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W.A.[MD]/No.1269 of 2021

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.[MD]No.1269 of 2021

and

CMP (MD) No.5320 of 2021

The Assistant Radio Engineer,  
Radio - Sub Division,  
Assistant Radio Engineer Office,  
Public Works Department,  
Madurai - 625 002.

... Appellant/Respondent

Vs.

P.S.Syed Abdulla Sheriff

... Respondent/Petitioner

**PRAYER:** Writ Appeal filed under Clause 15 of Letters Patent Act, praying against the order dated 23.09.2020 passed in W.P.(MD) No.5614 of 2020, on the file of this Court.

Prayer in WP(MD). 5614/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records relating to the impugned order of the respondent in proceedings Lr.No. Ko.25/U.Vaa.PO/Radio Madurai/2020 dt. 26.02.2020 and quash the same as illegal.

For Appellant

: Mr.R.Baskaran

Standing Counsel for Government

For Respondent

: Mr.V.Thirumal

#### JUDGMENT

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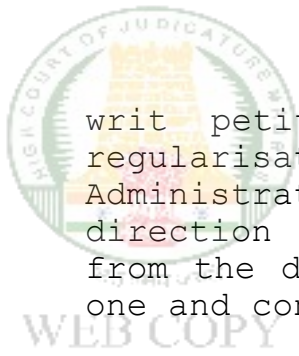
[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

With the consent on either side, this Writ Appeal is taken up for final disposal.

2.Heard Mr.R.Baskaran, learned Standing Counsel for Government appearing for the appellant and Mr.V.Thirumal, learned Counsel appearing for the respondent.

3.This Writ Appeal is directed against the order in W.P.[MD] No.5614 of 2020 dated 23.09.2020.

4.The case has had a checkered history, where the respondent /

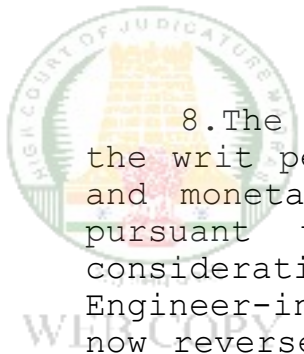


writ petitioner had been relentlessly pursuing his claim for regularisation. The writ petitioner approached the Tamil Nadu Administrative Tribunal and filed O.A.No.2273 of 2000 praying for a direction to the respondents to treat the services rendered by him from the date of initial employment from June 1991 as a continuous one and consequently, regularise his service.

5.The undisputed fact is that the writ petitioner was appointed as N.M.R. in the office of the Superintending Engineer, E.S.I. Engineering Circle, Public Works Department, Chennai and as a Helper for assisting Engineer Technicians and he was paid Rs.25/- per day. The writ petitioner approached the Tribunal stating that his continuous service should be reckoned and he should be regularised. After the abolition of the Tribunal, the case stood transferred to the Principal Seat of this Court and numbered as W.P.No.40552 of 2006. The said writ petition was disposed of by order dated 13.08.2010, by observing that the writ petitioner is in continuous employment since 1988 till 2010 and his name was directed to be included in the proposal and the case should be considered under G.O.Ms.No.134 dated 07.05.2010, in and by which, the Government took a policy decision to regularise the services of the N.M.R. candidates and more than 746 N.M.R. employees of the Public Works Department were regularised by relaxing the rule relating to age, method of recruitment and educational qualification, wherever required.

6.Pursuant to the direction issued, the authorities of the appellant department positively recommended the case of the writ petitioner and ultimately the Government in G.O.(2D).No.45, Public Work (2) Department dated 10.07.2017, regularised the services of the petitioner with effect from 01.01.2003, retrospectively, thereafter, with monetary benefits from the date of issue of the Government Order as done in G.O.Ms.No.134 dated 07.05.2010. The petitioner sought for appointment to the post of Technical Assistant by transfer. Since the same was not considered, he filed a writ petition in W.P.[MD]No.22648 of 2019. The said writ petition was disposed of by order dated 24.10.2019, to consider the petitioner's representation dated 09.09.2019 and pass orders in accordance with law. Since, the said order was not complied with, the petitioner sent a Contempt notice dated 12.02.2020. Immediately thereafter, an order was passed on 26.02.2020, proposing to recover alleged excess payment of salary and other benefits granted to the petitioner for the period from 01.01.2003 to 29.02.2020, on the ground that the writ petitioner suffered break in service from 01.01.2003 to 20.08.2017 and thereafter, this order was put to challenge in W.P. [MD]No.5614 of 2020 and the writ petition has been allowed by the impugned order.

7.We have carefully considered the findings recorded by the learned single Bench and we fully subscribe to the view taken.



8.The order of regularisation was specific to the effect that the writ petitioner would be regularised notionally from 01.01.2003 and monetary benefits from 21.08.2017. If such is the position, pursuant to G.O.(2D)No.45, which was passed by taking into consideration the recommendation of the Chief Engineer and the Engineer-in-Chief of the appellant department, the department cannot now reverse its stand and allege that excess payment has been made not knowing the important fact that benefit was only granted notionally.

9.We are in full agreement with the findings recorded by the learned Single Bench in paragraphs 23 to 26 of the impugned order and find no grounds to interfere with the said order. Accordingly, the Writ Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

MR

**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

The Assistant Radio Engineer,  
Radio - Sub Division,  
Assistant Radio Engineer Office,  
Public Works Department,  
Madurai - 625 002.

+2 CC to M/s.V.THIRUMAL, Advocate ( SR-24256[F] dated 29/07/2021 )

+1 CC to M/s.SPL GP ( SR-24419[F] dated 29/07/2021 )

**W.A./MD/No.1269 of 2021**

**27.07.2021**

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