

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.16410, 16416, 24744 & 16421 of 2019

W.P.No.16410 of 2019:

S.Thiyagarajan

... Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by the Secretary to Government,
Public Works Department,
Secretariat, Chennai 600 009.
2. The Chief Engineer (Buildings),
Chennai Region,
Public Works Department,
Chepauk, Chennai 600 005.
3. The Assistant Executive Engineer,
Public Works Department,
Adyar Sub Division,
Adyar, Chennai 600 028.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records in Letter No.S 4(1)/51189/2015, dated 13.04.2016, on the file of the 2nd Respondent, and quash the same as illegal, incompetent and without jurisdiction and further direct the Respondents to regularize the service of the Petitioner as per the order passed in W.A.No.493 of 2016, dated 25.04.2016 confirmed by the Honourable Apex Court and as per the Government Order in G.O.(2D) No.29, PWD Department, dated 09.02.2016 and in view of G.O.(3D) No.40, Public Works (C2) Department, dated 25.09.2018 with all monetary and service benefits.

W.P.No.16416 of 2019:

Jansirani

... Petitioner

vs.

1. The State of Tamil Nadu,
rep. by the Secretary to Government,
Public Works Department,
Secretariat, Chennai 600 009.

2. The Chief Engineer (Buildings),
Chennai Region,
Public Works Department,
Chepauk, Chennai 600 005.
3. The Assistant Executive Engineer,
Public Works Department,
Adyar Sub Division,
Adyar, Chennai 600 028.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records in Letter No.S 4(1)/51189/2015, dated 13.04.2016, on the file of the 2nd Respondent, and quash the same as illegal, incompetent and without jurisdiction and further direct the Respondents to regularize the service of the Petitioner as per the order passed in W.A.No.493/16, dated 25.04.2016 confirmed by the Honourable Apex Court and as per the Government Order in G.O.(2D) No.29, PWD Department, dated 09.02.2016 and in view of G.O.(3D) No.40, Public Works (C2) Department, dated 25.09.2018 with all monetary and service benefits.

W.P.No.24744 of 2019:

1. G.Kumar
2. A.Moorthy
3. T.Kumar
4. T.Gobal
5. C.Kasi
6. K.Yangamma
7. B.Muthaiya
8. P.Suresh
9. G.Harikrishnan

... Petitioners

1. The State of Tamil Nadu,
rep. by the Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai 600 009.

2. The Chief Engineer (Buildings),
Chennai Region,
Public Works Department,
Chepauk, Chennai 600 005.

3. The Executive Engineer,
Chennai Corporation,
South Division,
Chepauk, Chennai 600 005.

4. The Assistant Executive Engineer,
Public Works Department,
Adyar Sub Division,
Adyar, Chennai 600 028.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records in Letter No.26422/C2/2016-2, dated 09.02.2017, on the file of the 1st Respondent and further direct the Respondents to regularize the services of the Petitioners as per the order passed in W.A.No.493 of 2016, dated 25.04.2016 confirmed by the Honourable Apex Court and as per the Government Order in G.O.(2D) No.29, PWD Department, dated 09.02.2016 and in view of G.O.(3D) No.40, Public Works (C2) Department, dated 25.09.2018 with all monetary and service benefits.

W.P.No.16421 of 2019:

1. V.Kumar
2. D.Rajendran
3. A.Senthilnathan
4. S.Vijaya Prabhu
5. Vinoth
6. C.Sekar
7. V.Prithviraj
8. P.Krishnamoorthy
9. P.V.Raghu
10. S.Parthiban

... Petitioners

vs.

1. The State of Tamil Nadu,
rep. by the Secretary to Government,
Public Works Department,
Secretariat, Chennai 600 009.

2. The Chief Engineer (Buildings),
Chennai Region,
Public Works Department,
Chepauk, Chennai 600 005.

3. The Assistant Executive Engineer,
Public Works Department (Electrical Division)
Saidapet Sub Division,
Chepauk, Chennai 600 005.

... Respondents

(R3 amended vide order dated 03.03.2021 in W.M.P.No.24200 of 2019 in W.P.No.16421 of 2019)

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the Respondents to regularize the service of the Petitioners as per the order passed in W.A.No.493/16, dated 25.04.2016 confirmed by

the Honourable Apex Court and as per the Government Order in G.O.(2D) No.29, PWD Department, dated 09.02.2016 and in view of G.O.(3D) No.40, Public Works (C2) Department, dated 25.09.2018, with all monetary and service benefits.

For Petitioner(s) in all W.Ps.:Mr.M.Muruganantham
For Respondents in all W.Ps. :Mr.J.Pothiraj,
Special Government Pleader

C O M M O N O R D E R

As the issue involved in all these Writ Petitions is one and the same, cases are taken up for disposal by a common order.

2. Petitioners have come up with the above Writ Petitions seeking regularization of their service as per the order dated 25.04.2016 passed in W.A.No.493 of 2016, confirmed by the Honourable Apex Court and as per the Government Order in G.O. (2D) No.29, PWD Department, dated 09.02.2016 and in view of G.O. (3D) No.40, Public Works (C2) Department, dated 25.09.2018, with all monetary and service benefits.

3. Learned Special Government Pleader appearing for the Respondents pointed out that, G.O.(Ms) No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, has been superseded by G.O.(Ms) No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013. According to him, Petitioners are not entitled to claim any relief in the light of G.O.(Ms) No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, as they have not completed ten years of daily wages service as on 01.01.2006 and that, they are part-time and casual employees on need basis. He also pointed out that, the Petitioners have not been recruited through Employment Exchange, not in Tamil Nadu Basic Service, but in Tamil Nadu Engineering Subordinate Service.

