

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.03.2018

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THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.Nos.1348 of 2016 & 109 to 113 of 2017
and C.M.P.Nos.17285 of 2016 & 1825 to 1833 of 2017

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

Now as,

The Principal Secretary to Government
Highways and Minor Ports Department
Fort St.George, Chennai 600 009.

2.The Project Director
The Road Development Project
Guindy, Chennai 600 025.

Now at,

Tamil Nadu Road Sector Project-II
No.171, South Kesavaperumalpuram
Greenways Road
Raja Annamalaipuram
Chennai 600 028.

... Appellants in all W.As./
Respondents in all WPs

Vs.

P.Jayakumar
V.Ravichandran
R.Durai
E.Chellappan
R.Ayyasamy
R.Ponnusamy

... Respondent in W.A.1348/2016
.. Respondent in W.A.109/2017
.. Respondent in W.A.110/2017
.. Respondent in W.A.111/2017
.. Respondent in W.A.112/2017
.. Respondent in W.A.113/2017/

... Petitioners in all Wps.

Writ Appeals filed under Clause 15 of Letters Patent to set-
aside the order 22.08.2013 made in
W.P.Nos.9367,9361,9362,9363,9365 and 9366 of 2007 respectively
on the file of this Court.

WP No.9361 of 2007

Writ filed Under Article 226 of the Constitution of India, praying this court, to issue a Writ of Mandamus to direct the first respondent to regularise the service of the petitioner from the date of his initial appointment namely 21.6.91 with all consequential service and monetary benefits

WP No.9362 of 2007

Writ filed Under Article 226 of the Constitution of India, praying this court, to issue a Writ of Mandamus to direct the first respondent to regularise the service of the petitioner from the date of his initial appointment namely 01.07.91 with all consequential service and monetary benefits

WP No.9363 of 2007

Writ filed Under Article 226 of the Constitution of India, praying this court, to issue a Writ of Mandamus to direct the first respondent to regularise the service of the petitioner from the date of his initial appointment namely 01-09-98 with all consequential service and monetary benefits

WP No.9365 of 2007

Writ filed Under Article 226 of the Constitution of India, praying this court, to issue a Writ of Mandamus to direct the first respondent to regularise the service of the petitioner from the date of his initial appointment namely 01.10.97 with all consequential service and monetary benefits

WP No.9366 of 2007

Writ filed Under Article 226 of the Constitution of India, praying this court, to issue a Writ of Mandamus to direct the first respondent to regularise the service of the petitioner from the date of his initial appointment namely 3.11.97 with all consequential service and monetary benefits

WP No.9367 of 2007

Writ filed Under Article 226 of the Constitution of India, praying this court, to issue a Writ of Mandamus to direct the first respondent to regularise the service of the petitioner from the date of his initial appointment namely 05/10/98 with all consequential service and monetary benefits

For Appellants : Mrs.A.Sree Jayanthi
in all WAS Special Government Pleader

For Respondents: Mr.K.H.Ravi Kumar
in all WAS

C O M M O M J U D G M E N T

[Judgment of the Court was delivered by K.K.SASIDHARAN,
J.]

The respondents in the respective appeals (hereinafter referred to as "the respondents") were appointed on NMR basis. It was a project related work. The respondents filed writ petitions for issuance of a writ of Mandamus for regularisation of their services placing reliance on various Government Orders, including G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28 February, 2006. The learned single Judge by order dated 22 August, 2013 directed the appellants to regularise the services of the respondents in the respective intra court appeals. Feeling aggrieved, the appellants have come up with the appeals.

2. The learned Special Government Pleader appearing on behalf of the appellants contended that under similar circumstances, a Division Bench of this Court allowed the appeals filed by the State challenging the orders passed by the learned single Judge directing regularisation of the services of employees who were appointed on daily wages. The Division Bench allowed the appeals by following the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.2726 to 2729 of 2014. The Division Bench made it clear that those who were appointed on daily wages are not entitled to the benefit conferred by various Government Orders directing regularisation of services, in case the employee has completed ten years of continuous service. According to the learned Special Government Pleader, the respondents were appointed on part-time basis and as such, they are not entitled to an order for regularisation.

