

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2020

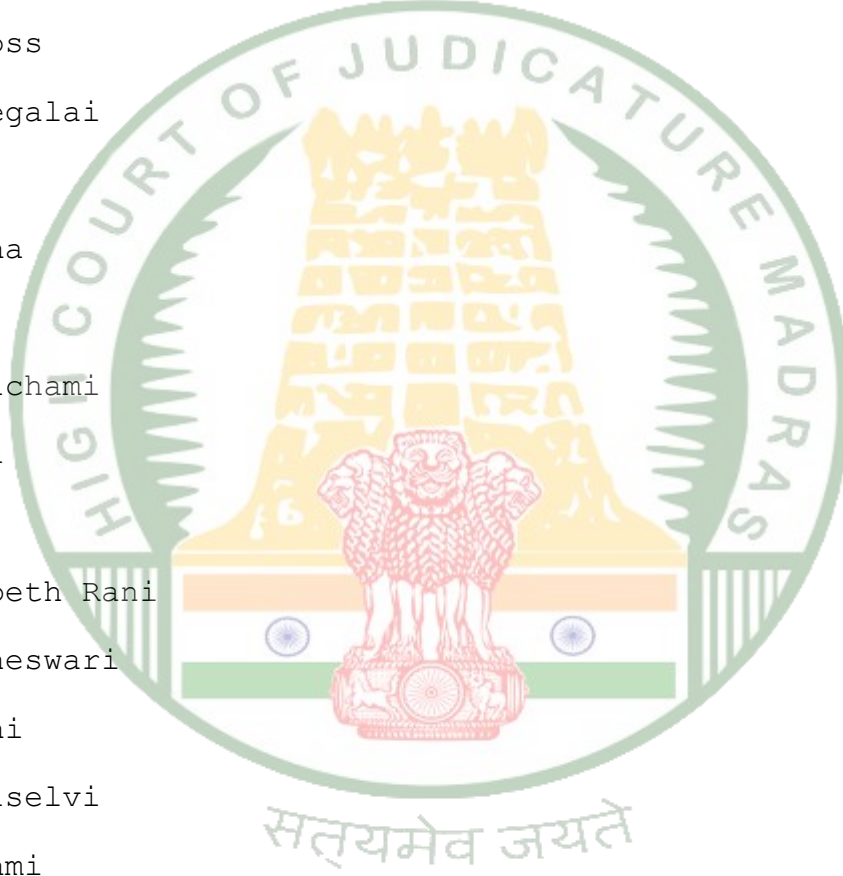
Pronounced on : 23.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.14346 of 2020 and
W.M.P.No.17818 of 2020

- 1.S.Aruldoss
- 2.V.Manimegalai
- 3.M.Mala
- 4.S.Punitha
- 5.Selvam
- 6.S.Vellaichami
- 7.A.Janaki
- 8.M.Latha
- 9.E.Elisabeth Rani
- 10.T.Sivaneswari
- 11.S.Santhi
- 12.D.Tamilselvi
- 13.S.Lakshmi
- 14.S.Lakshmi
- 15.E.Yasodha
- 16.K.Manonmani
- 17.R.Elumalai
- 18.B.Renuka
- 19.R.Vasantha



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20.S.Malaiswamy

21.Ambika

22.A.Arumugam

23.Pushpavathi

24.Rajeswari

25.Subramani

... Petitioners

-Vs-

1. State of Tamil Nadu,
Rep by its Secretary,
Public Works Department,
Fort St.George, Chennai 600 009.

2. The Chief Engineer (General)
and Engineer in Chief,
Water Resources Department,
Chepauk, Chennai 600 005.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to order of the first respondent made in G.O.(3D) No.40, Public Works (C2) Department dated 25.09.2018, to quash paragraph-12 in so far it restricts the monetary benefits from the date of issuance of Government Order instead of from the date of regularization and to consequently, direct the respondents to grant and extend the monetary benefits from the date of regularization as directed by this Court in W.P.No.16107 of 2012. सत्यमेव जयते

For Petitioners : Mr.L.Chandrakumar

For Respondents : Mr.V.Kathirvelu,
Special Government Pleader

O R D E R

This writ petition has been filed to call for the records relating to order of the first respondent made in G.O.(3D) No.40, Public Works (C2) Department dated 25.09.2018, to quash paragraph-12 in so far it restricts the monetary benefits from

the date of issuance of Government Order instead of from the date of regularization and to consequently, direct the respondents to grant and extend the monetary benefits from the date of regularization as directed by this Court in W.P.No.16107 of 2012.

2. The case of the petitioners is that they were originally appointed as casual labourers /NMR employees under the Public Works Department and were posted to work in the residence of the Hon'ble Judges and the Hon'ble Ministers and other dignitaries. They have been working for several years continuously, but however, their services have not been regularised. The Government issued G.O.Ms.No.22, P & AR Department dated 28.02.2006, providing for regularisation of service of casual employees who had completed 10 years of continuous service on or before 01.01.2006.

3. In the light of the said Government Order, the petitioners requested the authority to regularise their services as several hundred similarly placed employees had been granted the benefit of the above said Government Order. But, there was no response from the respondents, hence the petitioners moved this Court in W.P.No.16107 of 2012, seeking direction to grant the benefit of regularisation of their services in terms of the said Government Order and also on parity with other similarly placed employees. This Court, by order dated 04.07.2012, after referring to various decisions of the Hon'ble Supreme Court and other decisions, directed regularisation of the services of the petitioners on completion of 10 years of service in regular time scale. This Court has also directed that arrears of salary payable to the petitioners pursuant to the regularisation, shall be paid to them within a period of four weeks therefrom.

