



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P(MD)Nos.16801 to 16811 of 2021

and

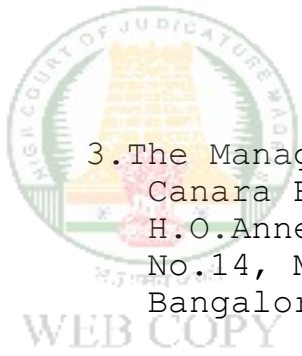
W.M.P (MD) Nos.13685, 13687,13689, 13690, 13693, 13686, 13691, 13688,
13692, 13695 & 13698 of 2021

- | | |
|------------------|--|
| 1.P.Madasamy | ... Petitioner in W.P(MD)No.16801/2021 |
| 2.U.Sapparathan | ... Petitioner in W.P(MD)No.16802/2021 |
| 3.P.Ganesan | ... Petitioner in W.P(MD)No.16803/2021 |
| 4.B.Nagarajan | ... Petitioner in W.P(MD)No.16804/2021 |
| 5.A.Natrajan | ... Petitioner in W.P(MD)No.16805/2021 |
| 6.P.Mookan | ... Petitioner in W.P(MD)No.16806/2021 |
| 7.V.Velayutham | ... Petitioner in W.P(MD)No.16807/2021 |
| 8.K.Ramakrishnan | ... Petitioner in W.P(MD)No.16808/2021 |
| 9.V.Gurusamy | ... Petitioner in W.P(MD)No.16809/2021 |
| 10.K.Thavamani | ... Petitioner in W.P(MD)No.16810/2021 |
| 11.K.Arumugam | ... Petitioner in W.P(MD)No.16811/2021 |

Vs.

(IN All W.Ps)

- 1.The Managing Director,
Canara Bank,
Canara Bank Buildings,
No.112, J.C.Road,
P.B.No.6648,
Bangalore - 560 002.
- 2.The Secretary,
Canara Bank (Employee's) Pension Fund,
H.O. Annexe, Naveen Complex,
No.14, M.G. Road,
Bangalore - 560 001.



3.The Manager,
Canara Bank (Employee's) Pension Fund,
H.O.Annexe, Naveen Complex,
No.14, M.G. Road,
Bangalore - 560 001.

4.The General Manager,
Canara Bank,
Circle Office,
Madurai.

5.The Assistant General Manager,
Canara Bank,
Circle Office,
East Veli Street,
Madurai - 1.

... Respondents

Prayer in W.P. (MD)Nos.16801 to 16807 & 16809 to 16811 of 2021: Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order in Ref. MDUC HRM 61580, 70466, 70520, 70215, 67085, 66306, 68402, 66087, 70359, 70463 2021 dated 06.05.2021 respectively on the file of the Respondent No.5 and quash the same as illegal and consequently for a direction, directing the Respondent No.1 & 2 to count the earlier services rendered by the Petitioners on daily wages i.e. from the date of initial appointment in the post of Peon along with the regular service for the purpose of calculation of the pensionary benefits and to provide all other consequential benefits within the time stipulated by this Court and pass such further or other orders as this Court.

Prayer in W.P. (MD).No.16808 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order in the Impugned Order in Ref.HRW/CBEPF/SS/64269/467/10/2020-21 dated 29.03.2021 on the file of the Respondent No.3 and quash the same as illegal and consequently for a direction, directing the Respondent No.1 & 2 to count the earlier services rendered by the Petitioner on daily wages i.e. from the date of initial appointment in the post of Peon along with the regular service for the purpose of calculation of the pensionary benefits and to provide all other consequential benefits within the time stipulated by this Court and pass such further or other orders as this Court.



(In all W.Ps)

For Petitioners : Mr.T.Lajapathi Roy
For Respondents : Mr.N.Dilip Kumar,
Standing Counsel.

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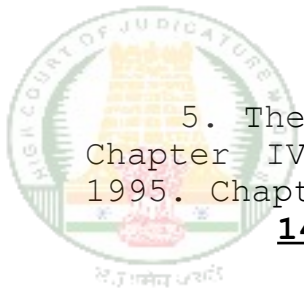
COMMON ORDER

Since the issue involved in these writ petitions is one and the same, a common order is being passed in these writ petitions.

2. The writ petitioners were appointed as peon on daily wages, in the leave vacancy that has arisen in the respondent bank. The appointment was made on the basis of seniority of registration in the employment exchange. The petitioners were appointed between the years 1983 and 1999. Later, the writ petitioners were observed in the permanent vacancy and their services were regularized by the respondent bank. The petitioners retired from service between the years 2018 and 2020. Thereafter, the petitioners made individual representations to the respondent bank to count the earlier service rendered by them as daily wages, along with regular service rendered, for calculating the pensionary benefits. The respondent bank has passed the impugned order, rejecting the request made by the petitioners. Challenging the same, the petitioners have filed the present writ petitions.

