



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2019

*Judgment Reserved
on:24.10.2019*

*Judgment delivered on:
04.11.2019*

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.655 of 2018

and C.M.P. (MD) No.3621 of 2018

- 1.The State of Tamil Nadu,
Through its Secretary,
Public Works Department,
Secretariat, Fort. St. George,
Chennai - 600 009.
- 2.The Principal Chief Engineer (Buildings) and
Chief Engineer (Buildings),
Chennai Range & Chief Engineer (General),
Public Works Department, Chepauk,
Chennai - 5. ... Appellants/Respondents

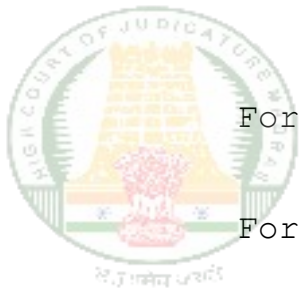
-vs-

N.Selvaraj ... Respondent/Writ Petitioner

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 01.12.2016, made in W.P.(MD) No.19870 of 2013, on the file of this Court.

Prayer in WP(MD) . 19870/ 2013 :

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 relating to the impugned order in Letter No.2153/C2/2008-21 dated 02.01.2012 and quash the same the consequently directing the Respondents to regularize the Petitioners service in the cadre of Work Inspector Grade-II Post, from 07.03.1990 with all attended monetary benefits and within a time frame fixed by this Honble Court.



For Appellants

: Mr.A.K.Baskarapandian
Special Government Pleader

For Respondent

: Mr.D.Ramesh Kumar

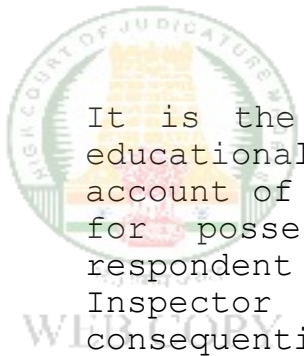
J U D G M E N T

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

This Writ Appeal by the State is directed against the order passed in W.P.(MD) No.19870 of 2013, dated 01.12.2016.

2.The respondent filed the said Writ Petition praying for issuance of a Certiorarified Mandamus, to quash the order passed by the first appellant and to direct the appellants to regularize the respondent's service in the cadre of Work Inspector Grade - II from 01.07.1990 with all attendant monetary benefits within a time frame.

3.The case of the respondent is that after completion of his SSLC on 29.03.1970, he registered his name with the employment exchange, based on his employment seniority, his name was forwarded to the office of the appellants and he was appointed as Head Mazdoor on 04.03.1980. Upon completion of 10 years of service, the respondent was brought into time scale of pay. The Superintending Engineer of the second appellant department by letter dated 11.07.1990 recommended that the respondent should be regularized in the post of Works Clerk Grade - I. Subsequently, the recommendation was altered by letter dated 24.07.1990, recommending that the respondent should be regularized as Work Inspector Grade - II. There was a further revised recommendation dated 15.11.1995, recommending that the respondent should be regularized in the post of Works Clerk Grade - I. Immediately, the respondent submitted a representation stating that he should be regularized as Work Inspector Grade - II. Considering the said representation, the Superintending Engineer revised his recommendation by letter dated 23.09.1996, recommending that the respondent be regularized as Work Inspector Grade - II. The respondent service was regularized as Head Mazdoor with effect from 01.07.1990 vide G.O.Ms.No.392, Public Works Department, dated 19.06.1998. Subsequently, the respondent submitted a representation that he should be regularized as Work Inspector Grade - II. However, the same was rejected by second respondent. This order was put to challenge by the respondent by filing O.A.No.7608 of 2001 before the Tamil Nadu Administrative Tribunal. After abolition of the Tribunal, the original application was transferred to the High Court and re-numbered as W.P.No.4399 of 2007. The said Writ Petition was disposed of by order dated 24.04.2008 with a direction to the appellants to consider the representation submitted by the respondent and pass orders taking note of the order passed in favour of one A.Subramanian in G.O.Ms.No.297, Public Works Department, dated 14.09.2007. When the said representation was pending, the respondent



It is the further case of the respondent that he fulfilled the educational qualification for the post of Work Inspector Grade II on account of an order passed by the Government waiving the requirement for possessing Bifurcated Engineering Course. Therefore, the respondent contended that he should have been regularized as Work Inspector Grade - II and he should have been extended all consequential benefits.

