



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) Nos.786 to 788 of 2019

T.Kingsly Thaya Singh ... Appellant in W.A.(MD) No.786/2019
S.Sivakumar ... Appellant in W.A.(MD) No.787/2019
T.Justin Raj ... Appellant in W.A.(MD) No.788/2019

-vs-

- 1.The Chief Engineer General,
Highways & Rural Works Department,
Chepauk, Chennai - 5.
- 2.The Superintending Engineer,
Highways & Rural Works Department,
Tirunelveli.
- 3.The Divisional Engineer,
Highways & Rural Works Department,
Nagercoil,
Nagercoil District. ... Respondents in these appeals

Writ Appeals filed under Clause 15 of Letters Patent against the common order dated 11.01.2018, made in W.P.(MD) Nos.1895 to 1897 of 2010, on the file of this Court.

Prayer in WP(MD). 1895/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS calling for the records pertaining to the impugned order of the 3rd respondent in his proceedings Letter No. 1996/2007/B5, dated 13.11.2009 quash the same, and direct the respondents to regularize the service of the petitioner as Technical Assistant in the respondent department or in the alternative appoint the petitioner as Road Inspector in the respondent department, within a time frame fixed by this Honourable Court.



Prayer in WP(MD). 1896/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS calling for the records pertaining to the impugned order of the 3rd respondent in his proceedings Letter No. 1996/2007/B5, dated 13.11.2009 quash the same, and direct the respondents to regularize the service of the petitioner as Technical Assistant in the respondent department or in the alternative appoint the petitioner as Road Inspector in the respondent department, within a time frame fixed by this Honourable Court.

Prayer in WP(MD). 1897/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS calling for the records pertaining to the impugned order of the 3rd respondent in his proceedings Letter No. 1996/2007/B5, dated 13.11.2009 quash the same, and direct the respondents to regularize the service of the petitioner as Technical Assistant in the respondent department or in the alternative appoint the petitioner as Road Inspector in the respondent department, within a time frame fixed by this Honourable Court.

For Appellant in these : Mr.S.Govindan
appeals

For Respondents in these : Mr.A.Muthukaruppan
appeals Additional Government Pleader

COMMON JUDGMENT

[Common Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.S.Govindan, learned counsel appearing for the appellants and Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the respondents.

2.Since the issue involved in these Writ Appeals are one and the same, they are taken up together for disposal. By consent on either side, these Writ Appeals are also taken up for final disposal.

3.The Writ Petitions have been filed praying for a Writ of Certiorarified Mandamus to quash the order of the third respondent in his Letter No.1996/2CC7/B5, dated 13.11.2009 and to regularize the services of the appellants/writ petitioners as Technical



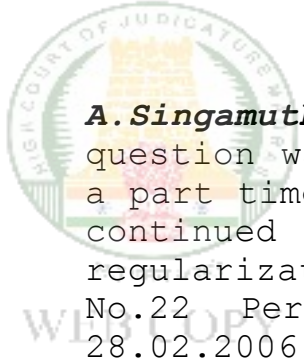
Assistant in the respondent Highways and Rural Works Department and appoint them as Road Inspectors.

4.The learned Single Bench examined the issue by applying the finding of the Hon'ble Supreme Court in **Secretary, State of Karnataka and Others v. Umadevi (3) and others [(2006) 4 SCC 1]** and took note of the relevancy of the decision. The Court also refers to the decision of the Hon'ble Supreme Court in the case of **Secretary to Government, School Education Department, Chennai v. R.Govindasamy and Others [(2014) 4 SCC 769]**, which pertains to part time employees, where the Hon'ble Supreme Court reemphasizes the law on regularization of part-time employees. Ultimately, the Writ Court, quoting the settled legal position of law laid down by the Hon'ble Supreme Court, held that regularization cannot be done and dismissed the Writ Petition.

