

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.11.2019

Coram

The Honourable Mr.Justice D.KRISHNAKUMAR

W.P.No.41120 of 2016
and W.M.P.Nos.35110 & 35111 of 2016

K.Panneer Selvam

...Petitioner

Versus

1.The Engineer-in-Chief and
Chief Engineer (Buildings),
Public Works Department,
Chepauk, Chennai - 600 005.

2.The Superintending Engineer,
Public Works Department,
(Electrical Division - No.1),
Chepauk, Chennai - 600 005.

3.The Electrical Engineer,
Public Works Department,
(Electrical Division No.1),
Chepauk, Chennai - 600 005.

4.The Assistant Executive Engineer (PWD),
Electrical Sub-Division,
Chepauk, Chennai - 600 005.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records connected in Lr.No.BA.2/1738/2014, dated 18.11.2014 of the third respondent and Lr.No.AEE(E)/187/2016, dated 26.09.2016 of the fourth respondent and quash the same and direct the respondents to reinstate the petitioner into service with all consequential benefits.

For Petitioner : Mr.G.Elanchezhian
For Respondents : Ms.K.Bhuvaneswari,
Additional Government Pleader

O R D E R

The relief sought for in the present writ petition is to call for the records connected to Lr.No.BA.2/1738/2014, dated 18.11.2014 of the third respondent and Lr.No.AEE(E)/187/2016, dated 26.09.2016 of the fourth respondent, quash the same and direct the respondents to reinstate the petitioner into service with all consequential benefits.

2. It is the case of the petitioner that the petitioner was working as Nominal Muster Roll Helper on daily wage basis in Public Works Department, Electrical Division, Chennai from 01.04.2003. In the year 2005, there was a dispute in the petitioner's village regarding the construction of the Village Temple. During the course of time, one Mr.Arjunan lodged a police complaint against the petitioner and his family members and a case was registered in PRC.No.14 of 2007 on the file of the Judicial Magistrate, Musiri. When the said criminal case was pending enquiry during 2005, no departmental action was initiated against the petitioner till 2009. After receiving the representation from the opposite party, in the year 2010, the petitioner was suddenly ousted from service orally by the respondent stating that a criminal case was pending against him. The Additional District & Sessions Court No.III, Tiruchirapalli vide judgment dated 21.03.2014, acquitted the petitioner from the said criminal case. The petitioner had been acquitted under Section 147, 148, 324, 307 r/w. 149, 506(2) of IPC, 235(1) of Cr.P.C.

3 Thereafter, the petitioner sent a representation on 20.04.2014 to the first respondent along with a copy of the judgment, dated 21.03.2014 requesting him to re-appoint him in the post of NMR helper, however, the same was not considered by the respondent. Hence, the petitioner filed a writ petition in W.P.No.25491 of 2014 before this Court seeking direction to the first respondent herein to consider his representation dated 20.04.2014 on merits and in accordance with law, to absorb him into service under the respondent as Electrician, pursuant to the acquittal made by judgment dated 21.03.2014 in PRC No.14 of 2007 on the file of the Judicial Magistrate, Musiri within a reasonable time, by considering his earlier service in Public Works Department.

4 By order dated 18.09.2014, this Court disposed of the said writ petition with a direction to the first respondent to consider the representation of the petitioner, dated 20.04.2014 and pass appropriate order on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

5 Subsequent to the aforesaid order of this Court, the third respondent sent a communication to the second respondent vide Letter in Lr.No.BA2/1738/2014, dated 18.11.2014 stating

that the representation of the petitioner may not be considered in view of the ban on engaging NMR in G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013. The petitioner was also served with a copy of the said Letter. So, immediately, the petitioner submitted a representation dated 21.07.2016 to the fourth respondent, however, the same was rejected by the fourth respondent vide Letter in Lr.No.AEE(E)/187/2016, dated 26.09.2016. Hence, the petitioner left with no other alternative, the petitioner has filed the present writ petition for the relief stated supra.

