



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.05.2017

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P(MD)No.3870 of 2015

and

MP(MD)No.1 OF 2015

D.Sulochana Bai.

..Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Principal Secretary,
Public Works Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Chief Engineer,
WRO/PWD and Engineer in Chief,
Chepauk, Chennai-600 005.
3. The Chief Engineer,
Public Works Department,
Madurai Region, Madurai-625 002.
4. The Executive Engineer,
Water Resources Development Outfit,
Public Works Department, Kothaiyar Basin Division,
Nagercoil, Kanyakumari District.
5. The Engineer in Chief (Buildings),
Chief Engineer (Buildings),
Chennai Region and Chief Engineer (General),
Public Works Departments, Chennai-600 005. ... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the first respondent in Letter No.6126/C2/2014-2, dated 01.04.2014, quash the same and direct the respondents to grant the regularization to the petitioner with all service benefits within a time frame fixed by this Court.

For Petitioner

: Ms.J.R.Annie Abinaya
for M/s.J.Anandhavalli

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

For Respondents

: Mr.K.P.Krishnadoss,
Government Advocate.

**O R D E R**

The prayer in the Writ Petition is for Writ of Certiorari or Mandamus or any other appropriate direction, calling for the records pertaining to the impugned order passed by the first respondent in Letter No.6126/C2/2014-2, dated 01.04.2014, quash the same and direct the respondents to grant the regularization to the petitioner with all service benefits within a time frame fixed by this Court.

2.The case of the petitioner is that she was initially appointed as Casual Labour in the year 1999 and she has been continued as Nominal Muster Roll employee with regular fictional break. The petitioner had been rendering continuous service with the fourth respondent office. Though the petitioner had initially engaged in the year 1994 and the Service Register for NMR had been on completion of four years, such Service Register was opened in the year 2000, where the record has been maintained that the petitioner has been working as NMR from, at least from the year 1999.

3.Though the petitioner has been continuously working for NMR for several years, her service was not regularized. Therefore, the petitioner along with some other similarly placed persons approached this Court by filing a writ petition in W.P.No.30251 of 2008, wherein the petitioner was worked as sixth respondent.

4.The said writ petition along with some other connected writ petition where heard together and a final order passed by this Court on 22.12.2008. In the said order this Court has passed a following order:

2.The writ petitioners are NMR employees under the Public Works Department. As per G.O.Ms.No.334, Public Works (C2) Department, dated 19.10.2007, the NMR employees, who have completed 10 years of service are eligible to be considered for the purpose of regularization. It was based on the said Government Order, the petitioners have made representation on 22.01.2008 and 11.01.2008 respectively for regularisation of their service.

3.Considering the limited scope of the prayer and without going into the merits of the case, the first respondent is directed to consider the representations of the petitioners dated 22.01.2008 and 11.01.2008 respectively in the light of the Government Order in G.O. (Ms)No.334, Public Works (C2) Department, dated 19.10.2007 and pass appropriate orders on merits and in accordance with the law expeditiously, in any event, within a period of twelve weeks from the date of receipt of copy of this order.



5. Though, such an order of this Court directing the respondents to consider the requests of the petitioner and others for regularization of their services within a time frame of twelve weeks, the respondents have not considered the same and the said request, in spite of the orders passed by this Court, has been kept pending for years together. While so, on 01.04.2014, the first respondent has issued the impugned order in Letter No. 6126/C2/2014-2. In this said order, the first respondent, among other things, has stated the following, which is relevant to the petitioner's case.

"(iii) The other four petitioners have been engaged in Kothaiyar Basin Division, Nagercoil now. Tmt.S.Kalarani has been engaged as daily wages employee drawing wages from the Roll prepared. The other three petitioners Tmt.D.Sulochana Bai, Thiru.R.Gnanasundar Raj and Thiru.D.Ganesh Kumar are now engaged as Daily Wages employees on Contract Basis.

(iv) All the above four petitioners require relaxation of rules relating to method of appointment and educational qualification and they have not completed 10 years of service as on 01.01.2006 and hence they are not eligible for regularisation as per G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated 27.06.2013".

