



W.A(MD)Nos.664 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2023

CORAM :

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**W.A(MD)Nos.232 & 664 of 2019
and
C.M.P(MD)No.5674 of 2019**

W.A(MD)No.232 of 2019:

G.Neelamegam

.. Appellant/Petitioner

Vs.

1.The Secretary to Government,
Highways Department,
Fort St.George,
Chennai-600 009.

2.The Chief Engineer,
Highways and Rural Works Department,
Chepauk, Chennai- 600 005.

3.The Divisional Manager,
Highways Department,
Construction and Maintenance Division,



W.A(MD)Nos.664 of 2019

Madurai-625 002.

4.The Assistant Divisional Manager,
Highways Department,
Construction and Maintenance,
Madurai West, Tallakulam,
Madurai.

.. Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act,
against the order, dated 22.01.2018, made in W.P(MD)No.1305 of 2016.

For Appellant : Mr.R.Devaraj

For Respondents : Mr.D.Sasikumar
Additional Government Pleader

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Construction and Maintenance,
Madurai West, Tallakulam,
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.. Appellant/Respondents

Vs.

G.Neelamegam

.. Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order, dated 22.01.2018, made in W.P(MD)No.1305 of 2016.

For Appellant : Mr.D.Sasikumar
Additional Government Pleader

For Respondents : Mr.R.Devaraj

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.

Neelamegam, the petitioner in W.P(MD)No.1305 of 2016 joined Highways Department as NMR in the year 1980. On passing of G.O.Ms.No. 184, Highways Department, dated 24.09.1997, he approached the State Administrative Tribunal to regularise his service in the post of Salai Paniyalargal. His O.A.No.5465 of 2006 was transferred to the High Court in



W.A(MD)Nos.664 of 2019

view of abolition of Service Tribunals. It was taken on file as W.P(MD)No. 28843 of 2006.

2. The said writ petition was filed by eight persons joined together in which the petitioner was ranked as fourth petitioner. On 22.04.2009, while the writ petition was taken up for consideration, recording the undertaking given by the learned Government Advocate that out of eight petitioners, Nehru and Neelamegam whose names are in Sl.No.2 and 4 have completed 10 years of service and therefore proposal for regularising their service is under consideration by the Government, the writ petition was dismissed. Even thereafter, his service was not regularised which has forced the petitioner Neelamegam to file another writ petition seeking mandamus for passing order regularising his service and absorbed him as Salai Paniyalar. This writ petition in W.P(MD)No.14615 of 2011 was disposed of on 07.11.2012 recording the undertaking given by the Special Government Pleader who again reiterated the request of Neelamegam is under consideration and proposal already been sent to the Government. The Court, while disposing the said writ petition also recorded that Neelamegam is



W.A(MD)Nos.664 of 2019

keep on making representation on various cases, but however, no order been passed in his case, but Highways Department vide order dated 09.11.2007 has regularised 77 similarly placed employees, who were working as daily wagers and completed 10 years of service on 01.01.2006, but the case of Neelamegam not yet considered inspite of the undertaking given by the State and also G.O.Ms.22, Personnel and Administrative Reforms Department, dated 28.02.2006 specifically directed the respondents to dispose of the writ petition within a period of three months from the date of receipt of the order copy.

3. Though the time bound order was passed on 07.11.2012, nearly after one year, the Assistant Divisional Engineer in his proceedings, dated 08.11.2013 issued reappointment order to Mr.Neelamegam as Salai Paniyalar on condition that his service will be given effect from the date of order ie., 08.11.2013. This order was challenged by Neelamegam in W.P(MD)No.130 of 2016 on the ground that his regularisation as Salai Paniyalar ought to have been given effect on completion of 10 years of service as NMR, ie., in the year 1990. But inspite of G.O.Ms.No.184 dated



W.A(MD)Nos.664 of 2019

24.09.1997 and directions of the Court to regularise the service in terms of G.O.Ms.184 dated 24.09.1997, the respondent which has relied upon G.O.Ms.No.22 dated 28.02.2006 has not given effect to the regularisation retrospectively but only prospectively only from 08.11.2013 thereby he has not only been deprived of his regular service by more than 23 years but also in view of the new Contributory Pension Scheme which has come into effect from 01.04.2003 he is deprived of the benefit of pension scheme. This writ petition was resisted by the Government stating that subsequent to passing of G.O.Ms.22 dated 28.02.2006, a clarification Government Order was issued by the Personnel Administration and Reforms Department in G.O.Ms.74 dated 27.06.2013 wherein it has been clarified that the effect of regularisation on completion of 10 years of service will come only from the date of regularisation and not with retrospective effect and in case of the writ petitioner, the date of order regularising his service being 08.11.2013, there is no legal infirmity in the order to interfere and issue certiorarified mandamus.



