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W.P.No.33499 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 14.11.2022

Orders delivered on 13.12.2022

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.33499 of 2012

C.Perumal

.. Petitioner

Vs

1. The Government of Tamil Nadu,
rep. by its Secretary,
Highways Department,
Fort St.George,
Chennai - 600 009.

2. Chief Engineer,
Highways and Rural Works Department,
Chepauk,
Chennai – 600 005.

3. The Divisional Engineer,
Saidapet Division,
Highways and Rural Works Department,
Saidapet,
Chennai – 600 015.

..Respondents.



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PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for records from the file of the 1st respondent relating to G.O.Ms.No.265 issued by the Highways (HM2) Department dated 09.11.2007 and quash the same insofar as the petitioner has been absorbed with effect from 09.11.2007 only and consequently direct the respondents to regularize and absorb the petitioner in service with effect from 29.05.1997, when his juniors were absorbed under G.O.Ms.No.184 dated 29.05.1997 with all consequential benefits including arrears and seniority.

For Petitioner : Mrs.R.Vaigai,Senior Counsel
for Ms.Anna Mathew

For Respondents : Mr.B.Vijay
Addl.Govt.Pleader

ORDER

This writ petition has been filed challenging G.O.Ms.No.265 dated 09.11.2007, issued by the Highways (HM2) Department insofar as the petitioner been absorbed in service with effect from 09.11.2007 is concerned



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and consequently, direct the respondents to regularize and absorb the petitioner in service with effect from 29.05.1997, the date on which his juniors were absorbed under G.O.Ms.No.184 dated 29.05.1997 with all consequential benefits including arrears and seniority.

2. The brief facts of the case of the petitioner are as follows:

i) The petitioner worked as a Road Mazdoor for more than 10 years from 26.04.1987 to 31.12.1998 on Nominal Muster Roll basis. After 11 years and 8 months of continuous work, the petitioner was stopped from service on 31.12.1998. Many persons including the petitioner were engaged as NMR Road Mazdoors for several years without their service being regularized. A group of similarly placed persons like that of the petitioner moved the Tamil Nadu Administrative Tribunal by filing O.A.No.3969 of 1991 & batch and sought for regularization in service from the date when they completed 480 days of continuous service. The Tribunal passed an order dated 17.05.1996 holding that the services of Nominal Muster Roll employees who have completed three years of service with short breaks should be regularized in



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their posts. Pursuant to the said order, the Government issued G.O.Ms.No.184 dated 29.05.1997, by which, 764 mazdoors who had approached the Tribunal were reinstated into service and regularized. On the basis of the said G.O., the petitioner's colleagues and his juniors were regularized with effect from 29.05.1997. Apart from 764 appointments, many other vacancies were created and filled up by fresh candidates who had not even worked for a single day as Road workers prior to their fresh appointments.

ii) The petitioner approached the Tamil Nadu Administrative Tribunal along with 16 others by filing O.A.No.5072 of 2000 and sought for regularization as granted to his colleagues from 25.09.1997. On 28.07.2000, the Tribunal ordered notice to the respondents returnable in six weeks. Though notice was received by the respondents, they did not file any reply. Thereafter, unfortunately, after May 2004, the Tribunal stopped functioning and there were no Members to hear the case.

iii) The petitioner, therefore, left with no other alternative, filed a petition under Section 2A of the Industrial Disputes Act on 30.12.2004,



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before the Labour Officer, Kuralagam, Chennai, for initiating conciliation proceedings. The petitioner sent a letter dated 20.01.2005 to the Labour Officer and requested to send notice to the respondents. The 3rd respondent sent their representative to appear before the Labour Officer during conciliation on various dates. On 23.05.2005, the representative of the 3rd respondent submitted a letter dated 04.07.2005 issued by the Divisional Engineer, Thiruvallur to the Chief Engineer, Chennai, enclosing a list containing details of 12 Road Mazdoors, recommending regularisation of their service and the petitioner's name found place at serial No.5 of the said list. The representative of the respondents informed the Labour Officer that steps were being taken to regularize the petitioner's service. On the basis of the statements made by the representative of the 3rd respondent, the Labour Officer closed the 2A petition on 23.05.2005. Since no steps were taken thereafter, the petitioner sent another representation on 24.10.2005 to the 3rd respondent to reinstate him in service. Though the letter was received by the 3rd respondent, there was no reply.