6. Challenging the said order dated 01.04.2014, the present writ petition has been filed with the aforesaid prayer.

7. Ms.J.Abinaya for M/s.Anandhavalli, learned counsel for the petitioner would contend that even though the petitioner was initially engaged as NMR in the year 1994, her Service Register was not opened immediately. As per the procedure being followed by the respondent department, Service Register for NMR employees would be opened only after the completion of four years of engagement. Accordingly, Service Register for the petitioner also was opened in the year 2000, where entry has been made as if the petitioner has been engaged from the year 1999. At least from the year 1999, admittedly, the petitioner has been continuously engaged as NMR by the respondent department. Therefore, she would be entitled to claim regularization. That is the reason why, the petitioner has approached this Court, in the earlier occasion, where a time bound direction has been given by this Court, but the same was not complied with. After six years, pursuant to the orders passed by this Court in the year 2008, the present impugned order was passed on 01.04.2014, by quoting of Government Order in G.O.(Ms)No.74, Personnel and Administrative Reforms(F) Department, dated 27.06.2013.

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8. The learned counsel for the petitioner would submit that since the petitioner had been working continuously at least from



the year 1999, if not from 1994, even then the petitioner would be entitled the claim regularization on completion of ten years of service. However, the said benefit has been denied to the petitioner by quoting a Government Order, which came into being only subsequently in the year 2013. Therefore, the learned counsel for the petitioner would submit that the petitioner would be eligible and entitled to claim regularization.

9. It is also the submission of the learned counsel appearing for the petitioner that since the respondents have not passed any orders regularizing the service of the petitioner pursuant to the direction given by this Court in the year 2008, notices were issued through her lawyer and thereafter notice for contempt from the petitioner and annoyed with the same, the respondent decided to dispense with the services of the petitioner and accordingly by way of oral termination, the service of the petitioner even as NMR/daily wages was dispensed with from 01.04.2014. Against the said dispensation of service on the part of the respondents, the petitioner had made request to the respondents to give back the duty to the petitioner, which was refused by the respondent department by a written order. As against the said order, the petitioner has already filed a separate writ proceeding, which is also pending before this Court.

10. Per Contra, Mr. K. P. Krishnadoss, learned Government Advocate appearing for the respondents would submit that the petitioner has never been appointed as NMR at the Nominal Muster Role Register, being maintained by the respondent department either in the year 1994 or in the year 1999. If at all, the petitioner is worked for some years or some days, the said work would have been done only through the contractors through whom only the respondents department extracting the work. It is not known to the department that who are all working in the particular contract and whether a particular worker is continuously engaged by a contractor, is not known to the department. Therefore, based on the work done by the petitioner through the contractor, she cannot claim by right of regularization from the department, unless and until, the petitioner is appointed on temporary basis or on monthly wages or consolidated pay basis by the department and worked for years together, this kind of request for regularization cannot be considered. Since, in the case in hands, the petitioner has not at all engaged by the department directly, she cannot claim any regularization from the department.

11. The learned Government Advocate appearing for the respondents would also submit that even though the full time employees, who have been engaged by the department and have completed ten years of service, after 01.01.2016 shall not be regularized by way of relaxing the necessary qualification, method of recruitment, age, etc. In this regard, the learned Government Advocate would heavily rely upon the Government Order

in G.O(Ms)No.74, Personnel and Administrative Reforms Department, dated 27.06.2013. He would rely upon paragraph 6 of the Government Order, which reads thus:

"6. In supersession of the orders issued in the Government Order read above, the Government now issue revised orders on regularization of services of full time daily wage employees working in all Government departments as detailed below:

(i) This order shall be deemed to have been come into force with retrospective effect from 01.01.2006;

(ii) 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 completed 10 (ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength;

(iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed;

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23(a) (ii) of the General Rules for Tamil Nadu State and Subordinate Services;

(v) In cases, where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularization;

(vi) The Part-time and casual employees are not entitled to the concession referred to at para (ii) above;

(vii) The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularized;

(viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules against the person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the above said instructions are followed without fail and lapses if any found, responsibility will be fixed against them;

(xi) All the proposals for regularisation of the services of full time daily wage employees should be sent to the Government even in cases where relaxation of rules not involved".

