

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

Writ Petition No.31759 of 2012

1. S. Amudha Dvi
2. H. Gandhi
3. A. Kandhan
4. M. Shankar
5. C.Sathanandham
6. M. Sivakural
7. R. Ravi
8. K. Kothandabani
9. J.Sadagopan
- 10.K.Pannerselvam
- 11.A.Gunasekaran

...

Petitioners

Vs.

1. The Secretary to Government
of Tamil nadu,
Highways Department,
Secretariat, Chennai 600009.
2. The Chief Engineer (General)
Highways Department,
Chepauk, Chennai 600005.
3. The Divisional Engineer,
Highways Division,
Cuddalore.

...

Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to appoint the petitioners herein in the existing or future vacancies as Gang Mazdoors in regular time scale of pay in light of the orders passed by this Court in W.P.No.36623 of 2004 which was upheld by the Division Bench of this Court in W.A.NO.1260 of 2008 and confirmed by the Honourable Supreme Court in CC.No.14093 dated 2010 and in terms of G.O.Ms.No.22 P & AR Department dated 28.02.2006.

For Petitioner : Mr.R. Rengaramanujam

For Respondents: M/s.P. Chinnadurai
Additional Government Pleader

O R D E R

1. The Writ Petitioners were working as NMRs from the year 1980 and they have been put in more than ten years of service. For the post of Road Worker requisite qualification is 5th Standard. Though they are named as Nominal Muster Roll or Daily Wages, their services are required throughout the year for maintenance of the Roadwork by the Highways Department. The details of service particulars which were sent to the Government by the Respondents are as under:

S.No.	Name	Qualification	No. of years of service		
			From	To	Total
1	S. Amudha Devi	+2	1983	2005	More than 10 years
2	H. Gandhi	+2	1993	2005	More than 10 years
3	A.Kandhan	8 th	1988	2003	More than 10 years
4	M.Shankar	8 th	1984	1997	More than 10 years
5	C.Sthanandham	5 th	1988	2005	More than 10 years
6	M.Sivakural	S.S.L.C.	1980	1997	More than 10 years
7	R.Ravi	8 th	1989	2005	More than 10 years
8	Godhandabani	6 th	1981	1997	More than 10 years
9	J.Sadagopan	+2	1992	2006	14 years
10	R.Pannerselvam	5 th	1988	2005	More than 10 years
11	A.Gunasekaran	10 th	1990	2005	More than 10 years

2. Since the petitioners have put in more than 10 years of

service and since the Government has taken decision time and again to regularise their services, they seek for a direction from this Court to appoint them in regular basis by equipping future vacancies as Gang Mazdoors in regular time scale of pay in the light of the order passed by the Honourable Supreme Court in C.P.No.14093 of 2010 and in terms of G.O.Ms.No.22 P & AR (F) Department dated 28.02.2006.

3. Learned counsel for the petitioner would contend that the petitioners were selected by the department as NMRs. Thereafter in the year 1977 they were taken into regular establishment and their services were regularised. In G.O.Ms.No.371 Highways Department dated 19.8.1997, they have decided to select and appoint through interview without calling for candidates from employment exchanges. Thus they have got the vested right to be considered for appoint on regular basis. Thereafter also the procedure of calling for candidates through employment exchange, age limit, educational qualification and rules and regulations were exempted in G.O.Ms.No.84 Highways (HM2) Department dated 7.4.1988. As on 1998 all these Petitioners were fully qualified for regularisation and still they are continuing the very same post. Therefore, they should be given regular employment.

4. Per contra, the learned Government Advocate relying on the counter filed by the Department submitted that none of these petitioners were sponsored through employment exchange and that there is no sanctioned post for regular vacancies are available to accommodate the petitioners. In a batch of cases, the petitioners have approached this court for regularisation which was negatived. In W.P.No.3366/2008 order passed by this Court dated 6.3.2019, this Court has considered battery of judgments passed by the Honourable Supreme Court and other High Courts and held that the road workers who were engaged on daily wages or on NMRs without being sponsored through employment exchange or regular selection procedure, are not entitled to get regularisation, and dismissed the Writ Petitions. But the Government has also passed G.O.Ms.No.74 P & AR (F) Department dated 27.6.2013 wherein the Government passed orders that with effect from 1.1.2006 those who were appointed in service on full time basis in consultation with employment exchange to do the basic services and completed 10 years of service as on 01.01.2006 shall be regularised against regular vacancies in the sanctioned cadre strength. But there shall not be any relaxation of age, education qualification, etc. Therefore, in view of G.O.Ms.No.74 P & AR (F) Department dated 27.06.2013 the claim of the petitioners are not acceptable. Accordingly, the writ petition has to be dismissed.

5. I have considered the submissions on both sides.

6. At the outset, the post to which regularisation is sought for, is the post of Road Workers. For the past two decades, road workers are engaged by the Engineers of the department, considering the physical strength of those persons. The road workers are doing physical labour of carrying blue metals, Tar and other road construction materials. They spread hot mixture of tar and blue metals on the road, level it and follow the road rollers when the road is formed. Naturally it requires enough physical strength and one should have the capacity to withstand heat emanated from the hot mixture and sunlight. They have also require to clean the road roller during the process. Such work as considered by the field officers require physical strength. Considering all these things Government passed G.O.Ms.No.371 Highways (HM2) Department dated 19.08.1997. Whereas on the basis of the recommendations given by the Chief Engineer, Highways Department, selection and appointment of road workers was made without availing the services of the employment exchange and without insisting rule of reservation. The Government has given sanction for filling 9817 posts which fell vacant as well as created for the post of road workers. The qualification fixed by them that, person should have passed 5th standard and he should have good physical strength. From the Government Order it can be inferred that the selecting of people through employment exchange will not help the efficient execution of the road works.