iv) Thereafter, the petitioner filed Writ Petition No.4953 of 2006 before



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this Court and sought for transfer of O.A.No.5072/2000, since the Tribunal had been abolished. In spite of the order passed by the High Court on 22.02.2006, O.A.No.5072/2000 was not transferred to High Court for long time and the respondents also did not take any further steps. Once again, the petitioner filed another petition under section 2A of the Industrial Disputes Act, 1947, and requested the Labour Officer to initiate conciliation proceedings regarding his regularisation with effect from 25.09.1997. The 3rd respondent filed a letter dated 10.04.2006 before the Labour Officer, Kuralagam, Chennai, stating that the petitioner's name was included in the list of employees who have completed 10 years of service. Thereafter, the 3rd respondent filed another letter dated 05.06.2006 before the Labour Officer stating that the petitioner's name was found in the list of those who have completed 10 years of service and steps were being taken to regularise his service and the Labour Officer, directed the petitioner to approach the respondent office in person. The Labour Officer, taking consideration of the submission made by the 3rd respondent, closed the conciliation proceedings. Again, no steps were initiated by the respondents and the petitioner sent



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another representation dated 05.10.2006 requesting regularisation of service.

The petitioner also sent a representation to the Hon'ble Chief Minister of Tamil Nadu on 18.12.2006 in this regard.

v) Finally, O.A.No.5072 of 2006 was transfer to the file of this Court and renumbered as W.P.No.45653/2006 and this Court, by order dated 13.03.2007, directed reappointment of the petitioners therein, who have completed 3 years of service as NMRs and also directed to extend the benefit of the said G.O.Ms.No.184 with effect from the date on which other similarly placed persons were granted such benefits. Thereafter, the Government issued G.O.Ms.No.265 dated 09.11.2007 for appointment of 77 daily wage employees who have completed 10 years of service. Pursuant to the said G.O., the Divisional Engineer, Thiruvallur Division, issued proceedings dated 12.12.2007 wherein it is stated that those highways employees who have completed 10 years of service will be appointed on temporary basis in the scale of 2550-55-2660-60-3200 and in the basic pay of Rs.2550/- and in the said proceedings, the petitioner's name was found in serial No.4 and he was appointed to the Saidapet Division and his service was regularised only from



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09.11.2007. Therefore, the petitioner sent a representation on 01.08.2009 seeking for absorption with effect from 25.09.1997, the date on which G.O.Ms.No.184 was issued.

vi) The only reason for not absorbing the petitioner with effect from 25.09.1997 is that he did not file the Original Application, viz., O.A.No.3969 of 1991 batch, before the Tamilnadu Administrative Tribunal along with his colleagues. The petitioner's date of birth was also wrongly mentioned as born in the year 1952, by confusing with that of another mazdoor, A.Perumal. Therefore, the petitioner filed a writ petition in W.P.No.10223 of 2010 and the same was allowed on 08.11.2011 correcting his date of birth. Against which, the department, filed Writ Appeal and the same was dismissed on 27.09.2010. Subsequently, the present writ petition has been filed seeking the aforesaid relief.

3. A counter affidavit had been filed by the 3rd respondent stating that since as per G.O.Ms.No.22, Public and Administration Reforms Department dated 28.02.2006, the persons who were completed 10 years of services are



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only eligible for regularisation of their services. Therefore, with reference to G.O.Ms.No.184, Highways Department (H-M2) department dated 29.05.1997, the department is unable to regularize the service of the petitioner. The Government have already taken a policy regarding regularization and the time scale of NMRs, the persons covered in W.P.No.45653/2006 dated 13.03.2007. The petitioner was considered equally one among 77 persons who were appointed in the aforesaid G.O.Ms.No.265 and was ordered in the time scale of Rs.2550-55-2660-60-3200 and his name has been considered for contributory pension scheme also with effect from 01.04.2003. Therefore, the contentions of the writ petitioner are not maintainable and prayed for dismissal of the writ petition.