12. The learned Government Advocate appearing for the respondents would also rely upon the following averments made in the Counter Affidavit on behalf of the respondents:

<https://hcservices.ecourts.gov.in/hcservices/> "2. I respectfully submit that the petitioner, Tmt. Sulochana Bai was engaged as one of the Contractor's Labour for the field works of Pattanamkal Sub Division, Kuzhithurai



by the contractor. The payment was made through the very same contractor for all the Labour supplied by him and not by the department directly. The petitioner Tmt.D.Sulochana Bai has turned up for the work from 01.04.2014 to till date.

3.It is for the submit that I deny all the allegation said in this para No.3 Further I submitted that the petitioner Tmt.D.Sulochana Bai has not been engaged daily wage by the department through Nominal Muster Roll. Hence the servie register was not opened for her. Vide Lr.M/s.No.74 P & AR Department dated 27.06.2013 which is now in prevalence, the petitioner request for regularization of service could not be complied with. Since this petitioner was not engaged in regular vacancy or unsanctioned post.

4.It is further submitted that as per the direction of Hon'ble High Court for the W.P.No.30251 of 2008, the first respondent passed and Administrative Reforms (F) Department dated 27.06.2013, which is now in prevalence that the petitioner's request for regularization of service could not be complied with. Since she was not engaged by this department for any kind of work based any scale of reservation against any sanctioned post.

5.It is further submitted that for the averments made in Para Nos.4,5 and 6 it is submitted that the petitioner, Tmt. D.Sulachana Bai was, engaged as a outsourced Labour to the field work of Pattanamkal Sub Division, Kuzhiturai through contractor and she did not turned up for the field work of aforesaid Sub Division after 01.04.2014."

Therefore, the Government Advocate appearing for the respondents would submit that in view of the factual position as well as the Government Order, which is invoague, the petitioner cannot be termed as NMR employee, continuously working for more than ten years, that too, before 01.01.2006 as envisaged in G.O.(Ms).No.74 and therefore she is not at all entitled to claim any regularization from the respondents department. Therefore, the impugned order passed by the first respondent, rejecting the claim of the petitioner for regularization, is fully justifiabile and sustainable and therefore the requires no interference from this Court.

13.This Court has considered the aforesaid submission made by both sides through their respective counsels.

14.The definite case of the petitioner is that the petitioner was engaged firstly as NMR employee in the year 1994 and since then she has been continuously working upto 13.03.2014 and only thereafter her service was abruptly/voluntarily dispensed with by the respondent department by oral dispensation and for getting the job on the government services the petitioner has been fighting by way of filing a parallel writ petition before this Court.



15. order to ascertain as to whether the petitioner has been orally engaged by the respondent department, the copy of the Service Register dated 23.06.2000 of the petitioner, as has been produced in the type set of papers, can be usually referred to. The Service Register contained the particulars of the name and other particulars of the petitioner, photograph of the petitioner and the date of opening of the Service Register as 26.03.2000. The seal of the Assistant Executive Engineer concerned of the respondent department, is also affixed. In the said Service Register, the petitioner has been categorized as Mazdoor Grade I. The date of engagement starts from 26.05.1999 and it continuously goes upto sometime in 2005 i.e., 31.03.2015. From the said document i.e., the Service Register opened in respect of the petitioner, it become abundantly clear the petitioner at least from 1999, i.e., from May, 1999 had been engaged as NMR by the respondent department.

16. In the impugned order, especially, at paragraph 2(ii) and (iv), it has been specifically stated the status of the various employees, like the petitioner, who have filed the earlier round of litigation before this Court, where it has been specifically mentioned that the petitioner along with two others are now engaged as daily wages employees on contract basis. That apart, at the paragraphs 2 to 5 and in various other places of the counter affidavit filed on behalf of the respondents, it has been specifically averred that the petitioner has not turned up from the work from 01.04.2014. These factors would go to show that at least upto 31.03.2014, the petitioner had been engaged or had been continuously working.

