



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2019

CORAM:

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE MRS.JUSTICE T.RAVINDRAN**

W.A. (MD) No.1095 of 2019

in

WP (MD) No. 18755 of 2015

V.Karuppasamy

.. Appellant/Petitioner

-vs-

1.The State of Tamil Nadu
rep.by its Secretary to Government
Public Works Department
Fort St.George, Chennai-600 009

2.Engineer-in-Chief
(Water Resources Organisation) and
The Chief Engineer
Public Works Department
Chepauk, Chennai-600 005

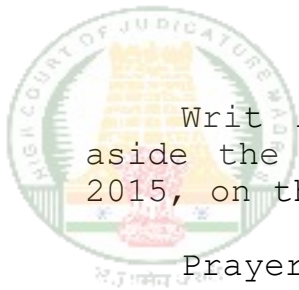
3.Chief Engineer
Water Resource Organisation
Public Works Department
Madurai Region
Madurai-2

4.Superintending Engineer
WRO/PWD
Vaippar Basin Circle
Virudhunagar

5.Executive Engineer
WRO/PWD
Vaippar Basin Circle
Virudhunagar

6.Assistant Executive Engineer
PWD/WRO
Vaippar Basin Sub Division
Vilathikulam, Thoothukudi District

... Respondents/Respondents



Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 27.06.2019, passed in W.P.(MD) No.18755 of 2015, on the file of this Court.

Prayer in WP(MD). 18755/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the records on the file of the 1st respondent in connection with the impugned order of rejecting regularisation passed in his Letter No.23249/C2/2009-9 dated 17.01.2014 and quash the same as arbitrary and unjustifiable and consequently direct the 1st respondent to regularise the petitioners service in the post of Lascar with effect from his initial appointment i.e.18.12.1978 based on the proposal sent by the 3rd respondent in his Letter No.C4/895/2006 dated 9.12.2006 as well as extended in the case of others in G.O.MS.No.134, Public Works(C2) Department, dated 07/05/2010 thereby sanction all service and monetary benefits with interest within the time limit that may be stipulated by this Court.

For Appellant : Mr.G.Thalaimutharasu
For Respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

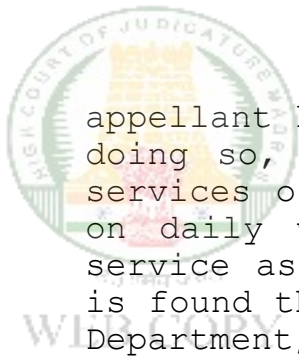
J U D G M E N T

[Judgment of the Court was made by T.RAVINDRAN, J.]

Challenge in this appeal is made to the order dated 27.06.2019, dismissing the writ petition filed by the appellant in W.P.(MD) No.18755 of 2015.

2. W.P.(MD) No.18755 of 2015 has been filed by the appellant to issue a writ of certiorarified mandamus to call for the records on the file of the first respondent in connection with the impugned order dated 17.01.2014 rejecting the regularisation, passed in Letter No.23249/C2/2009-9, and quash the same as arbitrary and unjustifiable and consequently direct the first respondent to regularise his service in the post of Lascar with effect from his initial appointment i.e.18.12.1978, based on the proposal sent by the third respondent in his Letter No.C4/895/2006, dated 09.12.2006, as well as extended in the case of others vide G.O.Ms.No.134, Public Works (C2) Department, dated 07.05.2010, thereby sanction all service monetary benefits with interest, within the time stipulated by this Court.

3. From the materials placed on record, it is found that the appellant's name has been sponsored by the Employment Exchange to the post of Mazdoor and on appointment to the abovesaid post, the



appellant had put in continuous service in the Department and while doing so, the Government took a policy decision to regularize the services of the employees working in various Government Departments on daily wage basis, who have completed more than ten years of service as on 01.01.2006 and based on the said policy decision, it is found that G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, had come to be issued.

4. Following the same, it is found that after collecting the service particulars of the appellant and finding that he had put in continuous service on daily wage basis for more than ten years since the date of joining of duty, a proposal dated 14.09.2006, had been sent by the sixth respondent informing that the appellant has put in continuous service of more than ten years and considering his length of service and also relaxing the Rules as regards the educational qualification, the proposal had been sent for regularization of the appellant's services, to the fifth respondent, namely, the Executive Engineer, Water Resources Organization, Public Works Department, Vaippar Basin Circle, Virudhunagar.