3. The learned counsel for the respondents contended that the respondents were all appointed against sanctioned posts. The appointments made as NMRS were continued from time to time. The services of some of the employees who were appointed along with the respondents were all regularised. The respondents are also entitled to a similar benefit and as such, the writ petitions were rightly allowed.

4. The respondents were engaged by the Public Works Department for a project. Even though the respondents have taken up a contention that their appointments were against the

sanctioned post and it was made by following a transparent method, there are no documents before us to substantiate the said contention. There is nothing on record to show that the Public Works Department advertised the post in question and after following a transparent procedure, including calling for sponsorship from the Employment Exchange, appointments were made. Therefore, it is clear that the respondents have entered the service through back door.

5. The core question is as to whether the respondents are entitled to the Government Orders directing regularisation of those employees who have put in ten years of service.

6. The appellants have not followed any procedure known to law while appointing the respondents. In fact, the appellants have contended that the appointments were made against a Scheme. Therefore, it is clear that it was only an engagement and not an appointment.

7. The question as to whether part-time employees and employees who were appointed on daily wages are entitled to the Government Orders and more particularly, G.O.Ms.No.22 dated 28 February, 2006 came up for consideration before a Division Bench of this Court in W.A.No.2911 of 2012 etc. batch. The Division Bench, by placing reliance on various earlier orders including the judgment dated 21 February, 2014 in Civil Appeal Nos.2726 to 2729 of 2014, made the position clear that those who were appointed on daily wages are not eligible for the benefits of the Government Order directing regularisation of those who have completed ten years of continuous service.

8. In fact, the Hon'ble Supreme Court in its judgment dated 21 February, 2014 in Civil Appeal Nos.2726 to 2729 of 2014, made it clear that those who were appointed as Sweepers and in other posts on daily wages are not eligible for regularisation. However, taking into account the submission made on behalf of the State that those employees whose services were regularised would not be disturbed, the Supreme Court issued a direction not to disturb their appointment.

9. In the subject case, the services of the respondents were not regularised pursuant to the direction given by the learned single Judge. In view of the legal position enunciated by the Hon'ble Supreme Court which was followed by the Division Bench, we are not in a position to accept the views expressed by the learned single Judge in the respective orders challenged in the appeals.

10. The learned counsel for the respondents submitted that the respondents are still working and as such, their engagements

should not be disturbed, on account of the view taken by this Court. We make it clear that in case the respondents are continuing in employment, this judgment would not amount to a direction to the State to disengage their services.

11. The learned counsel for the respondents on the basis of the judgment of the Supreme Court in State of Punjab and others vs. Jagjit Singh and others [(2017) 1 SCC 148] contended that the respondents should be given equal pay for equal work extracted from them. The question regarding equal pay for equal work is not a subject matter of the proceedings before us and as such, we are not in a position to issue a direction to the appellants. It is always open to the respondents to take up the issue with the employer, if they are legally entitled to such a relief.

12. The learned single Judge directed the appellants to regularise the services of the respondents without considering the nature of employment. The illegal order cannot be legalised by the Court.

13. The orders dated 22 August, 2013 in the respective appeals are set aside.

The intra court appeals are allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

gms

To

1.The Secretary to Government
Highways Department
Fort St.George, Chennai 600 009
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The Principal Secretary to Government
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2.The Project Director
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No.171, South Kesavaperumalpuram
Greenways Road
Raja Annamalaipuram
Chennai 600 028.

+ 1 cc to Mr.K.H.Ravi Kumar Advocate, SR.20301

+ 1 cc to The Govt.Pleader, SR.21446

W.A.Nos.1348 of 2016 &
109 to 113 of 2017

sj(co)
nr 12/04/2018



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