



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. (MD) No.23014 of 2019

and

W.M.P (MD) No.19762 of 2019

R.Stalin

... Petitioner

Vs.

1. Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Public Works Department,
Fort St. George,
Chennai-9.

2. The Engineer-in-Chief (General),
Water Resource Organization,
Public Works Department,
Chepauk,
Chennai-6.

3. The Superintending Engineer,
Vaipparu Basin Circle,
Water Resource Organization,
Public Works Department,
Virduhunagar.

... Respondents

PRAYER : This Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the third respondent relating to the impugned order dated 08.07.2019 passed in Letter No.A4/1413/2008, quash the same and consequently, direct the respondents to regularize the service of the petitioner from the date of completion of 10 years of his services as daily wage NMR worker and to pay him all the consequential benefits.

For Petitioner	: Mr.M.Ajmalkhan Senior Counsel for Mr.S.Arunachalam
For Respondents	: Mr.R.Murugaraj Government Advocate

O R D E R

This writ petition has been filed challenging the impugned order passed by the third respondent vide Letter No.A4/1413/2008, dated 08.07.2019, holding that the respondents cannot regularize the service of the petitioner, as he has not completed 10 years of



2.The main contention of the petitioner is that he has joined the third respondent Office on 01.10.1999 and he was terminated by way of illegal retrenchment with effect from 01.03.2009. Against the illegal retrenchment, he has filed a case in I.D.No.28 of 2013, before the Labour Court, Madurai. The Labour Court, Madurai has passed an order dated 29.09.2015, setting aside the retrenchment order passed by the third respondent with effect from 01.03.2009 and directing the third respondent to reinstate the petitioner in service with continuity of service and with the same seniority. The further contention of the petitioner is that the impugned order passed by the third respondent did not mention about the order passed by the Labour Court, Madurai. Against the order passed by the Labour Court, Madurai, the third respondent preferred a writ petition in W.P(MD) No.3644 of 2016 before this Court and the same was dismissed by confirming the order passed by the Labour Court, Madurai, dated 29.09.2015. Therefore, he contended that the Labour Court award has reached its finality and the same is binding on the third respondent, who is supposed to provide continuity of service and to consider the petitioner's request for regularization. Without considering all the above facts, the third respondent has passed the impugned order and hence, the same is liable to be quashed.

3.Per Contra, the learned Government Advocate appearing for the respondents admitted the fact that the petitioner has joined the service on 01.10.1999 and he was terminated by way of retrenchment on 01.03.2009. As on the date date of retrenchment, the petitioner has completed 9 years and 5 months service. As per G.O.Ms.No.202, Public Works (C2) Department, dated 01.08.2012, the petitioner supposed to have not completed 10 years of service. Therefore, the writ petition is not maintainable.

4.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

5.On perusal of G.O.Ms.No.202, Public Works (C2) Department, dated 01.08.2012, it appears that the petitioner supposed to have completed 10 years of service. Obviously, the petitioner has completed 9 years and 5 months of service before retrenchment. Against the retrenchment order passed by the third respondent, the petitioner herein has preferred an appeal before the Labour Court, Madurai vide I.D.No.28 of 2013 and the Labour Court, Madurai, passed an order dated 29.09.2015 and the relevant portion of the said order reads as follows:-

31.In the result, award is passed directing the respondent to reinstate the petitioner as temporary worker on daily wage basis with continuity of service on the same conditions existed before within three months from the date of receipt of this order but without back-wages and other

benefits. It is clarified that continuity of service would



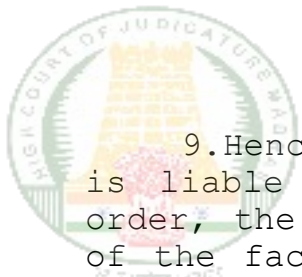
mean the maintenance of seniority of the petitioner amongst other daily wage workers. Parties are directed to bear their own costs.

6.The order passed by the Labour Court, Madurai, was under challenge before this Court in W.P(MD)No.3644 of 2016 and this Court also confirmed the order of the Labour Court, Madurai, on 12.12.2018. The relevant portion of the said order is extracted hereunder:-

2.I am of the view that the order passed by the Labour Court does not warrant any interference. The Writ Petitioner would claim that the second respondent herein did not work for 240 days per year. But then, this is a finding of fact. When the Labour Court on consideration of the materials available before it, rendered a finding of fact in favour of the second respondent, I do not propose to interfere with the same. This is all the more so because, this Court directed is that the workman should be taken back on daily wages basis. Of course the second respondent cannot dictate to the superior officers with regard to the nature of work to be allocated. The status of the second respondent as a daily wages worker alone is projected and declared. Continuity of service has also been given. Therefore, with this clarification, the award passed by the Labour Court, Madurai, in I.D.No.28 of 2013, dated 29.09.2015, is sustained.

7.On perusal of the award passed by the Labour Court, Madurai as well as the order of this Court, it appears that continuity of service has been provided to the petitioner by the Labour Court and the same was upheld by this Court and no further appeal has been filed. When such being the case, as on the date of passing the impugned order, the petitioner has completed 19 years of service. Taking into consideration of all these aspects, the impugned order has been passed by the third respondent without application of mind. In such of the view, the third respondent supposed to have considered the petitioner's request for regularization along with benefits entitled for him.

8.At this juncture, the learned counsel for the petitioner has also brought to the knowledge of this Court, the proceedings of the second respondent, dated 16.09.2019, wherein the second respondent identified 2406 candidates for the purpose of regularization and the petitioner's name can be included in the same. In the present case, the petitioner has completed more than 19 years of service as on date. However, these facts have not been considered by the third respondent, while passing the impugned order and completely ignored the order of the Labour Court as well as this Court.



9.Hence, this Court is of the opinion that the impugned order is liable to be set aside and while setting aside the impugned order, the matter is remanded back for reconsideration on the basis of the fact that the petitioner has already completed 10 years of service consequent to the order passed by the Labour Court as well as this Court. The Labour Court has categorically stated that for the purpose of continuity of service, the period of non employment should be considered for the purpose of seniority. In such case, the third respondent should consider the period of non employment of the petitioner's service for the purpose of regularization. Therefore, this Court does not find any impediment for the respondents to regularize the petitioner's service as per G.O.Ms.No.202, dated 01.08.2012.

10.In the result, this Writ Petition is allowed and the impugned order passed by the third respondent, dated 16.09.2020 is set aside and this Court remand this matter for reconsideration and directs the third respondent to take into consideration all the above aspects observed by this Court while passing order for regularisation of the petitioner's service. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

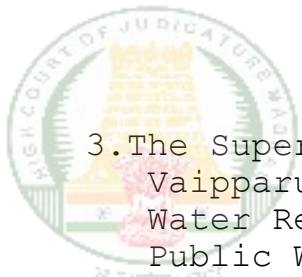
cp

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1.The Principal Secretary to Government of Tamil Nadu,
Department of Public Works Department,
Fort St.George,
Chennai-9.

2.The Engineer-in-Chief(General),
Water Resource Organization,
Public Works Department,
Chepauk,
Chennai-6.



3.The Superintending Engineer,
Vaipparu Basin Circle,
Water Resource Organization,
Public Works Department,
Virduhunagar.

WEB COPY

+1CC to M/s.SPL GP,SR.No.27062 dated 23/12/2020

W.P.[MD]No.23014 of 2019
22.12.2020

ES (CO)
KB(18.01.2021) 5P 5C