

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T. RAJA

W.P. No. 27801 of 2017
&
W.M.P. No. 29784 of 2017

M. Selva Michael

..Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by the Secretary,
Public Works Department,
Fort St. George,
Chennai - 9.
 2. The Chief Engineer (General)
And Engineer in Chief W.R.O.,
Chepauk, Chennai - 5.
 3. The Executive Engineer, WRO/PWD,
Public Works Department,
Citraru Basin Division,
Tenkasi - Tirunelveli District.
- ...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records on the files of the 2nd respondent pertaining to its order in Letter No.N.S.4(1)/48348/2014 dated 03.02.2017 and quash the same and consequently direct the 1st respondent to regularize the service of the petitioner on completion of 10 years of service and to extend all service and monetary benefits.

For Petitioner :: Mr.R. Singgaravelan

Senior counsel for

Ms.S. Esairani Narasimman

For Respondents:: Mr.V. Jayaprakash Narayanan,

Special Govt. Pleader

O R D E R

This writ petition has been filed challenging the proceedings of the the 2nd respondent pertaining to his order in Letter No.S.4(1)/48348/2014 dated 03.02.2017 and quash the same and consequently direct the 1st respondent to regularize the service of the petitioner on completion of 10 years of service and to extend all service and monetary benefits.

2. According to Mr.R. Singgaravelan, learned Senior Counsel appearing for the petitioner, it is a clear case for regularization since the petitioner, who was appointed on daily wage basis in Citraru Basin Division, Tenkasi, coming under the control of WRO/PWD from 1995 onwards. Further, according to him, the petitioner has been continuously working for the past 20 years. That being so, when G.O.Ms. No. 22 Personnel & Administrative Reforms(F) Department dated 28.02.2006, makes it clear that a daily wage employee working in P.W.D. or in other Government Department, who has completed 10 years of service as on 01.01.2006 is entitled to get the benefit of regularisation, the respondents have not come forward to extend the same benefit to the petitioner. Adding further, learned Senior Counsel for the petitioner would submit that the petitioner has not only completed 10 years of service as required under the said Government Order, he has completed two times more than the length of service as stated in the said Government Order i.e, 20 years of service. In spite of continuous employment for more than 2 decades, the respondents, by the impugned order, has rejected the request of the petitioner for regularization of his service by referring to G.O.Ms.No. 74 Personnel & Administrative Reforms Department dated 27.06.2013 stating that though the petitioner's name finds place in the consolidated proposal to regularise 1213 NMR/Contract employees of the Public Works Department, the said proposal is a policy decision of the Government, which is likely to take some time, as it involves huge financial committment to the Government exchequer. Adding further, taking support from the common order dated 14.09.2017 passed by this Court in a batch of writ petitions, in W.P. Nos. 29346 of 2013 etc, by which paragraph No.6 of G.O.Ms. 74 dated 27.06.2013, was set aside and it was categorically held that the petitioners therein were entitled to regularization of their services on completion of 10 years of service by virtue of G.O.Ms. No.22 dated 28.02.2006 and also in line with similar orders passed by this Court in various earlier writ petitions. Therefore, according to the learned Senior Counsel, when the request of the petitioner has been rejected citing paragraph No.6 of G.O.Ms. No. 74 dated 27.06.2013, when the said paragraph has been quashed, the case of the petitioner is squarely covered by G.O.Ms. No.22 dated 28.02.2006, which clearly says that persons, who have completed 10years of continuous service as on 01.01.2006 are entitled to get the benefit of regularization and hence, a direction has to be issued to respondents to regularize the services of the petitioner. The learned counsel has also placed on record one other order dated 15.06.2016 passed by me in W.P.(MD) No. 12389 of 2014 in which case, a similar stand was taken by the very same Department and the said stand was negatived by this Court extending the benefit of G.O.Ms. NO.22 dated 28.02.2006 to the petitioner therein.

3. Heard the learned Special Government Pleader for the respondents.

4. Paragraph No.13 of the order dated 15.06.2016 passed by me in W.P.(MD) No. 12389 of 2014, reads as follows:

"13...Consequently, the first respondent is directed to regularise the service of the petitioner in the light of G.O.(2D) 29 Public Works C2 Department dated 09.02.2016 wherein the first respondent after considering G.O.Ms.No.74 Personnel & Administrative Reforms (F) Department dated 27.06.2013 superseding the earliest 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 regularize his service by G.O.(2D) 29 Public Works C2 Depttment 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."

Moreover, this Court, while dealing with a similar issue, by an order dated 22.09.2017 passed in W.P. Nos. 29346 of 2013 etc., allowed the writ petitions by setting aside the paragraph No.6 of the G.O.Ms.No. 74, Personnel and Administrative Reforms Department, dated 27.06.2013, with a direction to the respondents therein to regularise the services of the petitioners therein on completion of their respective 10 years of services on the basis of G.O.Ms. No. 22, P & AR Department, dated 28.02.2006. Relevant portion of the order is extracted below:-

"24. For the foregoing reasons, the impugned G.O.Ms.No. 74 P & AR Department dated 27.06.2013 is hereby set aside insofar as para 6 is concerned and the petitioners in all the Writ Petitions are entitled to regularization of their services on completion of 10 years of service by virtue of G.O.Ms. No. 22 P & AR Department, dated 28.02.2006 and also in line with similar orders passed by this Court in various earlier writ petitions quoted supra. The respondents are directed to pass orders regularizing the services of the petitioners, within a period of three months from the date of receipt of a copy of this order."

5. In the light of the above, the contention of the learned Special Government Pleader for the respondents that the petitioner has not been recruited as per the Rules as he was not appointed through the employment exchange and that he was not appointed in a sanctioned post cannot be sustained, for, on the date of making representation ie., 12.11.2016 itself, the petitioner had completed 15 years of continuous service.

6. Thus, this Court, by taking note of the ratio laid down by this Court in the above said judgments, is inclined to set aside the impugned order passed by the 2nd respondent refusing to regularise the services of the petitioner and accordingly, the same is set aside. Consequently, the respondents are directed to extend the benefit of regularization of service to the petitioner on completion of 10 years of service as per G.O.Ms. No.22 Personnel & Administrative Reforms (F) Department dated 28.02.2006 within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed. No costs. Connected W.M.P. is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The State of Tamil Nadu,
rep. by the Secretary,
Public Works Department,
Fort St. George,
Chennai - 9.
2. The Chief Engineer (General)
And Engineer in Chief W.R.O.,
Chepauk, Chennai - 5.
3. The Executive Engineer, WRO/PWD,
Public Works Department,
Citraru Basin Division,
Tenkasi - Tirunelveli District.

+ 1 cc to Ms.S. Esairani Narasimman Advocate,SR.127
+ 1 cc to The Govt.Pleader, SR.666

W.P. No. 27801 of 2017

ad(co)
nr 24/01/2018