4. Heard, Mrs.R.Vaigai, the learned Senior counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

5. Learned Senior Counsel would submit that the action of the



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respondents in not regularly absorbing the petitioner with effect from 29.05.1997 on par with his juniors is in violation of the order passed by this Court in W.P.No.45654 of 2006 dated 13.03.2007. The petitioner was deprived the service benefits for 11 years as his juniors having been absorbed from 02.09.1997. The petitioner was also deprived of being entitled to pension which is available only to employees who were in regular service before 1.1.2004. There has been total non-application of mind by the respondents while passing the impugned G.O. dated 09.11.2007. The order did not take note of the various facts and circumstances preceding that date. The said order is a general order covering 77 workers and granted regularisation as per G.O.Ms.No.22 dated 28.02.2006. The order regularising the petitioner's services does not even refer to the order dated 13.03.2007 passed by this Court in W.P.No.45653/2007. Therefore, there is an obvious error in not complying with the High Court's order. It is admitted by the respondents in letter dated 04.01.1999 that the petitioner had more than 10 years of service from 26.04.1987 to 31.12.1998 and the subsequent G.O.Ms.No.22 dated 28.02.2006 has no bearing to the petitioner's case. The



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petitioner is wholly covered by the order dated 13.03.2007 made in W.P.No.45653/2007 and he has to be treated on par with his juniors who were regularised under G.O.Ms.No.184 dated 29.05.1997 wherein it is stated that “the respondents should extend the benefits of the Government orders aforementioned with effect from the date on which similarly placed persons were granted such benefits”. The respondents had not taken note of the fact that some workers whose names were left out in G.O.Ms.No.184 dated 29.05.1997 were sought to be identified/regularised and the letters dated 17.12.1998 and 04.01.1999 were issued, in which, the petitioner's name was mentioned. This happened long before G.O.Ms.No.22 dated 28.02.2006 was issued. Hence, the said G.O. has no bearing to the case of the petitioner. The petitioner's name ought to have found place in G.O.Ms.No.184 dated 29.05.1997 because he was in employment on that date. Repeated assurances were made before the Labour Officer that the petitioner would be taken back in service and regularised. The petitioner's juniors have been regularised in 1997 without following Sections 25G and H of the Industrial Disputes Act, 1947. The petitioner's juniors cannot be regularised without first regularising



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the petitioner's service. Therefore, the learned Senior Counsel would pray to regularize and absorb the petitioner in service with effect from 29.05.1997 and allow this writ petition.

6. In support of the above contentions, learned Senior Counsel would rely on the following decisions:

i) 1985(2) SCC 648 (Inder Pal Yadav and others vs. Union of India and others)

ii) 2003 (2) SCC 192 (State of Karnataka and others v.N.Parameshwarappa and others)

iii) Order passed by this Court in W.P.Nos.9869 of 2012 etc. batch dated 26.04.2012

(iv) 2015 (1) SCC 347 (State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others)

v) 2010(3) SCC 192 (Harjinder Sing v. Punjab State Warehousing Corporation).



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7. Per contra, learned Additional Government Pleader appearing for the respondents would submit that the petitioner's service was regularised vide G.O.Ms.No.265 dated 09.11.2007. If he is really aggrieved by the date of regularisation, he would have challenged the said G.O. immediately thereafter. The petitioner has been given the benefit of regularisation in the year 2007 conferring regular time scale of pay with effect from 09.11.2007 and he cannot be allowed to challenge the same after several years. He would also submit that if the petitioner is given the benefit of regularisation retrospectively from the date of completion of ten years of service, the financial commitment would be a huge amount towards backwages apart from pension which will have a huge impact on the State exchequer. Moreover, it will also open the flood gate to the similarly placed persons like that of the petitioners and it would adversely affect the State exchequer in a huge manner. He would further submit that the petitioner worked as a Road Mazdoor from 26.04.1987 to 31.12.1998 on Nominal Muster Roll basis and was stopped from service on 31.12.1998 and thereafter, only on 09.11.2007, he was re-appointed and benefit of regularisation retrospectively cannot be



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given to the petitioner. Therefore, he would pray for dismissal of the writ petition.

