



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
27.04.2021	06.05.2021

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) Nos.337 & 338 of 2021

W.A. (MD) No.337 of 2021:

K.Murugesan

... Appellant/Petitioner

-vs-

1.The State of Tamilnadu
Rep.by the Secretary
Public Works Department
Fort St.George
Chennai-600 009

2.The Engineer-in-Chief (WRO)
Public Works Department
Chepauk
Chennai-600 005

3.The Chief Engineer (WRO)
PWD-Madurai Region
Tallakulam
Madurai

4.The Superintending Engineer (WRO)
Thamiraiparani Irrigation Circle (Regular)
Palayamkottai
Tirunelveli District

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 04.11.2020, passed in W.P.(MD) No.10066 of 2014, on the file of this Court.

Prayer in WP(MD). 10066/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ or order or direction in the nature of a WRIT OF CERTIORARI MANDAMUS to call for the records of the impugned order No.446/C2/2013- 3 dated 17.01.2014 issued by the 1st Respondent and quash the same and direct the respondents to regularise the service of the petitioner



For Appellant : Mr.T.S.R.Venkatramana

For Respondents : Mr.K.P.Krishnadass
Special Government Pleader

W.A. (MD) No.338 of 2021:

N.Parthasarathy ... Appellant /1st Petitioner

-vs-

1.The State of Tamilnadu
Rep.by the Secretary
Public Works Department
Fort St.George
Chennai-600 009

2.The Engineer-in-Chief cum
Chief Engineer (General)
Chepauk
Chennai-600 005

3.The Chief Engineer (WRO)
PWD-WRO
Tallakulam
Madurai

4.The Superintending Engineer
WRO-PWD, Project Circle
Tirunelveli-2

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 04.11.2020, passed in W.P.(MD) No.14503 of 2017, on the file of this Court.

Prayer in WP(MD). 14503/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified mandamus calling for the records pertaining to the 2nd respondent in letter No.S.4(1)/27238/2017 dated 30.05.2017 and quash the same and further direct them to regularize in service within a time framed fixed by this court.

For Appellant : Mr.T.S.R.Venkatramana

For Respondents : Mr.K.P.Krishnadass
Special Government Pleader



C O M M O N J U D G M E N T

T.S.SIVAGNANAM, J.

The writ appeal in W.A.(MD) No.337 of 2021 by the writ petitioner is directed against the order dated 04.11.2020, passed in W.P.(MD) No.10066 of 2014, which was dismissed along with two other writ petitions.

2. The appellant in W.A.(MD) No.337 of 2021, after completing his 10th Standard and acquiring higher qualification in Typewriting in both English and Tamil, was appointed as Mazdoor Grade-I in the Office of the fourth respondent - Irrigation Section, Alwarkurichi and had been working as NMR for over 21 years as of 2014. The appellant placed reliance on various Government Orders issued from time to time regularizing the services of NMRs like that of the appellant, who have been rendering continuous service for several years. Since the appellant had completed ten years of service as on 01.01.2003, representations dated 28.11.2007, 15.10.2007 and 09.10.2017 were submitted to the Authorities to regularize his service in terms of Government Orders, namely, G.O.Ms.No.680, dated 16.08.1995; G.O.Ms.No.22, dated 28.02.2006; G.O.Ms.No.334, dated 19.10.2007; G.O.Ms.No.117, dated 15.04.2010; G.O.Ms.No.134, dated 07.05.2010 and G.O.Ms.No.202, dated 01.08.2012. Since the representation was not considered, the appellant filed W.P.(MD) No.10498 of 2007 to regularise his services and since there was an attempt to disengage the services of the appellant, he had filed W.P.(MD) No.8705 of 2008, in which an order of *status quo* was granted. The writ petition in W.P.(MD) No.10498 of 2007 was disposed of to consider the appellant's representation and since the direction was not complied with, Cont.P.(MD) No.508 of 2008 was filed and it is thereafter, the official respondents stated that the appellant has not been in continuous employment for ten years.