4.The appellants resisted the claim by stating that at no point of time the respondent worked as Work Inspector Grade - II and he was appointed as Head Mazoor as an NMR candidate and because of the decision taken by the Government to regularize those candidates, the Government orders were passed and the names of the candidates were specified in the Government Orders and the name of the respondent was mentioned in the Government Order and the post in which he was regularized is Head Mazdoor. Further, it is submitted that the case of A.Subramanian cannot be compared with that of the respondent as A.Subramanian was working in the department as Work Inspector Grade - II much prior to the respondent's joining service and the benefit of relaxation in educational qualification which was granted by the Government was applicable to A.Subramanian because on the said date he was working as Work Inspector Grade - II, hence, he was granted the benefit.

5.The learned Writ Court by the impugned order allowed the Writ Petition primarily on the ground that A.Subramanian has been promoted as Work Inspector Grade - II and the respondent also possesses the required qualification in the light of the amendment to the qualification dispensing the requirement to complete Bifurcated Engineering Course. Thus, the learned Writ Court came to the conclusion that the representation of the petitioner was not considered appropriately and therefore, set aside the proceedings of the first appellant dated 02.01.2012 and directed the first appellant to consider the case of the respondent and pass orders giving promotion as Work Inspector Grade - II from 01.07.1990. Aggrieved by the same, the appellants are before us by way of this Writ Appeal.

6.We have heard Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the appellants and Mr.D.Ramesh Kumar, learned counsel appearing for the respondent.

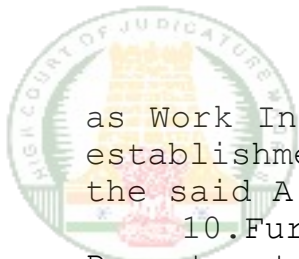
7.The undisputed facts are that the respondent was appointed as a Head Mazdoor as a nominal muster roll employee. The Government took a decision to bring the nominal muster roll employees, who have completed 10 years of service, into regular establishment. Various Government Orders were passed between 1990 to 1998 and those Government Orders listed the name of the candidates, to whom the benefit is extended. The order bringing the respondent into the regular establishment after completion of 10 years as nominal muster



roll employee was issued in G.O.Ms.No.392, Public Works Department, dated 19.06.1998. The said Government Order specifically states that the Government sanctioned the creation of 300 body constituted posts to accommodate the nominal muster roll employees. Such posts to continue till the incumbents vacate the post on retirement, promotion, appointed to other posts etc., and thereafter, the sanction will lapse. In the Annexure, the name of the respondent finds place in Sl.No.42. The respondent accepted the said order of regularization and he was brought under regular establishment. After being regularized as Head Mazdoor, the respondent submitted a representation to the second appellant stating that he should have been brought into regular establishment as Work Inspector Grade - II by considering the recommendation of the Superintending Engineer and also that the Government has exempted the Bifurcated Engineering qualification. The said representation was rejected by the second respondent by order dated 24.11.2000. This was challenged by the respondent by filing O.A.No.7608 of 2001 before the Administrative Tribunal. On the application being transferred to the High Court and re-numbered as W.P.No.4399 of 2007, the same was disposed of by order dated 24.04.2008, to consider the representation of the respondent along with the recommendations of the Superintending Engineering and the Government Order passed in favour of A.Subramanian. This representation was rejected, which was put to challenge in the Writ Petition, which has been allowed by the impugned order.