5.After elaborately hearing the arguments of the learned counsel appearing for the appellants and the learned Additional Government Pleader appearing for the respondents, we find that the appellants regularization is not a solitary case before this Court. Consistently, the persons who were employed on contract basis in road laying works in the very same department, approach this Court. In fact, the first of challenge was before the Hon'ble Administrative Tribunal in O.A.Nos.1464 and 1470 of 2002, which was allowed by order dated 21.03.2002 and there is another order passed by the Tribunal in O.A.No.1857 of 2002 dated 15.04.2002. Subsequently, the Government passed order in G.O.(Ms.) No.22 Highways (HM2) Department dated 10.02.2006.

6.It is the submission of the learned Additional Government Pleader appearing for the respondents that the benefit of G.O. (Ms.) No.22 Highways (HM2) Department dated 10.02.2006 cannot be applied to the appellants as they worked for a brief period. This submission was not first time before this Court and that has been started from 2007 onwards and successfully those submissions were rejected and the Writ Petition orders were confirmed by the Division Bench and the orders of the Division Bench were confirmed by the Hon'ble Supreme Court as the Special Leave Petitions filed against those judgments were dismissed. In fact one of us (The Hon'ble Mr. Justice T.S.SIVAGNANAM) was also a party to the judgment of the Division Bench of this Court in W.A.Nos.47 and 385 of 2010 dated 23.06.2010. It appears that the decision referred to by the learned counsel appearing for the appellants were not placed before the learned Single Bench.

7.The learned Additional Government Pleader refers to the decision of the Hon'ble Supreme Court in the case of **Secretary to Government, Commercial Tax and Registration Department v.**



A.Singamuthu [(2017) 4 SCC 113]. In the said Writ Petition, the question was whether the respondent therein, who was appointed as a part time Masalchi through Employment Exchange on 01.04.1989 and continued to work as part time Masalchi would be entitled for regularization on completion of 10 years by applying G.O.(Ms) No.22 Personal Administration Reforms (F) Department, dated 28.02.2006. Considering those facts, the Hon'ble Supreme Court held that the benefit of G.O.(Ms) No.22 is applicable only to full time daily wages employees. The said stand has never been taken by the respondents before this Court. Therefore, the case afore cited does not apply to the facts of the case.

8.Be that as it may, we do not find any ground to take a different stand between the persons who were already granted the benefit and the appellants, as we are fully convinced that the directions issued in the earlier writ petitions and affirmed by the Division Bench would govern the present cases as well. However, we find that the order and direction issued in **W.P. (MD) No.8512 of 2014 dated 10.07.2015 in the case of V.Meenakshi Sundaram and others v. Secretary to Government, Highways Department and another** would be a reasonable order as it takes care of the interest of the appellant employees as well as that of the respondent Government. This decision has been confirmed in W.A.(MD) No.913 of 2015 dated 21.02.2017. The relevant portion of the judgment reads as follows:

"5.The learned Single Judge by order dated 10.07.2015, has allowed the Writ Petition, directing the appellants to regularize the services of the respondents from the date of the respondents approaching this Court in the earlier Writ Petition and affect monetary benefits with effect from 01.06.2015. In the said order, the learned Single Judge has also observed that the respondents are not entitled to backwages and that the period that the period of service during which they were actually working, which are mentioned in the counter and the said period alone shall be taken into account for the purpose of pensionary benefits and that period or any other period will not be taken into account for gratuity and other benefits. Aggrieved over the same, the present Writ Appeal has been filed."

9.Thus, following the above, these Writ Appeals are allowed and the respondents are directed to regularize the services of the appellants from the date on which they approached this Court by filing the writ petitions i.e., from 01.02.2010. However, the appellants are not entitled to backwages and the period of



service, which they were actually worked alone shall be taken into account for the purpose of pensionary benefits and that period and any other period will not be taken for gratuity and other benefits. No costs.

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Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

sj

To:

- 1.The Chief Engineer General,
Highways & Rural Works Department,
Chepauk, Chennai - 5.
- 2.The Superintending Engineer,
Highways & Rural Works Department,
Tirunelveli.
- 3.The Divisional Engineer,
Highways & Rural Works Department,
Nagerkoil,
Nagerkoil District.

+1 CC to M/s.R.RENGARAMANUJAM, Advocate (SR-87315,87316,87317[F]
dated 18/09/2019)

+1 CC to M/s.SPL GP (SR-87549[F] dated 18/09/2019)

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