6. The learned counsel for the petitioner submitted that though the petitioner worked in PWD Department for a period of 7 years without any blemish of records, he was ousted from service on the basis of a false complaint registered against him in PRC.No.14 of 2007 on the file of the Judicial Magistrate, Musiri. He further submitted that in the communication dated 18.11.2014, the third respondent had stated that the representation of the petitioner may not be considered since as per G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013, there is a bar in engaging a NMR. The said G.O is dealt with regularization of service. The respondents totally misunderstood that the petitioner is seeking for regularization of service, whereas, the petitioner is claiming re-instatement.

7 He would submit that the petitioner made a representation dated 21.07.2016 to the fourth respondent but the same was rejected. He would further submit that the petitioner also gave a undertaking that he will not claim any regularisation in view of the G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013 and he is seeking only for re-appointment as NMR. He therefore prayed that the present writ petition may be allowed.

8. In the counter affidavit filed by the fourth respondent, it is stated as follows:

(i) The petitioner had not been engaged as Nominal Muster Roll, Helper in the Public Works Department from 22.12.2009 as his services were not required further in the PWD Project works.

(ii) The petitioner was only temporarily engaged as NMR and the respondent Department cannot regularize his service in accordance with G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 since there is a law in engaging NMR in PWD.

9 The learned Additional Government Pleader appearing for the respondents would rely on the judgment, Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and Others reported in (2014) 4 SCC 769, wherein, the Honourable Supreme Court held as follows:

"5. The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularized. The issue is no more res integra.

6. In State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806, this Court held as under:

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

7. In Union of India & Ors. v. A.S. Pillai & Ors., (2010) 13 SCC 448, this Court dealt with the issue of regularisation of part-time employees and the court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

8. This Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"8(i) The High Courts, in exercising power under Article 226 of the Constitution

will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are

not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute." (Emphasis added)

9. The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgment. Therefore, the appeals are allowed. However, in light of the facts and circumstances of the case as Shri P.P. Rao, learned senior counsel has submitted that the appellant has already implemented the impugned judgments and does not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected.

10. With the aforesaid observations, the appeals stand disposed of accordingly. No order as to costs."

10. From the aforesaid contention of the parties, the writ petitioner was not engaged as N.M.R. Helper after 22.12.2009 as his service was not required for the project works. The contention of the writ petitioner that he was ousted from service on the ground of pendency of criminal case against him. Pursuant to the criminal case registered against him in PRC.No.14 of 2007 on the file of the Judicial Magistrate, Musiri, he made a representation to the respondent on 21.7.2016 to re-engage him as N.M.R., however, the same was rejected by the respondent on 26.9.2016 on the ground that his service was not required for the project works and also his service cannot be regularized in view of the guidelines prescribed in G.O.Ms.No.74, Personnel and Administrative Reforms, dated 27.6.2013. Therefore, the request of the petitioner was rejected by relying on upon the said Government order. Counsel for the petitioner submitted that the petitioner is not seeking regularisation of service, but he is only seeking re-engage as N.M.R. in the respondent department.

11. On contrary, the respondent had rejected the request of the petitioner by relying upon the G.O.Ms.No.74, Personnel and Administrative Reforms, dated 27.6.2013. The relief sought for by the petitioner is to re-engage him in the department. To meet the ends of justice, this Court is inclined to pass the following order:

(i) The writ petitioner is permitted to make fresh representation to the respondent within a period of two weeks from the date of receipt of a copy of this order.

(ii) On receipt of such representation, the respondent shall consider the same and pass appropriate orders within a period of twelve weeks thereafter.

12. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(JJ ACT)

//True Copy//

Sub Assistant Registrar

mrr
To

- 1.The Engineer-in-Chief and Chief Engineer (Buildings), Public Works Department, Chepauk, Chennai - 600 005.
- 2.The Superintending Engineer, Public Works Department, (Electrical Division - No.1), Chepauk, Chennai - 600 005.
- 3.The Electrical Engineer, Public Works Department, (Electrical Division No.1), Chepauk, Chennai - 600 005.
- 4.The Assistant Executive Engineer (PWD), Electrical Sub-Division, Chepauk, Chennai - 600 005.

+1cc to Mr.G.Elanchazhiyan , Advocate SR.No. 9743
+1 cc to Government Pleader Sr.No. 97625

W.P.No.41120 of 2016

mp (CO)
A.SK(07/02/2020)