3. The appellant would further state that the respondents had admitted that he had worked with them from 1993 to 2000 continuously as NMR and from 2001 to 2007 as contract labour. However, the records for the year 2001 was tampered and his father's name was erased and the name of one Shanmugavel was inserted and this tampering was done only to deny the appellant's lawful right to seek for regularization. This averment has been made by the appellant based upon the information secured by him under the provisions of the Right to Information Act, 2005.



4. The appellant would further state that for the period from 2002 - 2007, though he was working, on account of the change of policy by the State Government, NMRs were made as contract labourers. However, the work assigned to the appellant continued to remain the same and the salary was paid from Government funds. Therefore, the appellant filed another writ petition in W.P.(MD) No.8683 of 2009 seeking regularization of his services. Since the direction was not complied with, Cont.P.(MD) No.331 of 2014 was filed and when the contempt petition was heard, an order dated 17.01.2014, passed by the second respondent, was produced before the Court stating that the claim of regularization was rejected. Therefore, the Court granted liberty to the appellant to challenge the order, dated 17.01.2014, which is impugned in W.P.(MD) No.10066 of 2014.

5. The facts in W.A.(MD) No.338 of 2021 is also identical to that of the case of the appellant in W.A.(MD) No.337 of 2021. The appellant in W.A.(MD) No.338 of 2021 was the first petitioner in W.P.(MD) No.14503 of 2017 stating that he has been recruited in the year 1992 as an NMR and has been functioning as such without being regularized in service or conferred permanent status. It is further submitted that the Government issued G.O.Ms.No.134, dated 07.05.2010, regularizing 976 similarly placed persons, but, however, the name of the appellant was not included. Since the claim for regularization was not considered, the appellant and another similarly placed person filed W.P.(MD) No.3576 of 2017, which was disposed of by directing the official respondents to pass orders within a time frame as the matter has been pending for several years and the appellant had crossed the age of 35 years. However, the claim was rejected by order dated 30.05.2017, which was impugned in W.P.(MD) No.14503 of 2017.

6. The respondents resisted the prayer sought for in the writ petition by contending that the appellant in W.A.(MD) No.337 of 2021 was working as NMR in the office of the fourth respondent for seven years from 1993 and for the remaining period from 2002 till 2007, he worked only on contract basis and G.O.(Ms) No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 is applicable only to the employees, who had completed 10 years of service as on 01.01.2006 and the appellant did not work for the said period. Therefore, he is not entitled for being regularized. So far as the appellant in W.A.(MD) No.338 of 2021 is concerned, the respondent - Department took an identical stand stating that he has not completed ten years of service on the crucial date fixed in the Government Order and therefore, not entitled for regularization.

<https://hcservices.ecourts.gov.in/hcservices/> 7. The learned Writ Court accepted the stand taken by the



respondents and dismissed the writ petitions. However, what was weighed in the mind of the learned Writ Court was that the appellants were "backdoor entrants" and regularization of such illegal and irregular appointees runs counter to the settled legal principles and no decision can be taken by the Government, which does not confirm the constitutional principles. Aggrieved by the dismissal of the writ petitions, the appellants are before us by way of these writ appeals.

8. We have elaborately heard Mr.T.S.R.Venkatramana, learned counsel appearing for the appellants and Mr.K.P.Krishnadass, learned counsel appearing for the respondents.

9. The order passed in the writ petitions has referred to several decisions of the Honourable Supreme Court and in particular, the decision of the Constitution Bench of the Honourable Supreme Court in the case of **Umadevi vs. State of Karnataka, [(2006) 4 SCC (1)]**. On a reading of the order passed by the learned Writ Court, we find that the correctness of the stand taken by the petitioners *qua* that taken by the respondent - Department appears to have not been dealt with. The crucial question would be as to whether the appellants satisfied the requirements to be treated on par with the other similarly placed persons. The appellants were nonsuited or in other words, denied the relief of regularization on the ground that they have not completed ten years of continuous service on the crucial date.

