



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 09.01.2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MRS.JUSTICE R.THARANI
W.A.(MD)No.33 of 2018

and

W.M.P.(MD)No.190 of 2018

- 1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board (TWAD),
No.31, Kamarajar Salai,
Chepauk, Chennai-5.
 - 2.The Secretary cum General Manager,
Tamil Nadu Water Supply and Drainage Board (TWAD),
No.31, Kamarajar Salai,
Chepauk, Chennai-5.
 - 3.The Chief Engineer,
TWAD Board,
Madurai.
 - 4.The Superintendent Engineer,
TWAD Board,
Sivagangai District.
 - 5.The Executive Engineer,
TWAD Board,
RWS Division,
Sivagangai District. ... Appellants/Respondents 1 to 5
- Vs.
- K.Alagar ... Respondent/Writ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent,
against the order dated 24.08.2016 passed in W.P(MD)No.15737 of 2016
on the file of this Court.

Prayer in WP(MD). 15737/ 2016 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Mandamus directing the respondents directing the respondents to
regularize the service period of the petitioner from 01.09.1981 to
02.05.1989 by considering the letter dated 28.05.2015 forwarded by
the 5th respondent and include the service for pension benefits with
all other benefits.

JUDGMENT

[Judgment of the Court was delivered by N.KIRUBAKARAN , J.]

This appeal has been preferred against the order passed by the learned Single Judge directing the respondents to consider the case of the petitioner in tune with the letter forwarded by the fifth respondent, dated 28.05.2015 with regard to the regularization of petitioner's service for the period from 28.08.1981 to 02.05.1989.

2.The facts of the case are as follows;

The respondent is the writ petitioner, who was selected as Fitter and posted at Devakotai, through Employment Exchange on NMR basis and he was brought into time scale with effect from 28.08.1981. When the petitioner was qualified for the post of Driver, he was promoted and transferred to Nagercoil as Driver. He joined service on 03.05.1989. Thereafter, again the petitioner was re-transferred to Thirupathur in the year 1995 and reached the age of superannuation on 31.05.2013 and all the pension benefits and other terminal benefits have been given to him, except for the period from 28.08.1981 to 02.05.1989. Therefore, the original writ petitioner has approached the appellants for regularizing the period from 28.08.1981 to 02.05.1989 for the purpose of service benefits. Though the Department issued a Board Proceedings in B.P.No.36 dated 05.02.1990 regularizing the services of 300 similarly placed persons like the respondent, the name of the respondent was not included in the Board proceedings. In this regard, the respondent/writ petitioner made a representation to regularize the said period. The Superintendent Engineer, TWAD Board, Sivagangai, the 4th appellant herein sent a proposal to the 3rd appellant to regularize the petitioner's service period from 01.09.1981 to 11.05.1989, so as to enable the respondent/writ petitioner to get pension benefits and other attendant benefits. The 3rd appellant forwarded the said proposal to the 1st appellant on 03.03.2014. However, the same was returned on 29.10.2014 for some clarifications. Again, the 5th appellant sent a proposal on 10.11.2014, which was forwarded to the Department on 20.11.2014. Even after returning the proposals for two times along with the relevant details, again the proposal was forwarded to the Joint Chief Engineer, TWAD Board. In the mean while, the petitioner reached the age of Superannuation on 28.02.2015. Since, no action has been taken with regard to the inclusion of the aforesaid period in service, the petitioner has approached this Court.

3.The learned Single Judge, taking into consideration the fact that the proposal sent by the 4th appellant through 3rd appellant to the 1st appellant was pending, a direction has been given to consider the claim of the respondent/writ petitioner in tune with the letter forwarded by the 5th appellant dated 28.05.2015, giving the benefits, given to the similarly placed persons. The said order is being challenged before this Court.



4. Heard Mrs. Porkodikarnan, learned counsel appearing for the appellants and Mr. V. Paneerselvem, learned counsel appearing for the respondent.

5. Nothing is in dispute, except the question whether the period between 28.08.1981 and 02.05.1989, is required to be included in service or not. The learned Single Judge, taking into consideration the fact that similarly placed persons were given the benefits and the proposal for inclusion of the aforesaid period in service of the respondent was given by the 5th appellant to the 1st appellant through the 3rd and 4th appellants, directed the authorities to decide the matter in tune with the proposal.

6. However, the learned counsel for the appellants would submit that the direction has been complied with by rejecting the petitioner's claim stating that the writ petitioner has already retired from service and therefore, it could not be given. Further, it has been mentioned that the respondent was already appointed even before the issuance of the Board Proceedings, dated 05.02.1990 and therefore, the respondent's name could not be included in the list. The list itself was intended only for the persons, whose services were not regularized.

7. When the respondent's service was already regularized as early as on 03.05.1989, he is deemed to be in service for the aforesaid period for which, the respondent seeks regularization. The respondent/writ petitioner was already appointed through Employment Exchange and his services were regularized from 28.08.1981 to 02.05.1989, even after transferring from Sivagangai to Nagercoil, he is deemed to be in service and the period from 28.08.1981 to 02.05.1989, has to be deemed as a service period. Therefore, the period from 28.08.1981 to 02.05.1989 should be included in the service period and the benefits should be extended to the original writ petitioner.

8. More over, the similarly placed persons were already given the benefits and hence, there could not be any problem. Further, the appellants 3 to 5 have already recommended the case of the writ petitioner for inclusion of the service for the above period and therefore, there could not be any prohibition to include the aforesaid period in the service of the petitioner or regularizing the said service period and to grant consequential benefits.

9. In view of the above, the Writ Appeal is dismissed and the consequential order passed by the authorities dated 27.03.2017 is also set aside and there shall be a direction to the appellants in the following terms:

(i) The petitioner is entitled to regularization of the service period from 28.08.1981 to 02.05.1989.

(ii) The appropriate consequential orders have to be passed within a period of 12 weeks from the date of receipt of a copy of this order.



(iii)The consequential benefits should be settled to the petitioner within a period of 4 weeks thereafter.

10.No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

- 1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board (TWAD),
No.31, Kamarajar Salai,
Chepauk, Chennai-5.
- 2.The Secretary cum General Manager,
Tamil Nadu Water Supply and Drainage Board (TWAD),
No.31, Kamarajar Salai,
Chepauk, Chennai-5.
- 3.The Chief Engineer,
TWAD Board,
Madurai.
- 4.The Superintendent Engineer,
TWAD Board,
Sivagangai District.
- 5.The Executive Engineer,
TWAD Board,
RWS Division,
Sivagangai District.

+1cc to M/S.V.Paneerselvam, Advocate SR.No. 41350

W.A. (MD) No.33 of 2018

and

W.M.P. (MD) No.190 of 2018

09.01.2018

dss/Ns

JM/SV MMS/SAR 4/13.02.2018/4P/7C