3. The learned counsel for the petitioners submitted that the respondent bank has passed the rejection order without counting the services of the petitioners rendered as daily wage workers in the respondent bank for more than ten years. He further submitted that the said period has to be taken in to account for calculating the pensionary benefits. Without considering the said fact, the respondent bank has rejected the claim of the petitioners. Therefore, the rejection orders were to be set aside.

4. The respondent bank has filed a detailed common counter-affidavit rejecting the contentions raised by the petitioners. According to the respondent bank, the petitioners were appointed only in leave vacancy i.e. whenever regular employees were on leave. The employment of the petitioners was not continuous. It is the usual practice followed in banks to employ peons on daily wages whenever regular employees go on leave. As and when regular vacancies arise, employees working on daily wages were considered for absorption, along with fresh candidates. The writ petitioners were appointed only on ad hoc basis. Therefore, their claim for regularisation, counting the period from the date of their initial appointment cannot be considered.



5. The learned counsel for the respondents has also relied upon Chapter IV of the Canara Bank (Employees') Pension Regulations, 1995. Chapter IV, Rule 14 reads as follows:-

14. Qualifying service:-

"Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension".

6. Heard the learned counsel for the petitioners on either side and perused the materials available on record.

7. The short point for consideration in these writ petitions is whether the writ petitioners are entitled for regularisation from the date of initial appointment or ad hoc employment in the leave vacancy and count the same period for the purpose of pensionary benefits.

8. The writ petitioners were initially engaged only as temporary daily wage employees on ad hoc basis, whenever regular employees were on leave. The writ petitioners' services were regularized between the years 1992 and 1993 by the respondent bank. It is pertinent to note that the writ petitioners have not challenged the appointment order, seeking regularization with effect from the date of their initial appointment. These writ petitioners retired from service between the years 2018 and 2020 on attaining the age of superannuation. These writ petitions have been filed praying for regularization of service from the date of initial appointment for the purpose of pensionary benefits.

9. The learned counsel for the petitioners has relied upon several judgments in support of his contentions. The learned counsel relied upon judgment of the Hon'ble Supreme Court in 2014(4) SCC 769 (Secretary vs. Govindasami) paras 8 and 9. This Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"8 (i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality



scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or

<https://hcservices.ecourts.gov.in/hcservices/> under a statute." (Emphasis added)



10. The learned counsel has also placed reliance on the judgment in 2006 (11) SCC 464:

12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911 , pg. 395 as follows :

. " In determining whether there has been such delay as to amount to laches, the chief points to be considered are :

(i) acquiescence on the claimant's part;

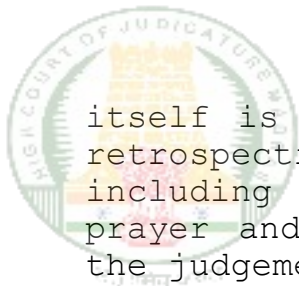
and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches. "

11. Considering the above judgments, this court is of the view that the petitioners' request to consider for regularisation of services with effect from the date of their initial appointment in the years 1992 to 1999 has to be rejected. The petitioners retired from service between the years 2018 and 2020. Till their retirement, the petitioners have not raised this prayer for regularisation of appointment from the initial period of daily wages. Therefore, these writ petitions are liable to be dismissed on the ground of delay and laches.

12. Another judgment of this court ultimately considered in WP No.4299 of 2015 dated 03.07.2019 wherein this court has considered a similar issue of petitioners who were initially appointed as daily wage employees and subsequently, their employment was regularized in the sanctioned post, in a regular scale of pay. These appointments were made by the Department and not as per the rules, and therefore, these appointments were held to be irregular appointments. This court further held that regularising the service for the employees



itself is a concession and that concession cannot be granted with retrospective regularisation of service for monetary benefits including pensionary benefits. This court ultimately negated the prayer and dismissed the writ petition. The relevant paragraph of the judgement is extracted hereunder:

"4.This Court is of the considered opinion that the initial appointment of the writ petitioner was not in accordance with the recruitment rules in force. He was appointed only as a daily wage employee and subsequently converted as consolidated pay employee. This being the factum, retrospective regularization of service cannot be granted in respect of the irregular appointments made. The services of the writ petitioner was subsequently regularized from the year 2012 in the sanctioned post in the regular time scale of pay in respect of the irregular appointments grant of regularization itself is a concession. Thus, further concession cannot be granted for retrospective regularisation of the services with monetary benefits."

13. The petitioners have not made out a prima facie case. These writ petitions have to be rejected on the ground of laches as well. The writ petitions are devoid of merits and the same is liable to be dismissed.

14. Since no prima facie case has been made out, the petitioners are not entitled to regularisation from the date of their initial appointment. The writ petitions fail and the same are therefore dismissed. There will be no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Mnr

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.



W.P(MD)Nos.16801 to 16811 of 2021

+11 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-33152[F] dated 29/10/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-33250[F] dated 29/10/2021)

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RD(16.12.2021) 8P 13C