

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.12683 of 2005

G.Sivaprakasam,
Work Inspector Grade-I,
Tamil Nadu Water Supply and Drainage Board,
R.W.S.Division,
Arni 632 301,
Thiruvannamalai District. ... Petitioner

Vs.

1. The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
R.W.S.Division,
Thiruvannamalai,
Thiruvannamalai District.
2. The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai 5. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records connected with the order Ka.No.4156/N1A/2004, dated 07.10.2004 passed by the first respondent and quash the same and further direct the respondents to regularise the petitioner service from 30.04.1973, the date on which the petitioner have completed 480 days of continuous service in 24 calendar months by conferring permanent status and disburse the consequential benefits.

For Petitioner : Mr.G.P.Arivuchudar
For Respondents : Mr.S.Eraskine Leo, for RR1 & 2

O R D E R

This petition has been filed to quash the order dated 07.10.2004 in Ka.No.4156/N1A/2004 passed by the first respondent and direct the respondents to regularise the petitioner's

service from 30.04.1973, the date on which the petitioner had completed 480 days of continuous service in 24 calendar months and disburse the consequential benefits.

2. The case of the petitioner is that since he had joined the service of the respondent-Board on 22.12.1971 and completed 480 days of continuous service in 24 calendar months with effect from 30.04.1973, his service ought to have been regularised from 30.04.1973 onwards. Since the respondents had rejected the petitioner's request to regularise his service from 30.04.1973 onwards, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submitted that the petitioner herein was appointed as a watchman on 22.12.1971 and since he had put in 480 days of continuous service in 24 calendar months from 30.04.1973 onwards, he deserves to be confirmed with permanent status from that date onwards.

4. According to the learned counsel for the petitioner, the Workers Union had entered into a settlement with the Management under Section 12 (3) of the Industrial Disputes Act on 08.08.1996, in which, it was agreed that the notional permanent status would be extended to all workers, who had put in 480 days of continuous in service in 24 calendar months. Since the petitioner had also put in 480 days, he is entitled for the benefits of the agreement.

5. The learned Standing Counsel for the respondents submitted that the petitioner herein was not among the list of workers, who were considered under the 12 (3) settlement, and therefore he is not entitled for the benefits. Even otherwise, he would submit that the petitioner had already been regularised with effect from 01.01.1979 and therefore, the present prayer doest not deserve consideration.

6. I have given careful consideration to the submissions made by the respective counsels.

7. It is not in dispute that the petitioner herein had joined duty as a watchman on 22.12.1971 and he had completed 480 days of continuous service in 24 calendar months with effect from 30.04.1973. The Union had entered into a settlement under Section 12 (3) of the Industrial Disputes Act on 08.08.1996, wherein, it was agreed in clause (2) that the workers who had completed 480 days of continuous service within 24 calendar months will be given permanent status with effect from the date they had completed 480 days of continuous service and their annual pay increment will be notionally fixed and the monthly wages will be accordingly revised. It was further agreed in the said settlement that the monthly benefits will be extended to

such employees with effect from 01.08.1996 onwards.

8. Since the petitioner herein had also completed 480 days of continuous service with effect from 30.04.1973, such notional fixation of permanent status of service, ought to have been extended to him. As such, the petitioner would also be entitled for the consequential benefits arrived at between the respondent Board and the Worker's Union.

9. At this juncture, the learned counsel for the petitioner relied upon the decision of the Division Bench of this Court dated 25.06.2012 passed in similar circumstances in Writ Appeal No.375 and 376 of 2008 in the case of the Executive Engineer, RWS Division, Tamil Nadu Water Supply and Drainage Board vs. Nagendramani and another, wherein it was held that the benefits given to the other employees would enure to the benefit of the petitioners therein also. The aforesaid decision arises out of the same Section 12 (3) settlement arrived on 08.08.1996 by the respondent Board with their Association, wherein, the Hon'ble Division bench had observed that Section 12 (3) settlement had categorically brought in all the persons within one frame work and when they had completed 480 days within a period of two years, they are required to regularise on the date of completion of 480 days.

10. In view of the agreement under Section 12 (3) of the Industrial Disputes Act entered into between the respondent Board and the Union and also on account of the indisputable fact that the petitioner herein had completed 480 days of continuous service within 24 calendar months on 30.04.1973, the petitioner is entitled for the benefit of the said settlement.

11. However, the first respondent, without appreciating the aforesaid facts, had passed the impugned order on 07.10.2004 holding that the petitioner's services had been regularised with effect from 01.01.1979 and therefore, he is not entitled to the benefits of 12 (3) settlement. Apparently, such a reasoning given in the impugned order is erroneous, in view of the observations made by the Division Bench of this Court in the aforesaid decision. Accordingly, the order dated 07.10.2004 in Ka.No.4156/N1A/2004, passed by the first respondent is set aside. Consequently, there shall be a direction to the second respondent herein to notionally regularise the petitioner's service with effect from 30.04.1973, on which date the petitioner had completed 480 days of continuous service in 24 calendar months and disburse all the consequential monetary benefits to the petitioner as expeditiously as possible, in any event, within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that though the petitioner's service was notionally regularised from 30.04.1973

onwards, the respondents herein shall calculate his monthly pay increments and re-fix his monthly wages and pay the arrears of wages from 01.08.1996 onwards.

12. With the above observations and directions, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar (CJ Conf)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
R.W.S.Division, Thiruvannamalai,
Thiruvannamalai District.
2. The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk, Chennai 5.

+lcc to Mr.S.Eraskine Leq, Advocate, S.R.No. 37440
+lcc to Mr.Law Square, Advocate, S.R.No. 37638

W.P.No.12683 of 2005

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