



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.10417 OF 2013

M.Appan

... Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Secretary,
Highways Department,
Fort St. George, Chennai - 600 009.
2. The Chief Engineer, National Highways,
Chepauk, Chennai - 600 005.
3. The Divisional Engineer,
Highways Department, Buildings & Maintenance,
(Near Oil Mill), Thiruvallur.
4. The Divisional Engineer,
Highways Department, National Highways Office,
Koyambedu, Chennai - 600 107.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relevant to the order in Letter No.498/A2/2012, dated 24.12.2012 passed by the 3rd respondent and quash the same as illegal, improper, arbitrary, against the Rule of law and principles of natural justice and thereby, direct the respondents to regularise the petitioner with all back wages.

For Petitioner : Mrs.R.K.Kalpna

For Respondents : Mr.J.Ramesh
Additional Government Pleader



ORDER

This writ petition has been filed by the petitioner seeking to call for the records relevant to the order in Letter No.498/A2/2012, dated 24.12.2012 passed by the third respondent and quash the same as illegal, improper, arbitrary, against the Rule of law and principles of natural justice and thereby direct the respondents to regularise the petitioner with all back wages.

2. According to the writ petitioner, he was appointed as Road Worker in the National Highways Department, Chennai, for the period from 1982 to 2001 as Non Muster Roll (NMR) for the past 19 years. But, his service was not regularized so far. Subsequently, he has filed an Original Application in O.A.No.6679 of 1998 before the Tamil Nadu Administrative Tribunal seeking to regularise his service as Mazdoor from the date of his initial appointment with all back wages and attendant benefits. Thereafter, the Tribunal was transferred his case to the Madras High Court and the same was renumbered as W.P.No.37390 of 2006. However, the said writ petition along with three more writ petition Nos.35696, 35698, 36180 and 37390 of 2006 came up for final hearing on 12.10.2009 and the same was ordered by directing that the petitioner is at liberty to approach the competent authority, including the Government for conferment of benefits to him in terms of G.O.(Ms).No.23, Personnel and Administrative Reforms (Finance) Department. Pursuant to the order of this Court, he has sent a representation on 18.01.2013 to implement the earlier order in W.P.No.37390 of 2006 batch etc., dated 12.10.2009. On receipt of the petitioner's representation dated 18.01.2013, the third respondent/Divisional Engineer has passed the impugned order No.498/A2/2012, dated 24.12.2012 which was sent to him on 24.01.2013 stating that his representation cannot be considered since G.O.(Ms).No.22, Personnel and Administrative Reforms (Finance) Department, dated 12.10.2006 not applicable to the petitioner herein and he has also worked only for 901 days. After receipt of the said representation dated 18.01.2013, the third respondent had passed the impugned order dated 24.12.2012, which was sent to him on 24.01.2013 by rejecting his request without considering the same in a proper manner. Hence, the writ petitioner sought for regularization of service, based on the completion of ten years of service, as per the Government Order in G.O.(Ms).No.22, Personnel and Administrative Reforms (Finance) Department, dated 28.02.2006, hence, the petitioner is entitled for the regularization of service. Hence, the petitioner has come forward with the present writ petition.

3. According to the learned counsel for the petitioner, he is still working in the Highways Department. Insofar as the



Government Order in G.O.(Ms).No.22, Personnel and Administrative Reforms (Finance) Department, dated 28.02.2006 is concerned and the matter was elaborately considered by the Hon'ble Supreme Court in the case of Secretary to Government, School Education Department, Chennai v. R.Govindasamy and Ors, reported in (2014) 4 SCC 769, wherein it has been held in paragraph Nos.7 and 8 are as follows:-

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:

“(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.



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(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.

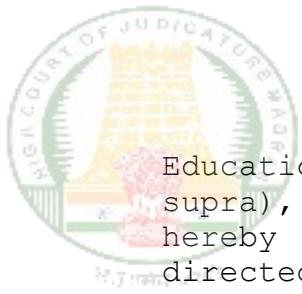
(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off 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)

4. Considering the aforesaid facts and circumstances of the case, the judgment of this Court in W.P.No.37390 of 2006, dated 12.10.2009, the respondents have to consider the petitioner's representation dated 18.01.2013 submitted by the writ petitioner as working in the National Highways Department on daily wages regular employee and he received monthly payment, has been paid by the third respondent/Department.

5. In the light of the decision rendered by the Hon'ble Supreme Court in the case of Secretary to Government, School



Education Department, Chennai v. R.Govindasamy and Ors (cited supra), the impugned order passed by the third respondent is hereby quashed and consequently, the second respondent is directed to consider the petitioner's representation dated 18.01.2013 and pass appropriate orders on merits and in accordance with law as expeditiously as possible within a period of twelve weeks from the date of receipt of a copy of this order.

6. The writ petition is disposed of, accordingly. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Secretary,
State of Tamil Nadu,
Highways Department,
Fort St. George, Chennai - 600 009.
2. The Chief Engineer, National Highways,
Chepauk, Chennai - 600 005.
3. The Divisional Engineer,
Highways Department,
Buildings & Maintenance,
(Near Oil Mill), Thiruvallur.
4. The Divisional Engineer,
Highways Department,
National Highways Office,
Koyambedu, Chennai - 600 107.

+1cc to Mrs.R.K.Kalpna, Advocate, S.R.No.7628

+1cc to the Government Pleader, High Court, Madras, S.R.No.7671

W.P.10417 of 2013

MP(CO)
RLP(27/01/2022)