



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.[MD].No.913 of 2015
and
M.P.(MD)No.1 of 2015

1.The Secretary to Government,
Highways Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Chief Engineer,
Highways & Rural Works Department,
Chepauk, Chennai-600 005.

: Appellants

Vs.

1.V.Meenakshi Sundaram
2.K.Lakshmanan
3.M.A.Saravanan
4.Kasim Mohideen
5.M.Hemalatha

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 10.07.2015, made in W.P.(MD).No.8512 of 2014.

Prayer in WP(MD). 8512/ 2014 :

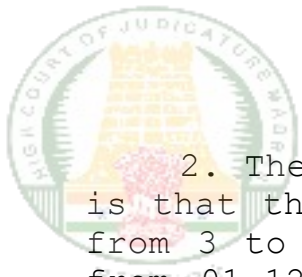
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 17.7.2013 in Lr.No.8165/HM2/2012-4 issued by the 1st respondent and quash the same and consequently direct the respondents to regularize the services of the petitioners who have completed three years of service.

For Appellants : Mr.VR.Shanmuganathan,
Special Government Pleader
For Respondents : Mr.G.Prabhu Rajadurai

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J.]

<https://hcservices.courts.gov.in/hcservices/> Appeal has been filed as against the order of the learned Single Judge of this Court dated 10.07.2015, made in W.P.(MD).No.8512 of 2014.



2. The case of the respondents before the learned Single Judge is that they have been working in the Highways Department ranging from 3 to 5 years. The second and fourth respondents are working from 01.12.1984 and the first and third respondents are working from 01.09.1998 and October, 1998 respectively. The fifth respondent is working from 20.09.1995. According to the respondents, they were appointed by the Assistant Divisional Engineer, Assistant Engineer or Executive Engineer, within the jurisdiction, without reference to Employment Exchange.

3. It is the further case of the respondents that a batch of similarly placed employees have approached this Court by filing a Writ Petition being W.P.(MD)No.36623 of 2004, seeking regularization and this Court allowed the said Writ Petition on 09.12.2005 relying on the orders of the Administrative Tribunal, in O.A.No.1543 of 1993 batch cases. This Court has further directed to complete the regularization of service on or before 30.04.2004. Aggrieved over the said order, the Government has filed a Writ Appeal in W.A.(MD)No.1260 of 2008, and the said appeal was dismissed by the Division Bench on 11.12.2009. Against the same, the Government preferred SLP before the Supreme Court in C.C.No.14093 of 2010 and the same was also dismissed on 27.09.2010 and the appellants were given time to comply with the orders of the learned Single Judge on or before 31.03.2011. Therefore, the issue with regard to the regularization of the similarly placed employees had reached finality and the appellants are bound by the order dated 09.12.2005.

4. Yet another batch of employees preferred Writ Petitions in W.P.(MD)Nos.14617, 14619 and 14620 of 2012 seeking for a similar relief and the Writ Petitions were allowed by this Court on 13.06.2012, against which, Writ Appeals in W.A.(MD)Nos.685 to 687 of 2013 were filed and the same were also dismissed confirming the order of Writ Court. Since the request of the respondents for regularization was not considered, they have filed W.P.No.5952 of 2012 praying to regularize their services, based on the order passed in W.P.No.36623 of 2004 and the same was allowed on 26.04.2012, directing the appellants to pass appropriate orders on merits, within a period of eight weeks. Since the direction was not complied with, the respondents have filed a Contempt Petition in Cont.P.(MD)No.607 of 2013 and it was closed on 28.10.2013, based on the representation made by the learned Government Advocate that the order of this Court has been complied with. However, the appellants, by order dated 17.07.2013, rejected the request of the respondents to regularize their services, on the ground that they have not fulfilled the conditions mentioned in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.07.2006 and G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013. Aggrieved over the rejection, the respondents have filed W.P.(MD)No.8512 of 2014.



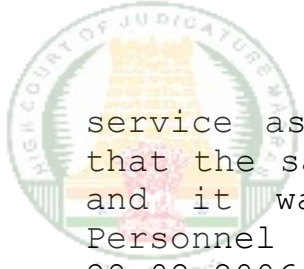
5. The learned Single Judge, by order dated 10.07.2015, has allowed the Writ Petition, directing the appellants to regularize the services of the respondents from the date of the respondents approaching this Court in the earlier Writ Petition and effect monetary benefits with effect from 01.06.2015. In the said order, the learned Single Judge has also observed that the respondents are not entitled to backwages and that the period of service during which they were actually working, which are mentioned in the counter and the said period alone shall be taken into account for the purpose of pensionary benefits and that period or any other period will not be taken into account for gratuity and other benefits. Aggrieved over the same, the present Writ Appeal has been filed.

6. We have heard the learned Special Government Pleader appearing for the appellants and the learned counsel appearing for the respondents.

7. This appeal has been filed based on the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.2726 to 2729 of 2014, dated 21.02.2014. According to the appellants, as per the dictum laid down in the said judgment, the respondents are not entitled for regularization. That apart, the learned Special Government Pleader, by relying upon G.O.(Ms)No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, has submitted that as per the said Government Order, the services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and those who have completed 10 (ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength. In the case on hand, the respondents were not appointed in consultation with the Employment Exchange. Therefore, they are not entitled for regularization.

8. Keeping in mind the above said submission, we have carefully gone through the judgment relied upon by the learned Special Government Pleader. The said judgment dealt with the issue relating to Part Time Sweeper. Coming to the case on hand, we find that the respondents are the daily wage employees and hence, the said judgment cannot be made applicable to the facts of the case to deny the claim of the respondents for regularization.

9. Yet another submission made by the learned Special Government Pleader is that as per G.O.(Ms)No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, the services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and those who have completed 10 (ten) years of



service as on 01.01.2006 shall be regularized. However, we find that the said Government Order came into effect only on 27.06.2013 and it was issued by way of clarification of G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. G.O.Ms.No.74 was issued only on 27.06.2013, whereas, the respondents were appointed in the year 1984, 1995 and 1998 respectively, that is to say, much earlier to the said Government Order. Therefore, the second submission made by the learned Special Government Pleader cannot be accepted. Therefore, we are of the opinion that absolutely, there is no infirmity in the order passed by the learned Single Judge warranting interference at the hands of this Court.

10. In fine, the Writ Appeal fails and the same is dismissed accordingly. The appellants are directed to comply with the order of the learned Single Judge, within a period of six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar.

+1CC to M/S.G.Prabhu Rajadurai, Advocate, SR.No. 9616

+1CC to the Special Government Pleader, SR.No. 9693

JUDGMENT MADE IN
W.A. (MD) No.913 of 2015

SML

AM/CM MSA/14.03.2017/2P/3C