4. The respondents being aggrieved by the direction as above, moved the learned Division Bench of this Court in W.A.No.493 of 2016. However, the learned Division Bench vide its order dated 25.04.2016, confirmed the order of the learned Single Judge by dismissing the appeal filed by the respondents. Thereafter, the respondents approached the Hon'ble Supreme Court of India in SLP (Civil) No.29344 of 2016 and the same was dismissed on 30.09.2016 and a review petition in R.P.No.2442 of 2017 was also rejected on 09.11.2017. The respondents having left with no other choice except to implement the order of the learned Single Judge dated 04.07.2012, issued G.O.(3D) No.40, Public Works (C2) Department dated 25.09.2018, granting the benefit of regularisation to all the petitioners covered under the orders. But while granting the benefit of regularisation from the respective dates mentioned in the order, the respondents restricted the monetary benefits only from the date of issue of the order. As against the restriction of monetary

benefits not from the date of regularisation, but from the date of issue of the Government Order, the petitioners are before this Court once again with the present writ petition.

5. Mr.L.Chandrakumar, learned counsel for the petitioners would draw the attention of this Court to the order passed by the learned Single Judge dated 04.07.2012 in W.P.No.16107 of 2012. The learned Single Judge, after consideration of various orders on the subject matter, ultimately allowed the claim of the petitioners in paragraph No.9, the operative portion of the direction is extracted hereunder :

"9. Applying the above said orders passed by this Court to the facts of the present case, the writ petition is allowed with a direction to the respondents to regularise the services of the petitioners based on the common representation dated 11.11.2011 after verifying their service particulars as to completion of ten years of service with time scale of pay. The regularization order is directed to be issued by the respondents within a period of eight weeks from the date of receipt of a copy of this order. The arrears of salary, payable to the petitioners, pursuant to their regularization, shall be paid to them within a period of four weeks therefrom. No costs."

6. According to the learned counsel, the above order very clearly held that the petitioners herein were entitled to be paid arrears of salary pursuant to the regularisation and the same shall be paid within a period of four weeks. The respondents having lost their case against the regularisation of these petitioners upto the Hon'ble Supreme Court of India, they cannot now restrict the monetary benefits payable to the petitioners only from the date of issue of the Government Order dated 25.09.2018. The Government Order is therefore contrary to the specific direction issued by this Court.

7. On the other hand, Mr.V.Kathirvelu, learned Special Government Pleader who entered appearance for the respondents, strongly resisted the claim of the petitioners. According to him, in terms of the rule, they are not entitled to be paid the arrears of salary as these petitioners had not regularly worked in those posts from the date of regularisation. Therefore, the respondents decided to grant the actual monetary benefits only from the date of issue of the order. According to the learned Special Government Pleader that the direction issued by the learned Single Judge of this Court dated 04.07.2012, is not specific that the arrears should be paid from the date of regularisation. He however added that in terms of the policy, the regularisation was granted on notional basis, retrospectively and restricted the monetary benefits from the

date of issue of the order. Therefore, the writ petition deserves to be dismissed.

8. This Court has considered the submissions of the learned counsel appearing on both sides. The contention of the learned counsel for the petitioners is fully supported by the decision of the learned Judge in his order dated 04.07.2012 in W.P.No.16107 of 2012. After advertng to the various decisions, the learned Judge has come to the conclusion that the petitioners were entitled to regularisation retrospectively and in that context, had clearly held that these petitioners were to be paid arrears of salary on regularisation. The respondents having chosen to preferred Intra Court Appeal and also chosen to approach the Hon'ble Supreme Court of India by filing Special Leave Petition and also review petition and have not been successful throughout, cannot turn around and restrict the benefits that are granted by the learned Single Judge of this Court.

9. If the impugned Government Order is to be upheld in so far as it restricts the financial benefits payable to the petitioners, that would amount to rewriting the judgment of the learned Single Judge dated 04.07.2012 in W.P.No.16107 of 2012. The respondents having lost upto the Hon'ble Apex Court, it cannot invidiously abridge the benefits granted by the learned Single Judge as that would amount to, in the opinion of this Court, committing a contempt of the order of this Court.

10. The arguments advanced on behalf of the respondents by the learned Special Government Pleader, is legally unacceptable for the reason that once the order of the learned Single Judge has been upheld and the same has not been varied by the Higher Court, the respondents have no choice except to implement the order in its letter and spirit. It is not open to the respondents to read something into the judgment it is not open to the respondents to conveniently interpret the order in their favour and restrict the benefits payable to the petitioners. Such action on the part of the respondents amounted to tampering with the judgment of the learned Single Judge and therefore, the impugned order is liable to be struck down as invalid and illegal in so far as it denies the monetary benefits from the date of regularisation of the services of these petitioners.

11. In the above circumstances, this writ petition is allowed and the impugned order in G.O.(3D) No.40, Public Works (C2) Department dated 25.09.2018, is hereby setaside only in so far as it restricting the monetary benefits only from the date of issue of the order and the respondents are consequentially directed to calculate and pay the arrears of salary to the

petitioners from the date of regularisation in terms of the order passed by the learned Single Judge of this Court dated 04.07.2012 in W.P.No.16107 of 2012, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

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

2.The Chief Engineer (General)
and Engineer in Chief,
Water Resources Department,
Chepauk, Chennai 600 005.

+1 cc to M/s.L.Chandrakumar, Advocate Sr.No. 42915

W.P.No.14346 of 2020 and
W.M.P.No.17818 of 2020

PM(CO)
RMP(19/01/2021)

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