W.A(MD)Nos.664 of 2019

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4. However, the learned Single Judge, after considering the tenure of G.O.Ms.184 passed in the year 1997, the orders passed by the Court in the case of Neelamegam and the tenure of G.O.Ms.22 dated 28.02.2006 and the clarification G.O.Ms.74 dated 27.06.2013 found that the writ petitioner, on completion of 10 years of service was qualified for regularisation and his case ought to have been considered in the light of G.O.Ms.22 Personnel Administration and Reforms Department dated 28.02.2006 while several of his colleagues similarly placed been regularised with effect from 01.01.2006 in the light of G.O.Ms.No.22 of Personnel and Administrative Reforms Department dated 28.02.2006. The petitioner cannot be regularised with a subsequent date cannot be applied in the case of the writ petitioner to defer his regularisation by more than seven years and to the point that the writ petitioner has enter service through back door and therefore he cannot take advantage of the Government Order passed to regularise the service, the learned Single Judge has negatived his plea saying that the petitioner has been employed as gang mazdoor in the Highways Department for decades cannot be deprived off right to be regularised.



W.A(MD)Nos.664 of 2019

WEB COPY

5. The learned Single Judge has also clarified that the subsequent G.O.Ms.74 dated 27.06.2013 not applicable to the case of the writ petitioner since his right to get regularised in service been crystalised long before ie., issuance of G.O.Ms.22 dated 28.02.2006 and has been affirmed by the High Court in two writ petitions filed by Neelamegam earlier. Thus, the regularisation of the petitioner's service was given effect from 01.01.2006 and the writ petition was allowed. Aggrieved by the said order, Department has filed W.A(MD)No.664 of 2019. Neelamegam has preferred W.A(MD)No.232 of 2021. While State wants to apply the clarified G.O.Ms. 72, dated 27.06.2013, Neelamegam wants to apply earlier G.O.Ms.184, dated 24.09.1997 and to regularise his service soon after completion of 10 years, ie.1990.

6. This Court, on perusing the Government Orders passed in case of NMRs working in the Highways Department for years together and been regularised the post of Salai Paniyalar finds that the road mazdoors are NMRs, who were working in Highways Department for years together but



W.A(MD)Nos.664 of 2019

as a daily wagers with regular break in service were making several representation to the State to regularise their service and that was sympathetically considered in the year 1997 and G.O.Ms.184 was issued. On case to case basis the NMRs, who are completed successfully 10 years of qualified service were considered for regularisation under the said Government Order. However, similarly placed NMRs in other departments were also facing uncertainty in service and that was taken into account by the State while passing G.O.Ms.22 in the year 2006. By virtue of this Government Order, NMRs who had satisfactorily worked for 10 years prior to the cut off date ie. 01.01.2006 were regularised and since there was some confusion in interpreting the clause of the Government Order, G.O.Ms.74 came to be passed. It is only a clarification Government Order and a person to whom the right to get regularised acquired under G.O.Ms.22 cannot be deprived and his right cannot be delayed by virtue of clarification Government Order which is not applicable to the person like the petitioner herein. This point has been well considered by the learned Single Judge and he has ordered that the regularisation of the writ petitioner should be from 01.01.2006 and not on 08.11.2013. The delay in regularising his service is



W.A(MD)Nos.664 of 2019

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purely on the department and not on the writ petitioner. In fact his right to get regularisation was crystalised when G.O.Ms.184 was passed in the year 1997. However, it was only discretion of the department to consider the regularisation of service which depends on various other factor like the service put forth by the NMRs vacancy in the post of Salai Paniyalar and other factors. But once G.O.Ms.22 was issued, the parameters for regularisation been clarified, simplified and also it was broad based the Government Order. The writ petitioner Neelamegam squarely entitled for the benefit of that G.O.Ms.No.22 of Personnel and Administrative Reforms Department dated 28.02.2006 and get his service regularised from 01.01.2006. The postponement of the regularisation by the department is vitiated and therefore, the Single Judge who has pointed out the error and fixed the date of regularisation as 01.01.2006 is based on the light of facts and hence, it needs no interference.

7. For the said reason, the Writ Appeal filed by the State as well as the Writ Appeal filed by Neelamegam deserve to be dismissed, accordingly



W.A(MD)Nos.664 of 2019

dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

[G.J.,J.] & [K.K.R.K.,J.]

01.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
PJJ

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W.A(MD)Nos.664 of 2019

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