transferred to the Principal Seat of this Court and renumbered as W.P.No.38509 of 2006. Finally, on 26.02.2010, while disposing of the said writ petition, this Court directed the petitioner to give a fresh representation to the respondents to be disposed of by the respondents within three months. Accordingly, the petitioner gave his representation. When he was awaiting order on his representation, G.O.Ms.No.334, dated 19.10.2007 was passed regularizing 1056 persons in the respondents department. Subsequently, one another G.O.Ms.No.134 dated 07.05.2010 was passed proposing to regularize another 985 persons, however, 746 persons alone were regularised and after sometime by passing G.O.Ms.No.202, dated 01.08.2012 the services of the rest of the persons were regularised, however, for the reason best known to the respondents, the petitioner's name was not included, hence, he came to this Court with W.P(MD)No.6552 of 2010 praying for a Writ of Mandamus directing the second respondent to regularise his services in the cadre of daily wage employee based on the proposal sent by the third respondent and this Court directed the second respondent to send a proposal to the first respondent and get appropriate orders on the same within a period of three months. Pursuant to the said direction, when the third respondent after taking note of the length of service put in by the petitioner as evident from the Service Register of the petitioner, has recommended the case of the petitioner for regularisation, it is not known why the first respondent has rejected the request of the

petitioner for regularisation.

12.The Service Register of the petitioner issued by the Assistant Executive Engineer, PWD, WRO, Periyar-Vaigai Basin Circle, Madurai, indisputably shows that he was appointed on 01.04.1996, since then he has been working till 30.06.2011. While admitting this writ petition, considering the apprehension of the petitioner that pursuant to the impugned order rejecting regularisation, he would be disengaged by the respondents and taking note of the entries in the Service Register of the petitioner to the effect that he has been in employment with effect from 01.04.1996, this Court by order dated 30.07.2014, has passed an order of interim injunction, which is given as under:-

"The petitioner seeks an order of interim injunction restraining the respondents from terminating his services pending disposal of the writ petition.

2.The petitioner was initially appointed as a Daily Wages Masdoor Grade I by the Chief Engineer, Public Works Department, as early as on 01.04.1996. He was paid daily wages. The petitioner by placing reliance on the Government order in G.O.Ms.No.202, Public Works (C2) Department, dated 01.08.2012, requested the respondents to regularise his services. The application was rejected by the first respondent, by order dated 17.01.2014. The said order is challenged in the writ petition.

3.It is the grievance of the petitioner that during the currency of the writ petition, he would be disengaged by the respondents. The petitioner, therefore, seeks an order to protect his employment during the currency of the said writ petition.

4.The petitioner has produced the service register. The service register clearly shows that he has been working from 01.04.1996 onwards. The legality and correctness of the order passed by the first respondent is essentially an issue to be decided by this Court, in the light of the relevant Government Orders. In case the petitioner is disengaged during the currency of the writ petition, it would cause him difficulties. The documents available on record very clearly show that the petitioner has been in employment with effect from 01.04.1996. Therefore, I am inclined to grant an interim order.

5.There shall be an order of interim injunction. Issue notice to the respondents returnable by 16.09.2014."

13.In the light of the above, the claim of the petitioner that he is entitled for regularisation is justified, as he has been continuously working from 01.04.1996 till 30.06.2011, therefore, the impugned order is liable to be set aside, accordingly set



aside. Consequently, the first respondent is directed to regularise the service of the petitioner in the light of G.O(2D) No.29 Public Works (C2) Department, dated 09.02.2016, wherein the first respondent after considering G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 superseding the earlier orders issued in G.O.Ms.No.22 dated 28.02.2006, according to which, the services of daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularised and the rules relating to method of appointment and educational qualification shall not be relaxed for such regularisation, has regularised 5 persons pursuant to the order dated 20.06.2012 in W.P.No.37024 of 2006. In the present case, the petitioner has completed 20 long years of service, hence, the first respondent cannot have any hesitation to regularise his services by applying G.O(2D)No.29 Public Works (C2) Department, dated 09.02.2016. The said exercise shall be done by the first respondent within a period of eight weeks from the date of receipt of a copy of this order.

14.With the above direction, this writ petition stands allowed. No costs. M.P(MD)Nos.2 and 3 of 2014 are closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

- 1)The Secretary to Government,
Public Works Department,Secretariat, Chennai -9.
- 2)The Engineer-in-Chief (General)
Public Works Department,Chepauk, Chennai - 5.
- 3)The Chief Engineer,Public Works Department,
Water Resources Organisation,Madurai Region, Madurai.

+1 cc to M/s.S.C.Herold Singh, Advocate in SR.No.30699

nbi/skn

CSL/NGM-MP/SAR-III/18.07.2016 : 6P/5C

W.P.(MD)No.12389 of 2014
15.06.2016