17. In this case, the plea made by the learned counsel for the petitioner that the petitioner's service had been abruptly dispensed only from 01.04.2014, would be worthy to be noted. If the very first date of engagement as per the Service Register opened by the respondent department, is taken into account, the petitioner's service starts from May, 1999 and even as per the averment of the respondents in the counter affidavit as well as the contention made in the impugned order itself, the petitioner's service either NMR or daily wages employee through contract basis, had been made available to the respondent department till, 31.03.2014. Therefore, only 15 years of service had been completed by the petitioner either as NMR or daily wages basis or on contract basis and therefore the said long service of 15 years put in by the petitioner cannot be disputed by the respondent side, in view of the categorical documents and their own assertion made through the counter affidavit as well as the impugned order. Therefore, it is a fact that the petitioner, at least, had been engaged by the respondent department either as NMR or as a temporary basis or as a daily wages employee or on contract basis continuously for a period of fifteen years.



18. Whether the petitioner, since having put in sixteen years of service at the respondent department, can be straight away regularised, as claimed by the petitioner, is a next question which is to be looked into. In this regard, the learned Government Advocate appearing for the respondents was very particular on the import of G.O(Ms).No.74 Personnel and Administrative Reforms Department, dated 27.06.2013 and the conditions imposed therein at paragraph No.6 of the said Government Order, which have already been extracted hereinabove.

19. By quoting said Government Order, the learned Government Advocate appearing for the respondents would submit that the service of fully time daily wage employees, who have completed ten years of service after 01.01.2006, shall not be regularised, as per clause (vii) of paragraph No.6 of G.O.(Ms)No.74. That means, those who have been completed ten years of service on or before 31.12.2005 alone shall be considered for regularization. By quoting this, the learned Government Advocate appearing for the respondents would submit that the petitioner cannot claim that ten years of service on or before 31.12.2005. If the initial engagement of the petitioner from May, 1999 is taken into account, she would be completed 5 1/2 of years of service only, as on 31.12.2005. Therefore, as per the G.O(Ms)No.74, the claim of the petitioner can very well be rejected, that is the reason why, her claim was rejected, the learned Government Advocate contended.

20. This submission made by the respondents side through the learned Government Advocate, is liable to be rejected in the simple reason, that in this case the petitioner along with the other similarly placed persons had already approached this Court by filing a writ petition, seeking direction to regularise the service of the petitioner and others. This Court, after considering their claim, has given a direction on 22.12.2008, directing the respondent department to consider the request of the petitioner and others similarly placed persons, in fact, in the light of the Government Order in G.O.(Ms).334, Public Works (C2) Department, dated 19.10.2007. However the respondents have not chosen to pass orders for years together in spite of the time bound direction given in the said order dated 22.12.2008, where only twelve weeks time was given by this Court. After six years, only on 01.04.2014, the present impugned order was passed, wherein also, it was admitted by the first respondent that the petitioner still being engaged as daily wages employee.

21. The respondent department would not have anticipated that a Government Order, like G.O(Ms).No.74, would be issued after the State Government Order is issued, that would have an element of banning the regularization after a particular cut of date, i.e., 01.01.2006 by giving retrospectice effect. Had

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benefits. The Writ Petition is allowed accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

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/True Copy/

Sub Assistant Registrar

To

1. The Government of Tamil Nadu,
Represented by its Principal Secretary,
Public Works Department,
Fort St. George, Secretariat,
Chennai - 600 009.
 2. The Chief Engineer,
WRO/PWD and Engineer in Chief,
Chepauk, Chennai-600 005.
 3. The Chief Engineer,
Public Works Department,
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 4. The Executive Engineer,
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Nagercoil, Kanyakumari District.
 5. The Engineer in Chief (Buildings),
Chief Engineer (Buildings),
Chennai Region and Chief Engineer (General),
Public Works Departments, Chennai-600 005.
- + 1 cc TO M/S.J.Anandhavalli , Advocate in SR No. 56103
+ 1 cc TO The Special Government Pleader in SR No. 56123

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ORDER MADE IN
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