



W.P.No.4517 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2022

CORAM :

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

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1. K.Selvan
2. K.Nagaraj
3. A.Rajendran
4. S.Selvan
5. K.Murugan
6. K.Moorthy
7. K.Thangaraj
8. K.Sinnaraj
9. R.Ravi
10. N.Jayanthi
11. P.Palanisamy
12. N.Rajendran
13. R.Veerappan
14. K.Gobal
15. V.Kaliyannan
16. S.Muthusamy
17. K.Suppuraj

.. Petitioners

Vs.

1. The State of Tamil Nadu
Rep. by its Principal Secretary
Public Works Department
Fort St. George, Chennai - 600 009.

2. The Engineer In-Chief and Chief Engineer in General
Public Works Department
Chepauk, Chennai - 600 005.

3. The Assistant Executive Engineer
Public Works Department
Bhavani Sagar, Erode District.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India for a writ of Mandamus directing the first respondent to pass orders on the representation dated 12.04.2019 seeking grant of pension and pensionary benefits condoning the break, if any, by suitably modifying the regularization to be made effective from the date of completion of ten years with consequential notional benefits thereto only for the limited purposes of certain fringe benefits of pension and pensionary dues thereto on merits as per law and within a time to be stipulated by this Hon'ble Court.

For Petitioners : Mr.L.Chandrakumar

For Respondents : Mr.C.Kathiravan
Special Government Pleader
for respondents 1 to 3

ORDER

The prayer sought for herein is for a writ of Mandamus directing the first respondent to pass orders on the representation dated 12.04.2019 seeking grant of pension and pensionary benefits condoning the break, if any, by suitably modifying the regularization to be made effective from the date of completion of ten years with consequential notional benefits thereto only for the limited purposes of certain fringe benefits of pension and pensionary dues thereto on merits as per law.



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2. These petitioners had been temporarily engaged on daily wage basis as NMRs in the respondent department from the year 1989 till 1991 that means between these period, these petitioners had been initially engaged or appointed.

3. From the day of inception, they had been continuously worked, however, with some intermittent breaks.

4. Like the petitioners, so many other people have been engaged as NMRs at various point of time by the respondent Department and in order to streamline and regularize their services, the Government had come forward to issue a Government Order in G.O.Ms. No. 334, Public Works (C2) Department dated 19.10.2007, under which, those who have been engaged as NMRs on daily wage basis or temporary basis and had been working continuously for ten years would be considered for regularization and accordingly, so many such people like the petitioners have been given the benefit of regularization on completion of ten years of temporary service.



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5. However, insofar as the petitioners' case is concerned, though they have been regularized on completion of ten years period, but the ten years period was calculated by deducting the intermittent break in service period and the said break in service according to the learned counsel Mr.L.Chandrakumar appearing for the petitioners, is only because of want of the project is concerned, therefore, such an artificial breaks imposed on the petitioners cannot be put against the petitioners for the purpose of calculating ten years service and for the purpose of regularization, as has been contemplated in the Government Order in G.O.Ms.No.334 dated 19.10.2007 as referred above.

6. In that regard, since all these petitioners though had been regularized, their regularization has been deferred and has been given only after 01.04.2003, where all of them would be deprived of getting their pensionary benefits after their superannuation and retirement. Therefore, in order to rectify the same and to calculate the correct ten years period from the date of initial appointment or engagement of these petitioners for the purpose of regularization, these petitioners joined together and filed a representation on 12.04.2019 to the respondents and the



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same, since has not been considered, they have approached this Court by filing the present writ petition.

7. Heard Mr.L.Chandrakumar, learned counsel appearing for the petitioners, who having reiterated the aforesaid would seek indulgence of this Court to issue a direction to the respondents by way of Mandamus.

8. Mr.C.Kathiravan, learned Special Government Pleader appearing for the respondents on the other hand by relying upon the averments made in the counter affidavit would submit that insofar as the break in service effected in respect of these petitioners is concerned, because these people have been engaged in some projects and once the project work is over till the next project starts, normally these kinds of break in service become inevitable. Therefore, the period in which they have been in break in service cannot be treated as continuous service for the purpose of regularization or treating them as they had been in continuous service for ten years for the purpose of the Government Order in G.O.Ms.No.334.



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9. Therefore, learned Special Government Pleader would submit that these people are not entitled to get any regularization on the early date prior to the date on which each of them have been regularized under the benefit of the Government Order. Therefore, the learned Special Government Pleader seeks dismissal of this writ petition.

10. I have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

11. It is no doubt that the initial appointment or engagement had been made in respect of these petitioners from 1989 till 1991 that means all the petitioners have been initially appointed or engaged. Thereafter, there might have been some intermittent break in service with regard to each of the petitioners. However, how much period such break in service was effected and the reason for such break in service cannot be found out now and in this aspect, the very purpose of the Government Order in G.O.Ms.334 issued by the Government, which is a beneficial Government Order to give such solace to regularize all



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these temporary employees, who have been working for more years and after having completed ten years of service, since they are entitled to get such regularization, that is the reason why the Government has come forward to issue the Government Order G.O.Ms.334, such beneficial arising out of the Government Order has to be extended to all eligible persons, no one can be deprived of by making a belated regularization, thereby, their pensionary benefits could not be deprived of.

12. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

- ◆ That there shall be a direction to the respondents to consider the representation of the petitioners dated 12.04.2019 and decide the same on merits and in accordance with law by taking into account of the service rendered by these petitioners right from their initial appointment or engagement, for the purpose of regularization of their services by completion of ten years period exactly from the date of initial appointment or engagement and in this regard the import of the Government Order G.O.Ms.334 only can be considered as a



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beneficial Government Order and import of the same shall be construed only in favour of the petitioners and having the aforesaid in mind, the respondents shall dispose of the representation of the petitioners by passing necessary orders as discussed herein above.

- ◆ The needful as indicated above shall be undertaken by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

With these directions, this writ petition is disposed of. No costs.

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Index : Yes/No
drm/mp



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The State of Tamil Nadu
Public Works Department
Fort St. George, Chennai - 600 009.
2. The Engineer In-Chief and Chief Engineer in General
Public Works Department
Chepauk, Chennai - 600 005.
3. The Assistant Executive Engineer
Public Works Department
Bhavani Sagar, Erode District.



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R.SURESH KUMAR,J.

(mp/drm)

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