5. Further, it is found that a proposal had been sent by the third respondent, namely, the Chief Engineer, Water Resources Organization, Public Works Department, Madurai Region, on 09.12.2006, to the second respondent, namely, the Engineer-in-Chief, Water Resources Organization and the Chief Engineer, Public Works Department, Chepauk, Chennai, apprising that the appellant had put in continuous service from 18.12.1978 for more than ten years and considering the services put in by him and treating his case as a special case *qua* the educational qualification of the appellant, a recommendation had been made for regularizing his services and thus, it is found that the proposals for regularization of the services of the appellant had been submitted by the various Authorities, considering the length of service put in by him for more than ten years and also as a special case relaxing the educational qualification that he had acquired and even thereafter, as the services of the appellant had not been regularized and on the other hand, the services of the appellant had been failed to be considered for regularization one way or the other, it is found that the appellant had earlier moved writ petitions in the High Court seeking for appropriate orders to direct the respondents to regularize his services as per G.O.Ms.No.22, dated 28.02.2006.

6. In this connection, in W.P.(MD) No.6204 of 2009 preferred by the appellant seeking to regularize his services from the date of his appointment and pay all the service and monetary benefits with interest in the light of G.O.Ms.No.22, dated 28.02.2006 and based on the proposal sent by the third respondent as above pointed out, this Court, by order dated 15.07.2009, had directed the respondents 1 and 2 to consider the representation of the appellant, dated 19.04.2009, on merits and in accordance with law, after taking into



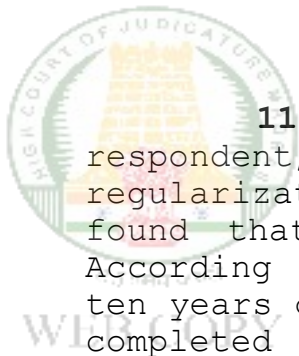
consideration G.O.Ms.No.22, dated 28.02.2006 and the recommendations made in this regard by the competent authorities, within a period of six weeks from the date of receipt of a copy of the order and accordingly, disposed of the abovesaid writ petition.

7. Even thereafter, as the services of the appellant had not been regularized, it is found that the appellant had preferred another writ petition in W.P.(MD) No.9378 of 2009 to quash the impugned order, dated 26.08.2009, passed by the sixth respondent as illegal and arbitrary and malafide and consequently, to direct the respondents 1 and 2 to regularize his services from the date of his initial appointment in the light of G.O.Ms.No.22, dated 28.02.2006 as well as based on the proposal sent by the third respondent as above pointed out and to pay all the service and monetary benefits with interest.

8. The abovesaid writ petition had also come to be allowed on 02.04.2013, whereunder, the impugned order had been quashed and the respondents 1 and 2 were directed to comply with the directions issued in the earlier writ petition in W.P.(MD) No.6204 of 2009, dated 15.07.2009 and take note of the recommendation made by the third respondent as above pointed out and pass appropriate orders so as to enable the appellant to get the benefit of G.O.Ms.No.22, dated 28.02.2006 and as at that point of time, the appellant had also attained the age of superannuation and considering the position that right through he has been fighting for his regularization, this Court had directed the respondents 1 and 2 to pass appropriate orders on merits and in accordance with law, within a period of two months from the date of receipt of a copy of the order.

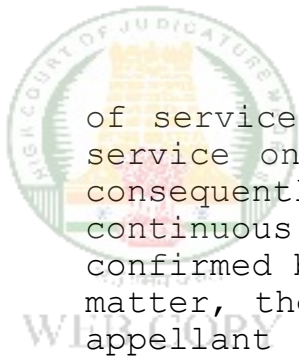
9. Subsequent thereto, the order dated 17.01.2014 had come to be passed by the first respondent declining the request of the appellant for the regularization of his services on the reasonings that in view of G.O.(Ms) No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, which had superseded G.O.Ms.No.22, dated 28.02.2006 and the same having been given retrospective effect from 01.01.2006, accordingly, holding that the appellant had not fulfilled the basic educational qualification and had only completed eight years of service with breaks of services, thereby negated the request of the appellant to regularize his services. Impugning the same, the writ petition had come to be levied by the appellant.

10. The learned Single Judge, on the footing that the appellant, having been appointed as a daily rated employee for a particular period, is not entitled to seek the relief of permanent absorption as prayed for and consequently, holding that the benefit of granting regularization with retrospective effect cannot be extended to him, dismissed the writ petition. Impugning the same, the writ appeal has been preferred by the appellant.



