

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 30224 of 2006
and M.P.No.1 & 2 of 2006

K.Lingam

...Petitioner

Versus

1.The Managing Director,
TWAD Board,
No.31, Kamarajar Salai,
Chepauk, Chennai-5.

2.The Executive Engineer,
TWAD Board Maintenance Division,
Thoothukudi.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records connected with the order passed by the first respondent in his proceedings No.97247/EA/A3/Ho/2004 dated 10.08.2006 and the consequential order passed by the second respondent in his proceedings No.4344-1/EA/F.JA/2006 dated 11.08.2006 and quash the same and further direct the respondents to appoint the petitioner in the post of work Inspector Grade.II from the date of his regularization of service 25.07.1985.

For Petitioner : Mr.G.P.Arivuchudar
for C.Regurajan.

For Respondents : Ms.R.Ghandhimadhi

ORDER

The petitioner has filed this Writ Petition challenging the order of the first respondent dated 10.08.2006, wherein he was reverted from the post of Junior Assistant to his original post of Maintenance Assistant.

2.The case of the petitioner is that the petitioner was appointed as Watchman under Non-Master Roll (NMR) on 01.04.1982 and thereafter appointed as Mazdoor Category-I(Watchman) through employment exchange at Thoothkudi and joined duty on 23.03.1984 in Tamilnadu Water Supply and Drainage Board (hereinafter

referred as TWAD Board). His services were regularized and made permanent with retrospective effect on 25.07.1985. However, the petitioner's name was found in Sl.No.531 in the seniority list as on 31.12.1985 and thereafter on 06.04.1987, B.P.No.110 was passed approving the Seniority List of NMRs. On completion of 10 years of service under NMR, by proceedings dated 19.10.1994, again joined as watchman cum gardener on 28.12.1994. But, his services were regularized with effect from 25.07.1985 instead of 15.07.1985, on his completion of 480 days continuous service as per Sec.3 of the Tamilnadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, under Clause (2), a settlement was arrived at between the TWAD Board and TWAD Board Trade Unions/Service Associations under Section 12(3) of the Industrial Disputes Act, 1947. Thereafter, on completion of probation, he was permitted to move to Selection Grade scale of pay on completion of 10 years of service as Maintenance Assistant by proceedings dated 14.08.2001. Thereafter, the petitioner has completed M.A.decreed in May, 1997. Again, the petitioner was appointed as Junior Assistant on 09.12.2004 and joined duty on 30.12.2004. However, the first respondent had passed an impugned order dated 10.08.2006, reverting the petitioner from Junior Assistant to the original post of Maintenance Assistant. Challenging the same, the present Writ Petition has been filed.

3. Heard the learned counsel for the petitioner.

4. The learned counsel for the petitioner would submit that the petitioner was initially appointed in the year 1982 and after completion of 480 days, the petitioner's services were regularized from 25.07.1985 and was promoted to the post of Junior Assistant. However, on erroneous consideration, the petitioner was reverted to the original post as Maintenance Assistant on the ground that the petitioner's services were regularized from 28.12.1994 and not from 25.07.1985. Admittedly, the petitioner's services were regularized in the year 1985. On erroneous consideration, the impugned order was passed by the first respondent without considering the regularization year.

5. Admittedly, the petitioner joined as Watchman in TWAD Board on 01.04.1982. However, there is no records with the petitioner to show his service details. The learned counsel for the petitioner relied upon a letter dated 23.03.1998, wherein the Executive Engineer has passed an order as if the petitioner has completed 480 days of service. Accordingly, he claimed his services were regularized on 25.07.1985. However, the said order was passed in the year 1998 and in that letter, the Executive Engineer did not explain under what circumstances, he has passed an order on 23.03.1998 certifying the petitioner has

completed his probation on 25.07.1985. The petitioner also did not place any materials to show that he was regularized on 25.07.1985. Contrary to that, the petitioner relied upon a letter dated 08.8.1996, under Section 12(3) of the Industrial Disputes Act, 1947. On perusal of the letter dated 08.08.1996, there was a settlement before the Joint Commissioner of Labourers, that the Labourers who have completed 480 days of service were regularized on 01.08.1996, notionally. Thereafter, they were observed as permanent in the vacancy post. Accordingly, 386 labourers were regularized from October 1994 and April 1995. The petitioner's services were regularized on October 1994 there were 351 employees regularized along with the petitioner. On perusal of the settlement, the petitioner was regularized only in October 1994. On perusal of the impugned order, the petitioner's services was regularized in 1994 and not on 25.07.1985.

6. In view of the above, I do not find any error in the order passed by the second respondent. Accordingly, the Writ Petition stands dismissed. However, this order will not stand on the way of the petitioner, if he subsequently qualified for promotion and the respondents can consider without influenced by any of the observation made in this order.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
TWAD Board,
No.31, Kamarajar Salai,
Chepauk, Chennai-5.

2. The Executive Engineer,
TWAD Board Maintenance Division,
Thoothukudi.

+1cc to Mr.R.GANDHIMATHI, Advocate, S.R.No. 40505
+1cc to Mr.S.SIVAKUMAR, Advocate, S.R.No. 40696

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and M.P.Nos.1 & 2 of 2006

RK(CO)
TR(10/08/2018)