



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.NO.18416 OF 2020

&

W.M.P.NO.22823 OF 2020

M.Kumar

... Petitioner

.Vs.

1. The Chief Engineer (General)
& Engineer - in- Chief,
Public Works Department,
Chepauk, Chennai - 5.
2. The Executive Engineer (General),
Building Maintenance,
PWD, Uthagamandalam.
3. The Superintending Engineer,
Construction & Maintenance Division,
Public Works Department,
Coimbatore.

... Respondents

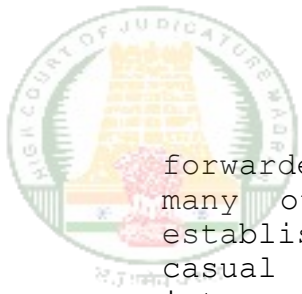
PRAYER:- Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondents to pass orders on the representation dated 04.06.2020 seeking restoration to duties by re-engaging or allowing the petitioner to join duty, on merits and as per law within a time to be stipulated.

For Petitioner .. Mr.L.Chandrakumar

For Respondents .. Mr.G.Krishna Raja
Assistant Government Pleader

ORDER

The case of the petitioner is that he was appointed as casual labourer/NMR in 1996 under the control of the respondents and has been continuously discharging his duties. On completion of 10 years of service as casual labourer/NMR, a proposal was



forwarded to the competent authority to bring the petitioner and many other similarly placed casual labourers into regular establishment. According to the petitioner, more than 1200 casual labourers were included in the list for being brought into regular time scale of pay and also for being regularized in the last grade service.

2. According to the petitioner, several similarly placed persons whose names have not been considered, approached this Court in a batch of writ petitions. Some of the writ petitions were allowed and some went against them in view of the ruling of the Hon'ble Supreme Court in Uma Devi's case. However, the Government in order to outline its policy on the regularization of casual employees, issued an order in G.O.Ms.No.233, Public Works (C2) Department dated 06.12.2009 and decided to grant consolidated salary of Rs.18,000/- per mensem, terming it as minimum pay for the purpose of grant of benefit. The Government had identified 3,407 NMR daily waged casual labourers, the petitioner who has been continued in service since 1996 had completed 10 years of service as on 31.12.2005.

3. In the meanwhile, a writ petition in W.P.(MD).No.8092 of 2020 was filed before the Madurai Bench of this Court seeking to conduct an enquiry in regard to the bogus service certificate produced before the Screening Committee and finally by order dated 01.10.2020, the learned Judge of this Court held that out of 20 petitioners therein except 3 petitioners, all others did not produce bogus certificate and rejected their claim. While rejecting the claim of bogus certificate, the Court has also held that those who have rendered more than 5-10 years of service are entitled for continuous engagement. The petitioner herein is also entitled to the observation of the learned Single Judge in the above said writ petition.

4. In the meanwhile, the petitioner vide his representation dated 04.06.2020, requested the Authority to permit him to rejoin as he satisfied all the norms and guidelines laid down by the Government which was also clarified by the Madurai Bench of this Court. The services of the petitioner being utilized from the year 1996 continuously upto 2018, he was entitled to be paid consolidated pay of Rs.18,000/- per mensem in terms of the aforementioned G.O.Ms.No.233, Public Works (C2) Department, dated 06.12.2009.

5. According to the petitioner the present writ petition has been filed confining only in regard to the re-engagement, as he was discontinued from service unjustly and illegally. According to him, he has also filed a Writ Petition in W.P.No.29212 of 2014 along with others seeking regularization of his service and same is pending before this Court. In the said circumstances, the petitioner is before this Court with a prayer for issue of



writ of mandamus directing the respondents to pass order on his representation dated 04.06.2020.

6. Mr.L.Chandrakumar, learned counsel for the petitioner has reiterated the above facts and would emphasize that the petitioner worked for more than 20 years uninterruptedly as casual labourer/NMR. Despite fulfillment of all the norms and requirements for bringing him to the regular establishment atleast for payment of consolidated salary of Rs.18,000/-, no order has been passed in this case. He would therefore request that a direction may be issued to the Authorities to consider his case sympathetically.

7. On behalf of the second respondent, a detailed counter affidavit has been filed. In the counter affidavit, the fact that the petitioner was engaged as NMR from 1996 to December 2017 was admitted, however it is stated that he has not completed 10 years service as on 01.01.2006, because he was appointed only on 02.09.1996. Therefore, his prayer for regularization cannot be accepted.

8. The above submission and the objection of the regularization is a matter to be considered in the other writ petitions pending before this Court seeking regularization. As far as the present issue of re-engagement of the petitioner is concerned, though number of facts have been stated on the issue of regularization, this Court is not inclined to go into those issues in view of the limited prayer being sought in the present Writ Petition.

9. As far as the claim of the petitioner herein is concerned, the fact that he was engaged from 1996 to 2017 is admitted. When the engagement of the petitioner has been admitted for more than two decades, it does not lie in the mouth of the respondents to oppose his re-engagement as NMR or casual labourer on a consolidated payment of Rs.18,000/- per month. The respondents having extracted work from the petitioner for more than two decades, cannot come up with a case that he is not entitled to any benefit at all. The petitioner atleast is entitled to be continued in service on casual basis till such time a decision of the regularization is taken in the other Writ Petitions. The Government being a model employer cannot come up with hyper technical reasons and seek to negative the claim of the petitioner herein. The loss of earning due to unjust disengagement amounted to violation of Article 21 of Constitution of India and the respondents cannot be allowed to take refuge behind certain instructions and orders for the purpose of denial of basic livelihood to be extended to the petitioner herein. The petitioner having acquired right to get engaged atleast on a temporary/casual/adhoc basis, cannot be