11. On a perusal of the order passed by the first respondent, dated 17.01.2014, rejecting the request for regularization of the services put forth by the appellant, it is found that mainly on two grounds, the same had been refused. According to the first respondent, the appellant had not completed ten years of service as Nominal Muster Roll employee and he had only completed eight years of service with breaks of services and further, it is stated that the appellant had not possessed the minimum educational qualification of eighth standard and relying upon G.O.(Ms).No.74, dated 27.06.2013, the first respondent had negatived the request of regularization of services prayed for by the appellant.

12. As rightly put forth by the appellant's counsel, when it has been noted that the various Authorities had forwarded the proposals recommending the case of the appellant for the regularization of the services on the footing that he had put in more than ten years of continuous service and particularly, the third respondent had recommended the regularization of the services of the appellant by relaxing the Rules putting forth that he has served more than ten years continuously since the date of the appointment i.e. 18.12.1978 and furthermore, when the Executive Engineer, Water Resources Organization, Public Works Department, Vaippar Basin Division, Virudhunagar, has sent a letter, dated 09.05.2007, to the Superintending Engineer, Water Resources Organization, Vaippar Basin Circle, Virudhunagar, certifying that the appellant, whose services had been recommended for regularization, had completed ten years on the date noted against him, in such view of the matter, it does not stand to the reason as to how the first respondent had proceeded to hold that the appellant had not completed ten years of service as N.M.R.employee and completed only eight years of service with breaks of services. In this connection, as rightly contended by the appellant, when the first respondent has failed to consider the proposal of the third respondent recommending the regularization of the appellant's services taking into consideration of his continuous length of service for more than ten years and when the impugned order passed by the first respondent does not spell out as to on what basis it has been determined that the appellant had only put in eight years of service and not ten years of service as N.M.R.employee, resultantly, we have to hold that the first respondent has failed to take into account the services rendered by the appellant for more than 29 years and also when it is seen that various employees on par with the appellant had been recommended for regularization vide G.O. (Ms) No.134, Public Works (C2) Department, dated 07.05.2010, whose names having also not been sponsored for appointment by the Employment Exchange and also not having the requisite educational qualification, it does not stand to the reason as to why the appellant had alone been singled out from the ambit of the abovesaid Government Order and for negativing his request for regularization



of services. As above noted, the appellant had been absorbed into service on the recommendation made by the Employment Exchange and consequently, when he had been appointed as Mazdoor and put in continuous service for more than 29 years and the same had also been confirmed by various Authorities as above noted, in such view of the matter, the declinment of the regularization of the services of the appellant on the footing that he had not completed ten years of service as N.M.R.employee cannot be acceded to and particularly, in the earlier writ petitions preferred by the appellant, the directions had been given to the respondents 1 and 2 to take note of the recommendation made by the third respondent dated 09.12.2006 and pass appropriate orders to enable the appellant to get the benefit of G.O.Ms.No.22, dated 28.02.2006 and the same having been failed to be considered by the respondents 1 and 2, in such view of the matter, the impugned order has to be held only as arbitrary and unjustifiable and therefore, is liable to be set aside.

13. As regards the ground that the appellant had not possessed the requisite educational qualification, when his name had been recommended for regularization of services by the third respondent and other Authorities by giving relaxation *qua* the possessment of requisite educational qualification and G.O.Ms.No.22, dated 28.02.2006, also provides for relaxation in special cases and accordingly, the same had been extended to the appellant by relaxing the Rules and as above noted, when the various employees on par with the appellant had been granted the regularization of services, despite they having not possessed the requisite educational qualification vide G.O.Ms.No.134, dated 07.05.2010, in such view of the matter, the respondents cannot be allowed to press into service G.O.(Ms) No.74, dated 27.06.2013, for holding that no relaxation could be made with reference to the educational qualification. When the appellant had been fighting for regularization of his services right from 2006 onwards and when his request has also been directed to be favourably considered by this Court in the various writ petitions as abovenoted and when his case had been favourably considered and recommended by the various Authorities for regularization of his services by relaxing the Rules as applicable at the relevant point of time and when similar relaxation of Rules had also been extended to the other employees on par with the appellant, in such view of the matter, the first respondent is not justified in negating the request for regularization of services of the appellant by relying upon G.O.(Ms).No.74, dated 27.06.2013, giving retrospective effect to the same. When it is seen that the appellant had made the request for regularization of his services at the earliest point of time and accordingly, when it should have been considered by the respondents favourably as abovenoted, to say that his services do not fit-in in the light of G.O.(Ms).No.74, dated 27.06.2013, as such, cannot be acceded to, particularly, when the respondents had failed to process the request of regularization of the appellant's services at the earliest, in the light of G.O.(Ms).No.22, dated 28.02.2006. Therefore, the impugned order of

