

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

And

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Review Application No.127 of 2019

Against

W.A.No.1325 of 2018

M.Selva Micheal

... 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, W.R.O./P.W.D.
Public Works Department,
Citraru Basin Division,
Tenkasi - Tirunelveli - Dt.

... Respondents

Prayer:

Review application filed under Order 47 Rule 1 read with Section 114 of Civil Procedure Code praying to review the order in W.A.1325 of 2018 dated 02.07.2018.

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 02.01.2018 made in W.P.No.27801 of 2017 by a learned Single Judge filed 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 date 3.2.2017 and quash the same and consequently direct the 1st respondent to regularise the service of the petitioner on completion of 10 years of service and to extend all service and monetary benefits.

For Petitioner : Ms.S.Esairani Narasimman

For Respondents: Mr.K.Ravikumar
Additional Government Pleader

O R D E R

(Order of the Court was made by T.S.SIVAGNANAM,J.)

Heard Ms.S.Esairani Narasimman, learned counsel for the petitioner and Mr.K.Ravikumar, learned Additional Government Pleader for the respondents.

2.This review application has been filed to review the judgment and order in W.A.No.1325 of 2018.

3.The Government of Tamil Nadu have filed the writ appeal against the order in W.P.No.27801 of 2017 which was filed by the petitioner herein for Writ of Certiorarified Mandamus to quash the order passed by the Chief Engineer (General) and Engineer in Chief W.R.O., dated 03.02.2017 and to direct the State Government to regularise the service of the petitioner on completion of 10 years of service and to extend all service and monetary benefits.

4.The writ petition was allowed by order dated 02.01.2018. The operative portion of the order reads as follows:

"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 pursuance 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 Department 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."

5.The State Government and the Public Works Department filed writ appeal contending that the petitioner herein is not eligible for regularisation as per G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. However, the petitioner contended that he had completed above 10 years of service by excluding the contract labour period as on 01.01.2006. When the petitioner raised such an objection before the Division Bench, on behalf of the respondents, the learned Special Government Pleader submitted that the petitioner has not furnished the details and particulars with regard to the period from which he was working as NMR and also when he has completed 10 years to regularise the services.

6.Taking note of the said submission, the Division Bench by judgment dated 02.07.2018 disposed of the writ appeal with the following direction:

"5.In view of the submission now made by the learned Special Government Pleader appearing for the State, it is for the writ petitioner/respondent to submit all the particulars and details satisfying the requirement of the G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department dated 28.2.2006 to the appellants to regularise his service, if he is continuously working as NMR for 10 years, within a period of two months from the date of receipt of a copy of this Order.

On receipt of the same, it is for the appellants to take into consideration of the same and to proceed further in accordance with law by extending the service and

monetary benefits to the respondent herein, within a period of two months thereafter, if the respondent herein has satisfied the requirement criteria as per G.O.Ms.No.22 cited above."

7. In terms of the above direction, the petitioner herein was required to submit all the particulars and details satisfying the requirement of G.O.Ms.No.22 and a direction was issued to the respondents to take into consideration those particulars and proceed in accordance with law by extending service and monetary benefits to the petitioner within a specified period, if the petitioner has satisfied the requirement criteria as per G.O.Ms.No.22.

8. The learned counsel for the petitioner has drawn the attention of this Court to a proceedings of the Executive Engineer, Chitraru Irrigation Division, Thenkasi Quarters, Kuttralam dated 01.06.2010 addressed to the Superintendent Engineer WRD/PWD, Thamirabarani Irrigation Scheme, Tirunelveli. In the said proceedings, the Officer has specifically stated that the petitioner and 10 others have completed 10 years of continuous service on daily wages. The learned counsel also drawn the attention of this Court to another proceedings of the Superintending Engineer, WRD/PWD, Thamirabarani Irrigation Scheme, Tirunelveli dated 28.06.2010 which also certifies that the petitioner has completed 10 years of continuous service on daily wages and that the Service Register, 2/1 Division Format-6, Form 1 and II and other Certificates were forwarded to the Chief Engineer WRD/PWD, Madurai Division, Madurai.

9. The learned counsel for the petitioner has also referred to another proceedings of the Assistant Executive Engineer WRD/PWD, Nambiyaru Irrigation Sub-Division, Nanguneri, dated 30.12.2013, to show that the petitioner has been continuously working on daily wages. Therefore, it is the contention of the learned counsel that the respondents ought to have regularised the petitioner's service. On the contrary, an order was passed by the Principal Chief Engineer rejecting the representation without taking note of any of the particulars.

10. In our considered view, the contention advanced by the learned counsel for the petitioner, before us, cannot be the grounds of review and at best, can be a ground to quash the proceedings of the Principal Chief Engineer received by the petitioner on 06.09.2018, rejecting the petitioner's claim for

regularisation.

11.For such reason, we are not inclined to entertain the review application. Accordingly, the same is dismissed. However, the dismissal of the review application will not stand in the way of the petitioner to work out his remedies as against the orders passed by the Principal Chief Engineer.

12.Accordingly, the review application is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

pri

To

- 1.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, W.R.O./P.W.D.
Public Works Department,
Citraru Basin Division,
Tenkasi - Tirunelveli - Dt.

+1cc to Mr.S.Esairani Narasimman, Advocate SR.No.58848

Review Application No.127 of 2019
Against
W.A.No.1325 of 2018

KS(CO)
GMY(02/08/2019)