4. It is further submitted by the learned Special Government Pleader that, G.O.(2D) No.29, dated 09.02.2016 of Public Works (C2) Department has been passed in compliance of the order dated 20.06.2012 passed by this Court in W.P.No.37024 of 2006 and the services of the incumbents therein were regularized and hence, the said Government Order may not be applicable to the facts of this case.

5. Citing reference to the judgment of the Hon'ble Supreme Court in the case of State of Karnataka vs. V.Umadevi, reported in AIR 2006 SC 1806, learned Special Government Pleader submitted that, it has been clearly held therein that, there is no fundamental right for those who have been employed on daily wages or temporarily on contractual basis, to claim that, they

have a right to be absorbed in services. It has been further held that, the right to be treated equally with the other employees employed on daily wage basis, cannot be extended to a claim for equal treatment with those who were regularly employed, as that would be treating unequals as equals. The prime intendment of the decision was that, the employment process should be by fair means and not by back door entry.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. Petitioners herein have tabulated the number of days they have worked and the same is not disputed by the Respondents. Admittedly, Petitioners herein have not been paid monthly wages and they have been paid only daily wages on need basis.

8. When the matter was taken up for hearing on an earlier occasion, this Court directed the Respondents herein to file particulars tabulating the number of days worked by the Petitioners and the wages payable to them. However, Respondents have not furnished such particulars, so far.

9. Nature of work of the Petitioners is perennial. The fact that, they have been regularly employed requires consideration that, there should be a regular post. Admittedly, there are vacancies which have not been filled up for years together. Even assuming for the sake of argument that, the contention of the Respondents has to be accepted that, G.O.(Ms) No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, has been superseded by G.O.(Ms) No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, Petitioners herein should not have been engaged at all in all vacancies. The fact that, the Petitioners have been made to work continuously for years together even after the issuance of G.O.(Ms) No.74, shows that, there is need for regular employment and it is clear that, the Respondents have given a go-by to the old Government Order, i.e. G.O.(Ms) No.22, dated 28.02.2006. That being the case, employees who have been on the rolls ever since the date of entry, as per the statement made by the Respondents before this Court, will have to be regularized in service.

10. The applicability of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (in short, 'the 1981 Act) to Establishments and to the facts of this case, is not addressed in this Writ Petition. Even assuming for the sake of argument that, the 1981 Act is not applicable to the case on hand, this Court would like to draw inference that, the intention of the Government while

legislating the Act was to ensure that, the employees are regularized on completion of 480 days in a period of 24 calendar months, and that, the 1981 Act, received the assent of the President of India on 05.08.1981 and it came into effect from 01.01.1982, and it has a deeming provision. Except the extension of the provisions of the Act to Central Government Establishments viz. Southern Railways and Khadi Gramodyog, there appears to be no Notification extending the benefits of the Act to any other Industrial Establishment.

11. Umadevi's case (supra) may not be applicable to the facts and circumstances of this case, as, pursuant to the said decision, Petitioners herein should not have been appointed and continued in service. When the Respondents have given a go-by to the said decision every time, principles of the said decision cannot come handy. Respondents have watered down the principles laid down in Umadevi's case (supra) and they cannot shed crocodile tears after a decade. In the light of the decision rendered by this Court in the case of S.Thangappan vs. Government of Tamil Nadu, reported in 1986 T.N.L.J. 153, action needs to be taken against persons, who appointed the employees, and the Petitioners herein cannot be made as scapegoats.

12. In the case on hand, there is no back door employment of the Petitioners, so as to disentitle them from the benefit of regularization. Moreso, documents produced by the Petitioners have not been disputed or denied. Hence, this Court does not find any impediment in directing regularization of the services of the Petitioners. Accordingly, Respondents are directed to regularize the services of the Petitioners herein from the date of their entry into service. However, all the service benefits need to be calculated and payment due to the Petitioners shall be made with effect from 01.04.2021. It is made clear that, the Petitioners will not be entitled to any other backwages or monetary benefits, except that, wages need to be re-fixed notionally/retrospectively. Petitioners are entitled to permanent status, continuous and continuity of service, which shall be counted for pension and gratuity.

In fine, these Writ Petitions are allowed with the above direction. No costs. Consequently, connected W.M.P.Nos.16078 & 24394 of 2019; W.M.P.Nos.16075, 16079, 24396 and 16085 of 2019 and W.M.P.Nos.24454, 15866, 36786 & 23261 of 2020 are closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

(aeb)

To:

1. The Principal Secretary to Government,
State of Tamil Nadu, Public Works Department,
Secretariat, Chennai 600 009.
2. The Chief Engineer (Buildings), Chennai Region,
Public Works Department, Chepauk, Chennai 600 005.
3. The Executive Engineer, Chennai Corporation,
South Division, Chepauk, Chennai 600 005.
4. The Assistant Executive Engineer, Public Works Department,
Adyar Sub Division, Adyar, Chennai 600 028.
5. The Assistant Executive Engineer,
Public Works Department (Electrical Division)
Saidapet Sub Division, Chepauk, Chennai 600 005.

+ 4 ccs to M/s. M.Muruganatham, Advocate SR.13483 to 13486

+ 1 cc to the Government Pleader Sr.13757

W.P.Nos.16410, 16416,
24744 & 16421 of 2019

CP(CO)
EU 13.5.2021

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