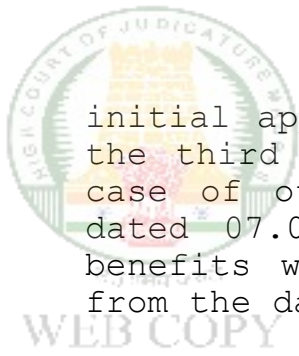


the first respondent denying the regularization of the services of the appellant by invoking G.O.(Ms).No.74, dated 27.06.2013, cannot be acceded to.

14. As above noted, the learned Single Judge, while dismissing the writ petition preferred by the appellant, has proceeded on the footing that the appellant's inductment into service being irregular, accordingly, not entitled for any relief of permanent absorption, declined to grant the relief sought for by the appellant. However, when the same is not the ground put forth by the first respondent for negating the request of regularization of services of the appellant, we are of the considered view that the learned Single Judge has failed to appreciate the facts involved in the matter in the right perspective, particularly, the orders passed in the earlier writ petitions preferred by the appellant, wherein the directions had been given to the respondents to consider the request of the appellant regarding regularization of services in the light of G.O.Ms.No.22, dated 28.02.2006 and accordingly, when it is seen that when the appellant has satisfied the ingredients set out in G.O.Ms.No.22, dated 28.02.2006, in such view of the matter, it is found that the appellant is entitled to secure the regularization of services as prayed for.

15. The learned Additional Government Pleader, in support of his contention that the appellant has been only inducted as part time employee and therefore, cannot be regularized as determined by the learned Single Judge, placed reliance upon the decision in the case of ***State of T.N. vs. A.Singamuthu***, reported in ***(2017) 4 SCC 113***. However, considering the import of G.O.Ms.No.22, dated 28.02.2006 and particularly, when as above pointed out the appellant had put in continuous period of service for more than ten years as stipulated under the abovesaid Government Order and his case had been favourably considered by the appropriate Authorities at the relevant point of time as above noted and furthermore, if the appellant had been inducted as part time employee, the same would have been the ground for the rejection of his request for regularization of service in the impugned order of the first respondent and on the other hand, when the impugned order passed by the first respondent does not specify the abovesaid ground for rejecting his case, in such view of the matter, we are of the considered opinion that the abovesaid decision would not be applicable to the case on hand.

16. In the light of the above discussions, the order dated 27.06.2019, passed in W.P.(MD) No.18755 of 2015, is set aside and the order, dated 17.01.2014, passed by the first respondent rejecting the regularization of services of the appellant is hereby quashed as arbitrary and unjustifiable and the first respondent is directed to pass appropriate orders regularizing the appellant's service in the post of Mazdoor with effect from the date of his



initial appointment i.e. 18.12.1978, based on the proposal sent by the third respondent, dated 09.12.2006 as well as extended in the case of others vide G.O.Ms.No.134, Public Works (C2) Department, dated 07.05.2010, and thereby sanction all service and monetary benefits with interest as per law, within a period of four weeks from the date of receipt of a copy of this Judgment.

17. Accordingly, the writ appeal is allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To:

- 1.The Secretary to Government,
Public Works Department,
State of Tamil Nadu,
Fort St.George,
Chennai-600 009.
- 2.Engineer-in-Chief
(Water Resources Organisation) and
The Chief Engineer,
Public Works Department,
Chepauk,
Chennai-600 005.
- 3.Chief Engineer,
Water Resource Organisation,
Public Works Department,
Madurai Region,
Madurai-2.
- 4.Superintending Engineer,
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- 5.Executive Engineer,
WRO/PWD,
Vaippar Basin Circle,
Virudhunagar.



6.Assistant Executive Engineer,
PWD/WRO,
Vaippar Basin Sub Division,
Vilathikulam,
Thoothukudi District.

+1 CC to SPL.GP (SR-104688[F] dated 12/12/2019)
+1 CC to Mr.G.THALAIMUTHARASU, Advocate (SR-104781[F] dated
13/12/2019)

W.A. (MD) No.1095 of 2019
11.12.2019

MK (06.01.2020) 9P 9C