

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.04.2019  
Delivered on : 23.04.2019

C O R A M

THE HONOURABLE MR. JUSTICE M.VENUGOPAL  
AND  
THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.9256 of 2019

R.Lakshminarayanan  
Working as Iceman,  
Office of the Project Officer,  
Fisheries Department,  
Puducherry. .... Petitioner

Vs.

- 1.Union of India  
Rep. by the Government of Puducherry  
through the Secretary to Government(Fisheries),  
Chief Secretariat, Puducherry.
- 2.The Director  
Directorate of Fisheries,  
Puducherry.
- 3.The Registrar,  
Central Administrative Tribunal,  
Madras Bench. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari cum Mandamus to call for the records of the 3rd Respondent in O.A.No.801 of 2015 dated 11.12.2018 and to quash the same and consequently to direct the Respondents 1 and 2 to regularize his service with effect from 26.04.2000, the date on which the Petitioner was re-engaged.

For Petitioner : Mr.V.Ajaykumar

For Respondent : Mr.Syed Mustafa  
Spl. Government Pleader  
(Puducherry) for R1 and R2

O R D E R

SENTHILKUMAR RAMAMOORTHY.J.,

This Writ Petition has been filed for a Writ of Certiorari cum Mandamus to quash the Order dated 11.12.2018 in O.A.No.801 of 2015 and consequently direct the Respondents 1 and 2 to regularise the services of the Petitioner with effect from 26.4.2000.

2.The case of the Petitioner is that he was appointed as an Iceman in the Fisheries Department, Puducherry on 12.10.1995. On 23.05.1996, sanction orders were issued for the continuation of the services of four others as Icemen on daily wage basis, whereas the Petitioner did not receive such a sanction order. He further states that he was reinstated on 26.04.2000 and that he submitted a representation in July 2000 for regular appointment but he was appointed on regular basis only on 28.08.2006. Accordingly, the Petitioner states that he was constrained to approach the First Respondent by filing O.A.No.801 of 2015, which was dismissed by Order dated 11.12.2018. According to the Petitioner, the First Respondent failed to consider that his name was deliberately omitted by the authorities when extension of daily wage appointments was given in 1996. He further states that the First Respondent wrongly concluded that he was absent from duty from 04.02.1996 onwards. He also submits that even if he was re-engaged on 26.04.2000, 50% of his daily wage service ought to be reckoned by adding the same to his regular service for purposes of fixation of pension and, if it was so reckoned, he would be entitled to pension under the old pension scheme.

3.At the hearing, the learned counsel appearing for the Petitioner reiterated the averments in the affidavit. In particular, the learned counsel referred to the appointment Order dated 12.10.1995 and the joining report dated 13.10.1995. He also referred to the representation issued by the Petitioner in July 2000 and the Order dated 28.08.2006 appointing the Petitioner on regular basis. By drawing reference to paragraph 3 of the affidavit, the learned counsel submitted that it is stated therein that the Petitioner comes within the purview of the old pension scheme and is, therefore, entitled to consequential benefits from the year 1998 when his juniors were regularised.

4.In order to substantiate his submissions, the learned counsel for the Petitioner also referred to and relied upon the order of this Court in THE PONDICHERRY PWD TEMPORARY STATUS WORKERS ASSOCIATION AND ANOTHER Vs. UNION OF INDIA AND OTHERS in W.P.No.5102 of 2011, wherein, by Order dated 27.04.2011, this

Court held that the Order passed therein by the Tribunal was illegal in view of the fact that temporary status was conferred on the casual labourers, in that case, with effect from 01.09.1993 and, consequently, the said persons became entitled to the benefits of General Provident Fund on completion of three years of continuous service after being conferred temporary status, whereas the Petitioners therein were discriminated against. The other order that was relied upon by the learned counsel for the Petitioner is an order of the First Respondent in C.RAJENDIRANE Vs. UNION OF INDIA AND ANOTHER in O.A.No.573 of 2008. In the said case, the applicant therein was engaged as a daily rate Telephone Operator and continued in that position from the date of appointment for more than 10 years. In the said circumstances, the Tribunal directed the Respondents to regularise the services of the Applicant from the date of creation of the post, i.e. From 24.10.2007.

5. In response, the learned counsel appearing for the Respondents pointed out that the Petitioner was engaged as an Iceman on daily rated basis from 13.10.1995 to 13.02.1996, i.e. four months only and that he was not considered for regularisation in 1998 when others were regularised because he was not in employment at the relevant time. He also submitted that the services of the Petitioner were re-engaged on 28.08.2006 on temporary basis. Upon receipt of repeated representations from the Petitioner, it was also pointed out that, by letter dated 30.01.2004, the Petitioner was informed that his name would be considered as and when a vacancy arises in the post of Iceman in future. In addition, the learned counsel for the Respondents referred to the Original Application filed before the First Respondent. In particular, the learned counsel pointed out that the said Application was filed in April 2015, much after the expiry of the period of limitation for challenging the non-regularisation of the Petitioner. In this regard, the learned counsel for the Respondents referred to the reply statement filed by the Second Respondent before the First Respondent wherein it was pointed out that the Petitioner did not continue in employment on daily rated basis and that, therefore, the daily rated icemen who continued in employment were appointed on regular basis in December 1988 and December 1999. By contrast, in view of the fact that the Petitioner did not provide services from March 1996 to 25.04.2000, it was submitted that the Application was devoid of merit.

6. The affidavit, documents on record, pleadings before the First Respondent and oral submissions before this Court were duly considered.

7. The documents disclose, in no uncertain terms, that the Petitioner was appointed on daily rated wages, i.e. on temporary basis, on 12.10.1995. It is the admitted position that the

Petitioner did not continue in employment on daily rated basis from 14.02.1996 onwards. It is also the undisputed position that he was re-engaged, albeit on temporary basis on 28.08.2006. In these facts and circumstances, the Petitioner requested the First Respondent in the Original Application for regularisation of his services from 1998 merely because the Petitioner's contemporaries were regularised in 1998. However, the critical difference between those persons and the Petitioner is that they continued in the employment of the Second Respondent from the time of appointment until regularisation in 1998. On the other hand, the Petitioner did not continue in employment after mid February 1996. Accordingly, his request for regularisation with effect from 1998 is untenable.

8.The implications of the two Orders that were relied upon by the learned Counsel for the Petitioner should also be examined. On perusal of the Order dated 27.04.2011 in W.P.No.5102 of 2011, it is evident that the facts and circumstances in which the Order was passed is completely different from that prevailing in the instant case in as much as the daily wage casual labourers, in that case, continued in employment but were regularised after their juniors. Similarly, the Order dated 31.12.2009 of the first Respondent in O.A.No.573 of 2008 was in the factual context of a daily rated Telephone Operator who was in continuous employment for more than 10 years without regularisation. Therefore, the said orders are clearly distinguishable. Consequently, there is no reason to interfere with the Impugned Order of the First Respondent.

9.In fine, the Writ Petition is dismissed but there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government(Fisheries),  
Union of India  
The Government of Puducherry  
through the Secretary to Government(Fisheries),  
Chief Secretariat, Puducherry.

2.The Director  
Directorate of Fisheries,  
Puducherry.

3.The Registrar,  
Central Administrative Tribunal,  
Madras Bench.

+lcc to Mr.V.Ajayakumar, Advocate, S.R.No.40182

W.P.No.9256 of 2019

GP (CO)

RRS (19/06/2019)



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