7. A perusal of Government Order in G.O.Ms.No.84 Highways (HM2) Department dated 7.4.1988, would further substantiate the stand taken by the Government and in the said Government Order 473 daily wages were appointed against the newly created posts. The Government has relaxed Rule 3(a) (Reservation), 4(a) (Employment through employment exchange), 5(1) Age limit and Rule 3 (Educational Qualification) of the Tamil Nadu Government Fundamental Rules. In G.O.Ms.No.230 Highways (HM2) Department dated 1.10.1999, the Government followed G.O.Ms.No.84 Highways (HM2) Department dated 7.4.1988 and appointed several other similarly placed persons and regularised their services. It is also seen that there were several persons appointed pursuant to the orders of this Court in several writ petitions. Insofar as the present case is concerned, all these petitioners were engaged by the respondent w.e.f.1980. By their continuation for more than two decades they got vested rights to be appointed regularly in view of the above said Government Order.

8. The Government have taken shelter under the judgment of State of Karnataka vs. Uma Devi reported in 2006(4) SCC 1

wherein it is held that when there were several youths with full qualifications waiting at the doors of the employment exchanges, appointing workers through back door method cannot be said to be the holders of a post, since, a regular appointments consistent with the requirements of Articles 14 and 16 of the Constitution.

Therefore, any appointment through back door method were considered as illegal and direction was given to follow due procedures and appoint persons as Government Servants in accordance with the recruitment rules. In view of the above judgment the Government has passed the G.O.Ms.No.74 P & AR (F) Department dated 27.06.2013 superseding the previous Government Order and directed appointment only in consultation with the employment exchange against the regular vacancies in the sanctioned cadre strength. But all the relaxations given in the previous Government Orders were superseded.

9. The Honourable Supreme Court in State of Karnataka and others vs.ML Kesari and others [2010(9)SCC 247] has held thus:

"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi's case [(2006) 4 SCC 1] ,if the following conditions are fulfilled:

(i)The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii)W.P.No.31759 of 2012 31.01.2020The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

10. Following the observation made in paragraph 15 of the Uma Devi's case (supra), in the instant case, the employees were engaged as early as 1980 by Government Officials. Such engagement was consensually made to suit the physical hard work by the road workers after deliberations, men with good physical strength to tolerate heat and radiation were engaged and they were allowed to continue for more than ten years. Status Report submitted by the learned Government Advocate shows that the petitioners have served more than 10 years for which table is given under:

S.No.	Name	Period of Service			
		From	To	Year	Month
1	2	5	6	7	8
1	S. Amudha Devi	01.01.1983	28.02.1998	13	10
2	H. Gandhi	01.02.1993	31.05.2005	10	2
3	A.Kandhan	22.08.1988	31.12.1996	08	0
4	M.Shankar	01.07.1984	31.07.1996	10	6
5	C.Sathanandham	10.03.1983	28.02.1998	11	10
6	M.Sivakural	01.02.1980	02.02.1993	11	10
7	R.Ravi	15.12.1988	30.06.2004	10	8
8	K. Kothandapani	01.01.1981	11/1998	10	0
		01.02.2005	31.12.2005		
9	J.Sadagopan	09.01.1992	31.12.2005	10	5
10	R. Paneerelvam	12.04.1988	17.09.1999	11	5
11	A.Gunasekaran	02/1990	24.12.2000	10	10

11. G.O.Ms.No.74 came into force only in the year 2013 following the judgment of Uma Devi's case in the year 2006. By that time all these petitioners, in view of the Government Orders, were posted and got vested right to be appointed. The Government has discussed the above and deliberately relaxed the rules relating to the reservations, sponsoring of employment exchange, education qualification, age, etc., The very fact was considered by this Court in several Writ Petitions and directed to be regularised and the same was confirmed by the Honourable Supreme Court. In one such circumstance, this court in W.P.No.8512 of 2014 dated 10.07.2015 has directed the respondent to appoint similarly placed persons on regular basis. The said order was challenged in W.A.(MD) No.913 of 2015 and the same was dismissed by confirming the order of the single judge. The S.L.P.filed against the Writ Appeal in SLP(Civil)No.38194 of 2018 dated 22.11.2018 was also dismissed. The Petitioners are also entitled to the same relief.

12. In view of the same a direction is issued to the respondent to appoint them on regular basis with effect from the date of their initial employment. The period of service rendered by them shall be counted for calculating the pension benefits. However, they are not entitled for back wages.

13. With these observations, this writ petition is allowed.
No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

ggs

Copy to:

1. The Secretary to Government
of Tamil nadu,
Highways Department,
Secretariat, Chennai 600009.
2. The Chief Engineer (General)
Highways Department,
Chepauk, Chennai 600005.
3. The Divisional Engineer,
Highways Division,
Cuddalore.

+1cc to Mr.R.Rengaramanujam, Advocate, S.R.No.7759
+1cc to the Government Pleader, S.R.No.8147

W.P.No.31759 of 2012

AD(CO)
CB(06/08/2020)

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