8. In support of the above contentions, learned Additional Government Pleader appearing for the respondents would rely on the following decisions:

- i) 2017(4) SCC 113 (State of Tamil Nadu v. A.Singamuthu
- ii) 2011 (2) SCC 429 (State of Rajasthan v. Daya Lal)
- iii) 2015(14 SCC 382 (Surendra Kumar v. Greater Noida Industrial Development Authority)
- iv) W.P.(MD) Nos.7929 and 7930 of 2014 dated 07.02.2018

9. This Court considered the rival submissions made on either side and also perused the materials available on record.

10. It is not in dispute that the petitioner worked as Road Mazdoor from 26.04.1987 to 31.12.1998 on Nominal muster Roll (NMR) basis and was stopped from service from 31.12.1998. Hence, he challenged the order of termination before the Tamil Nadu Administrative Tribunal in O.A.No.5072 of 2000. But no reply was filed by the respondents in the said O.A. In the interregnum period, during 1999, the Assistant Divisional Engineer prepared



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the list for Road workers who are eligible for regularization in terms of the Government Orders in force. The name of the petitioner finds a place in the said list. Thereafter, the Tamil Nadu Administrative Tribunal was abolished. Therefore, the petitioner raised Industrial Disputes before the Labour Officer, where conciliation proceedings was initiated and later, it was closed upon intimation that the petitioner's name was included in the regularization list. Subsequently, there was no progress and the petitioner was neither reinstated in service nor regularised in service. Thereafter, O.A.No.5072 of 2000 pending before the Tamilnadu Administrative Tribunal was transferred to the file of this Court and renumbered as W.P.No.45653 of 2006, wherein this Court directed the respondents to extend the benefit of G.Os. passed between 1978 to 1998 to all the 17 petitioners in the writ petition vide order dated 13.03.2007 on par with the other similarly placed persons who were granted the said benefits. Accordingly, the petitioner was entitled for regularisation with effect from 29.05.1997. In the meanwhile, G.O.Ms.No.265 dated 09.11.2007 came to be passed wherein the road workers who had completed 10 years of service have been regularised. The petitioner was regularised in



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terms of the said G.O. But under the said G.O., the petitioner was entitled only for contributory pension scheme. Aggrieved by the same, the petitioner made representations to regularise his service with effect from 29.05.1997 as per G.O.No.184 dated 29.05.1997 in view of the order dated 13.03.2007 made in W.P.No.45653 of 2006, but the same was not considered. Hence, he filed the present writ petition in 2012. In the meanwhile, the petitioner retired from service on 31.12.2018.

11. The question that is sought to be resolved in the present writ petition is whether the petitioner is entitled to be regularised on par with the other similarly placed persons who were regularised in terms of G.O.Ms.No.184 dated 29.05.1997. On perusal of the order dated 13.03.2007 passed in W.P.No.45653 of 2006 would indicate that the decision is unambiguous. In terms of the above order, all the 17 petitioners therein are entitled for regularization on par with other similarly placed persons who got the said benefits under the order dated 17.05.1996 made in O.A.No.1543 of 1991. Therefore, it is clear that the respondents have erred in regularizing the petitioner as per G.O.Ms.No.265 of 2007 dated 09.11.2007 instead of



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regularizing him from 29.05.1997. The above action of the respondents is clearly not in conformity with the relief granted to the petitioner in terms of the order dated 13.03.2007 in W.P.No.45653 of 2006. Therefore, the petitioner is entitled for regularization with effect from 29.05.1997 with all attendant benefits that are legally entitled to. The order passed by the 1st respondent in G.O.Ms.No.265, Highways (HM2) Department dated 09.11.2007 is quashed insofar as the petitioner has been absorbed with effect from 09.11.2007.

12. In the result, the Writ Petition is allowed and the respondents are directed to regularise the service of the petitioner with effect from 29.05.1997, when his juniors were absorbed vide G.O.Ms.No.184 dated 29.05.1997, with all consequential benefits, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

13.12.2022

Index :Yes/No
Speaking/Non-speaking order
vsi

To

1. The Government of Tamil Nadu,



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rep. By its Secretary,
Highways Department,
Fort St.George,
Chennai - 600 009.

2. Chief Engineer,
Highways and Rural Works Department,
Chepauk,
Chennai – 600 005.
3. The Divisional Engineer,
Saidapet Division,
Highways and Rural Works Department,
Saidapet,
Chennai – 600 015.



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J.NISHA BANU, J.

(vsi)

Pre-delivery order in
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