10. From the perusal of the records placed before this Court, we find that the respondent - Department themselves have certified and recommended the case of the appellants to have completed ten years of service on contract daily wage basis and contract basis and these recommendations have been made by none other than the Superintending Engineer of the respondent - Department as early as in the year 2017, precisely, on 08.12.2017 and 03.07.2017 respectively. This recommendation has not been disputed by the Department in their counter affidavit filed in the writ petitions. In fact, in the counter affidavit filed in W.P. (MD) No.14503 of 2017, filed by the appellant in W.A.(MD) No.338 of 2021, there is a reference to various Judgments of the Honourable Supreme Court and certain paragraphs from the Judgments have extracted. The only averment, which is contained in the counter affidavit, is that the appellant in W.A.(MD) No.338 of 2021, namely, N.Parthasarathy was paid wages through a private contractor. Admittedly, to tide over the exigencies and in order to fulfil certain very important water bodies, the Department had necessarily to engage NMRs / contract labourers. Such NMRs / contract labours continued to work for several years as in the case of the appellant for more than 20 years and the Government



several years and their services were virtually indispensable thought fit to grant the relief of regularization. The relief of regularization was to be granted based on the fulfillment of certain parameters by fixing a cut off date within which the concerned NMRs/contract labours should have completed ten years of continuous service. The Superintending Engineer, who is the Head of the Department in the particular region, has recommended and certified that both the appellants have completed ten years of continuous service on the crucial date. Without disputing the said document by merely stating that one of the appellants was paid through a private contractor is to unjustly deny the relief of regularization to the appellants alone, which was extended to several 1000s of people in the State.

11. Identical issue was considered by the Honourable Division of this Court in the case of ***State of Tamil Nadu, Public Works Department and two others vs. P.Subramanian and three others*** [W.A.No.493 of 2016, dated 25.04.2016] and the appeal filed by the Government was dismissed. Thus, in the light of the fact that the certification done by the Superintending Engineer certifying that the appellants have completed the requisite number of ten years of continuous service having not been disputed, the appellants were entitled to be granted the relief extended to the other similarly placed persons. In this regard, it will be beneficial to refer to the decision of the Honourable Supreme Court in the case of Union of India, rep.by the ***Chief Postmaster General and another vs. G.Subramani and another [(2013) 7 MLJ 724]***, wherein, it was held that equal treatment should be accorded to similarly placed persons without any discrimination.

12. Further, the learned counsel has drawn the attention of this Court to the order, dated 22.09.2017 in W.P.No.29346 of 2014 etc. batch [***G.Sivaganesan and five others vs. The State of Tamil Nadu, Public Works Department and two others***], wherein the learned Single Bench had quashed paragraph No.6 of G.O.Ms.No.74, dated 27.06.2013 and several Judgments of the Honourable Division Bench on the said issue have been referred to and the relief of regularization was granted to the petitioners.

13. Thus, for all the above reasons, we are of the considered view that the appellants are entitled to the relief as prayed for in the writ appeals.

14. In the result, the writ appeals are allowed and the order dated 04.11.2020, passed in W.P.(MD) Nos.10066 of 2014 and 14503 of 2017, is set aside. Consequently, W.P.(MD) Nos.10066 of 2014 and 14503 of 2017 are allowed and the impugned orders in these writ petitions are quashed and the respondents are directed



to extend the benefit of regularization of service of the appellants in terms of the relevant Government Orders and bring them under the time scale of pay, within a period of three months from the date of receipt of a copy of this Judgment. No costs.

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Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note :

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

To:

- 1.The Secretary, Public Works Department,
State of Tamilnadu, Fort St.George,
Chennai-600 009.
- 2.The Engineer-in-Chief (WRO),
Public Works Department,
Chepauk, Chennai-600 005.
- 3.The Chief Engineer (WRO), PWD-Madurai Region,
Tallakulam, Madurai.
- 4.The Superintending Engineer (WRO),
Thamiraiparani Irrigation Circle (Regular),
Palayamkottai, Tirunelveli District.

+3 CC to MR.T.S.R.VENKATRAMANA, Advocate (SR-18499[F] dated
07/05/2021)

COMMON JUDGMENT

IN

W.A. (MD) Nos.337 & 338 of 2021
06.05.2021

KM(01.06.2021) 7P 8C

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