

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.21964 of 2010

& M.P. Nos.1 & 2 of 2010

P.Karthikeyan

.... Petitioner

Versus

1.The Tamil Nadu Water Supply &
Drainage Board,
rep. by its Managing Director,
31, Kamarajar Salai, Chempauk,
Chennai-600 005.

2.The Executive Engineer,
Tamil Nadu Water Supply &
Drainage Board,
Maintenance Division,
Erode.

.... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a certiorarified mandamus to call for the records of the respondents, relating to the orders of the second respondent in Na.Ka.No.827/A5/Ko.Ve.Ni.U/2009-1, dated 21.10.2009, Na.Ka.No.12446/A5/Ko.Ve.Ni.U/2009 dated 21.10.2009, Na.Ka.No.12446/A2//Ko.U.Ni/2009 dated 21.10.2009 and Na.Ka.No.12446/A2//Ko.U.Ni/2009 dated 21.10.2009 and quash the same in so far as it relates to the re-fixation of the date of regularization from 07.03.1998 instead of 11.01.1995 as earlier fixed and consequently direct the respondents to pass fresh order of regularisation in terms of the order dated 19.01.1996 passed by this Court and made in W.P.No.12993 of 1994.

For Petitioner : Mr.Muthumani Dodaisami

For Respondents : Ms.Tamilzharasi

ORDER

The petitioner has approached this Court seeking the following relief:

'To issue a certiorarified mandamus to call for the records of the respondents, relating to the orders of the second respondent in Na.Ka.No.827/A5/Ko.Ve.Ni.U/2009-1, dated 21.10.2009,

Na.Ka.No.12446/A5/Ko.Ve.Ni.U/2009 dated 21.10.2009, Na.Ka.No.12446/A2//Ko.U.Ni/2009 dated 21.10.2009 and Na.Ka.No.12446/A2//Ko.U.Ni/2009 dated 21.10.2009 and quash the same in so far as it relates to the re-fixation of the date of regularization from 07.03.1998 instead of 11.01.1995 as earlier fixed and consequently direct the respondents to pass fresh order of regularisation in terms of the order dated 19.01.1996 passed by this Court and made in W.P.No.12993 of 1994''.

2. The petitioner originally joined the service of the respondent Board as Nominal Muster Roll (NMR) employee, sponsored through Employment Exchange on 17.09.1993 on daily wages. The petitioner was terminated from service on 06.01.1994 on the ground that he did not complete 480 days of continuous service within two years. Similar terminated employees approached this Court and filed a batch of writ petitions in W.P.No.12993 of 1994, including the petitioner herein. The writ petitions were allowed with a direction to reinstate the petitioner herein with all attendant benefits including the regularisation of service with effect from the date of his initial appointment.

3. In pursuance of the orders passed by this Court, reinstatement was ordered vide communication dated 24.01.1997, in respect of the petitioner as well as the other similarly placed employees. As far as the petitioner is concerned, he was reinstated in service as NMR on 15.02.1997. Thereafter, the petitioner appears to have submitted a representation on 17.11.1997 to the respondent Board, seeking to regularise him in service from the date of his initial appointment in terms of the orders passed by this Court in the aforesaid writ petition. In pursuance thereof, by proceedings dated 24.01.1997, the respondent Board has passed orders regularising the services of the other similarly placed employees including the petitioner herein with effect from 11.01.1995.

4. While matter stood thus, an order was passed on 21.10.2009, by the respondent Board, re-fixing the date of regularisation of the petitioner with effect from 07.03.1998, instead of 11.01.1995, which was originally granted to him and also further ordered recovery of a sum of Rs.72,288/- towards excess amount paid in monthly installments. The order re-fixing the date of regularisation from 11.01.1995 to 07.03.1998 is put to challenge in the present writ petition.

5. The learned counsel for the petitioner would submit that the order passed by this Court on 19.01.1996 in W.P.No.12863 of 1994, clearly directed to reinstate the petitioner alongwith

other similarly placed persons, with all attendant benefits including regularisation of service with effect from the date of their initial appointment. Such being the case, the Board's action in not granting regularisation to the petitioner from the date of his initial appointment is contrary to the specific directions of this Court and therefore, the same is liable to be set aside on that ground alone. Moreover, the learned counsel would also submit that in respect of the other similarly placed persons, who had benefited by the direction of this Court earlier in the aforesaid batch of writ petitions, they were granted regularisation with effect from 11.01.1995 i.e., the date of their initial appointment and only the petitioner has been singled out to his disadvantage.

6. Upon notice, Ms.S.Thamizharasi, learned counsel entered appearance for the respondents 1 & 2 filed a detailed counter affidavit. In the counter affidavit, it is stated that regularisation has to be re-fixed in respect of the petitioner for the reason that the petitioner had completed 480 days only in the year 1998 and therefore, the respondent Board had rightly fixed his date of regularisation in the year 1998. However, the said statement was disputed by the learned counsel for the petitioner stating that as far as other similarly placed employees are concerned, the Board had regularised their services from the date of their initial appointment regardless of the fact that they had completed 480 days in two years or not. Such being the case, the denial of similar benefit to the petitioner is per se in violation of Article 14 of the Constitution of India.

7. After hearing the arguments, the learned counsel for the petitioner was directed to get instructions as to whether the statement made by the learned counsel for the petitioner was correct and whether the other similarly placed persons like the petitioner herein had been granted regularisation from the date of their initial appointment.

8. The learned counsel for the respondents on instructions would submit that the statement made on behalf of the petitioner is correct. Therefore, this Court does not find any distinguishing factor for treating the petitioner differently in the matter for grant of benefit of regularisation from the date of his initial appointment.

9. Moreover, it has to be seen that earlier this Court in W.P.No.12993 of 1994 dated 19.01.1996 has given a clear direction to regularise the services of the petitioner from the date of his initial appointment and the direction was understood properly and the same was implemented in pursuance of such direction. Thereafter, for whatever reasons, the Board had

taken a different view and taken away the benefit of regularisation of the petitioner from the date of his initial appointment. Therefore, the decision taken by the Board cannot be countenanced both in law and on facts and also the petitioner having been placed in the identical situation as that of the other similarly placed employees cannot have different treatment at the hands of the respondent Board.

10. Hence, the writ petition stands allowed and the respondent Board is directed to restore the original order of regularisation dated 28.09.2004 and all other consequential benefits arising thereof. Such exercise shall be completed by the respondent Board within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

To

Sub Assistant Registrar

1.The Tamil Nadu Water Supply &
Drainage Board,
rep. by its Managing Director,
31, Kamarajar Salai, Chepauk,
Chennai-600 005.

2.The Executive Engineer,
Tamil Nadu Water Supply &
Drainage Board,
Maintenance Division,
Erode.

+1cc to M/s.Muthumani Doraisami, Advocate SR.No.83785
+1cc to M/s.S.Tamizharasi, Advocate SR.No.83385

sm:5.1.2018

W.P.No.21964 of 2010