8.Firstly, the respondent could not have been granted any relief in the Writ Petition because he has not challenged G.O.Ms.No.392 Public Works (C2) Department dated 19.06.1998, which brings him into regular establishment. The said Government Order is not a blanket order, but specific to 300 body constituted posts. This is the reason why the names of the employees, who are brought under regular establishment in the respective post is specifically mentioned in the Annexure to the Government Order. Thus, in the absence of any challenge to the Government Order, which was accepted by the respondent without demur, no relief could be granted in the Writ Petition.

9.Further, the case of the respondent is that he has passed SSLC. The qualification for Work Inspector Grade - II as on the relevant date was a pass in SSLC and there was no requirement to possess qualification in Bifurcated Engineering Course, therefore, he should be treated on par with A.Subramanian. This submission is wholly untenable for the simple reason that A.Subramanian was granted the benefit because on the date when he was brought into regular establishment, he was working as Work Inspector Grade - II. The benefit of the amended qualification was extended to A.Subramanian. This benefit accrued to the said employee only because he was working as Work Inspector Grade - II on the date when the Government Order G.O.Ms.No.297 Public Works (C2) Department, dated 19.06.1998, was passed. Admittedly, the respondent did not work



as Work Inspector Grade - II prior to he being brought into regular establishment. Therefore, the respondent cannot claim parity with the said A.Subramanian.

10.Further, on a perusal of G.O.Ms.No.297 Public Works (C2) Department, dated 14.09.2007, it is seen that A.Subramanian's case was considered based on the direction issued by the Tribunal in O.A.No.6555 of 1996 filed by him. In the said Government Order it was noted that the said A.Subramanian was working as Head Mazdoor from 30.12.1974 to 31.03.1984 and as Work Inspector Grade - II with effect from 01.04.1984. The said A.Subramanian stated that he has been discriminatively not regularized as Work Inspector Grade - II from 01.04.1984 as done in the case of one O.Pandian and K.Palani and 5 others. Taking these facts into consideration, in terms of the direction issued by the Tribunal A.Subramanian was regularized in the post of Work Inspector Grade - II with effect from 01.01.1985 i.e much after he was functioning as Work Inspector Grade - II as NMR ie., with effect from 01.04.1984. Therefore, the Writ Court fell in error in treating the respondent and A.Subramanian on the same pedestal. Further more, the learned Writ Court erred in observing as if the post of Work Inspector Grade - II is a promotional post. This finding rendered by the Writ Court in paragraph 7 of the impugned order is contrary to the factual position.

11.The learned counsel appearing for the respondent would submit that there are other instances, where Government Orders have been passed in cases of Head Mazdoor, Mazdoor, Blumber, Clerk etc., regularizing them as Work Inspector Grade - II and Government Orders have been issued. Even assuming that certain orders have been passed by the Government, the same will not bind the Court as the Court is required to interpret the claim made by the respondent on the facts and circumstances and applying the correct legal principle. Thus, for the above reasons, we hold that the order and direction issued in the Writ Petition is un-sustainable.

12.In the result, the Writ Appeal is allowed and the order passed by the Writ Court in in W.P.(MD) No.19870 of 2013, dated 01.12.2016, is set aside and consequently, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

sj



To

1.The Secretary,
Public Works Department,
State of Tamil Nadu,
Secretariat, Fort. St. George,
Chennai - 600 009.

2.The Principal Chief Engineer (Buildings) and
Chief Engineer (Buildings),
Chennai Range & Chief Engineer (General),
Public Works Department, Chepauk,
Chennai - 5.

+1 CC to M/s.D.RAMESHKUMAR, Advocate (SR-95718[F] dated
04/11/2019)

+1 CC to M/s.SPL GP (SR-96087[F] dated 05/11/2019)

sj

W.A. (MD) No.655 of 2018
and C.M.P. (MD) No.3621 of 2018

04.11.2019

KK/SAR/12.11.2019/6P-5C/