



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.4788 of 2009

- 1.S.Shanmugam
- 2.K.Parthiban
- 3.Mary Victoria Fathima
- 4.A.Sundaram
- 5.C.Gajendrababu
- 6.M.Srinivasan
- 7.D.Chandran
- 8.P.Ulaganathan
- 9.R.Rathakrishnan
- 10.P.Chinnathambi
- 11.V.Velan
- 12.K.Vadivelu
- 13.P.Velu
- 14.A.Anandaraj
- 15.M.Sundarraaj

...Petitioners

Vs.

1. The State of Tamil Nadu rep. by its
Secretary to Government,
Higher Education Department,
Fort St. George, Chennai -9.



2. The Principal Secretary,
Public Works Department,
Fort St. George, Chennai -9.

3. The Director of Technical Education,
Guindy, Chennai - 600 032.

4. The Executive Engineer,
Technical Education Division,
Coimbatore.

5. The Executive Engineer,
Technical Education Division,
Guindy, Chennai -25.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the First respondent's order made in, Paragraph-5 of G.O. Ms.No.122 Higher Education (B1) Department dated 26.03.1998 and Second Respondent's Letter No.12236/C2/2008-4, dated 5.9.2008, to quash the same and consequently direct the respondents to regularise the services of the petitioners herein from the date of completion of ten years of casual labourer services and to revise and refix the scale of pay by arriving at the notional increment till the date of Government Order and to extend all consequential benefits forthwith.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.C.Selvaraj,
Government Advocate

O R D E R

There are 15 petitioners before me who were all appointed as causal labourers with R5/Executive Engineer, Technical Education Division, Guindy, Chennai -25. Upon their completion of ten (10) years of service, the services of the petitioners were regularized by way of Government Order in G.O. No.122, Higher Education (B1) Department dated 26.03.1998 (G.O.). The regularization was itself made with effect from 01.01.1986, 01.01.1988, 01.01.1989 & 01.01.1990 in the cases of the various petitioners before me, taking into account the services rendered by the petitioners for a period of one decade.

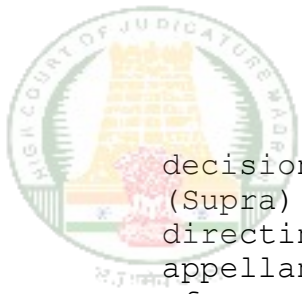


2. The challenge in this writ petition is to Clause 5 of the said G.O whereunder, while regularizing the services of the petitioners upon completion of 10 years of service, pay fixation was directed from the date of regularization, however, with the caveat that monetary benefits shall be given effect to only from the date of issuance of the Government Order. The petitioners are aggrieved by Clause 5 of the G.O as aforesaid and seek a quash of the G.O to this extent, with a consequential direction that not only have their services been regularized from the dates stipulated but that the scales of pay also stands revised and refixed from date of regularization. They thus seek computation of notional increments till the date of G.O and for all consequential benefits to be given to them.

3. The respondents have filed a counter wherein they would state that the Government Order was, in fact, beneficial to the petitioners herein and thus, according to learned Government Advocate, there is no warrant or justification for interference in the same.

4. Heard learned counsel and perused the materials available on record including the decision of the Division Bench of this Court in W.A. Nos.168 and 169 of 2012 dated 08.08.2014 in the case of A.Babysabeena and others Vs. The State of Tamil Nadu and others, which appears to clinch the issue arising in this case. The challenge in that matter was to Government Order in G.O. No.334 Public Works Department dated 19.10.2007, whereunder the services of the appellants therein had been regularized upon completion of ten years of casual service and their pay revised and refixed, however only with effect from the date of that Government Order. The argument of the petitioner in that case was similar to the one before me, that the notional fixation of pay be with retrospective effect from date of regularization with monetary benefits and this prayer came to be accepted by the Bench. Thus, the Bench granted notional fixation of pay retrospectively upon completion of a decade of service with fixation of notional monetary benefits for the express purpose that the entire service period be counted for the purpose of service benefits including monetary benefits.

5. This issue appears to have engaged the attention of the Courts for some time now. Learned counsel for the petitioners would submit that initially the relief sought for by similarly placed petitioners was wide insofar as a payout of monetary benefits for the period for which service has been regularised was also sought. However, this plea had been negatived with the Court and the petitioners thereafter acquiesced to the position that the benefits could be notionally fixed in order that the service period be counted for subsequent benefits including monetary benefits. This, in effect, is the ratio of the



decision of the Division Bench in the case of A. Babysabeena (Supra). In conclusion, the Bench allows the Writ Appeals directing the respondents 'to notionally fix the pay of the appellants/petitioners retrospectively with effect from the date of completion of 10 years of service as NMRS, with monetary benefits from the date of the Government Order, dated 19.10.2007, as it has been extended to others in G.O. Ms.No.124, Public Works Department, dated 15.05.2008.' The exercise was directed to be commenced and completed within a period of eight weeks from date of receipt of a copy of that order. This decision has been confirmed and the Special Leave Petitions filed by the State in SLP. Nos.9122 & 9123 of 2016 dismissed by the Hon'ble Court on 29.06.2016, both on the ground of delay as well as on merits. Subsequent to the Judgment of the Supreme Court, G.O. Ms No.235 dated 30.11.2017 has been passed by the State giving effect to the decision.

6. The above decision applies on all fours to the present case insofar as there appears to be perfect identity between the facts as well as legal submissions advanced. In fact, the counter affidavit filed by the State is dated 2010, prior to the decision of the Division Bench which has been affirmed by the Hon'ble Supreme Court.

7. In the light of the discussion as aforesaid, this Writ Petition is allowed and there is a direction to the State to refix the pay including notional benefits in the cases of all the petitioners from the date of regularisation without there being any actual pay out and this exercise will be completed within a period of eight (8) weeks from today. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

rkp

To

1. The Secretary to Government,
The State of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai -9.



2. The Principal Secretary,
Public Works Department,
Fort St. George, Chennai -9.

3. The Director of Technical Education,
Guindy, Chennai - 600 032.

4. The Executive Engineer,
Technical Education Division,
Coimbatore.

5. The Executive Engineer,
Technical Education Division,
Guindy, Chennai -25.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.42973

+1cc to the Government Pleader, S.R.No.43417

W.P. No.4788 of 2009

SSD(CO)
SU(20/09/2021)