



WEB COPY



W.A.No.447 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM

The Hon'ble Mr. Justice **PARESH UPADHYAY**
and

The Hon'ble Mr. Justice **D.BHARATHA CHAKRAVARTHY**

W.A.No.447 of 2020

- 1.S.Vettyvel Kumar
- 2.P.Krishnan
- 3.Y.Mahesh
- 4.S.Vedananth
- 5.G.Richard Dhas
- 6.T.Jeba Daya

.. Appellants

vs

- 1.The State of Tamil Nadu rep. by
The Secretary, Public Works Department,
Fort St. George, Chennai – 9.
- 2.The Chief Engineer and Engineer in
Chief (General),
Public Works Department,
Chepauk, Chennai – 5.
- 3.The Chief Engineer (Buildings),
Public Works Department,
Chepauk, Chennai – 5.
- 4.The Executive Engineer,
Water Resource Organization,
Kodayar Basin Division,
Nagercoil – 629 001.



W.A.No.447 of 2020

5.The Assistant Engineer,
Planning and Designing Sub Division,
Nagercoil.
Respondents

..

Appeal filed under Clause 15 of Letters Patent against the order dated 05.12.2019 made in W.P. No.33807 of 2018.

For Appellants : Mr.S.Ashok Kumar
For Respondents : Mr.P.Kumaresan,
Addl. Advocate General
assisted by
Ms.E.Renganayaki,
Addl. Govt. Pleader

JUDGMENT

(Delivered by D.BHARATHA CHAKRAVARTHY.,J)

This writ appeal is preferred by the unsuccessful writ petitioners aggrieved by the dismissal of the writ petition in W.P.No.33807 of 2018 by the order of the learned single Judge dated 05.12.2019.

2. The writ petitioners are engaged on NMR basis/ casual basis by the respondents. Even though the exact date of initial appointment was not furnished in the writ petition, it was stated that the writ petitioners joined service in the years 1996, 1997 and 1998



W.A.No.447 of 2020

and the details as furnished in the writ petition are as follows:

WEB COPY

Sl. No.	Name	Date of appointment year	Date of proposal	Post in which regularisation is proposed
1.	Vettyvel Kumar	1996	12.01.2010	Mazdoor Grade I
2.	P.Krishnan	1996	12.01.2010	Mazdoor Grade I
3.	Y.Mahesh	1996	12.01.2010	Mazdoor Grade I
4.	S.Vedanathan	1998	29.12.2008	Mazdoor Grade I
5.	G.Richard Dhas	1998	07.02.2008	Mazdoor Grade I
6.	T.Jeba Daya	1997	19.01.2009	Mazdoor Grade II

3. The counter affidavit filed by the respondents, specifically did not deny the fact that the writ petitioners were engaged from the years 1996, 1997, 1998 but the stand of the respondents in respect of the said averments is as follows:

"With regard to the averments made in paragraph No.2 of the affidavit, it is submitted that the petitioners were initially engaged as casual labours/NMRs and their engagement is not based on a proper selection as recognized by the relevant rules or procedure of the department and they were not recruited through Employment Exchange as laid down in the Special Rules



W.A.No.447 of 2020

WEB COPY

for the Tamil Nadu Engineering Subordinate Service under "Branch XII-Miscellaneous Branch". The petitioners are aware of the consequences of the appointment being temporary and casual in nature but the above facts have been conveniently concealed by the petitioners in this paragraph but claiming for regularization of their service which is not acceptable. However, I deny the specific averment made to this paragraph that the petitioners have rendered their service continuously for more than 10 years which is false and untrue"

4. The issue on hand before learned single Judge was whether the writ petitioners can claim the benefit of G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department dated 28.02.2006 which conferred the benefit of regularisation on all the daily wage employees who had completed ten years of service or more as on 01.01.2006. The learned single Judge dismissed the writ petition filed by the writ petitioners on the ground that the writ petitioners were not appointed against the sanctioned vacancies and further that they were engaged by the fifth respondent only from the year 2008 - 2010 onwards. It is essential to reproduce the findings of



W.A.No.447 of 2020

the learned single Judge in paragraph 9 of the order which formed the basis for dismissal of the writ petition. Paragraph 9 of the order impugned reads as under:

"9.In the facts of the present case, admittedly, the petitioners were not engaged/appointed against the sanctioned vacancies. That apart, the petitioners are claiming to have been engaged by the 5th respondent only from the year 2008-2010 onwards. Therefore, the petitioners also do not fall within the cut off that was prescribed by G.O.Ms.No.22, which stated that it will apply only to those persons who fall within the cut off date 01.01.2006. The claim made by the learned counsel for the petitioners that similarly placed persons who were juniors to the petitioners were regularised, also cannot be a ground to direct the petitioners to be considered for regularisation, since there is no question of applying the principles of equality in illegality."

5. In this regard, Mr.S.Ashok Kumar, learned counsel appearing on behalf of the appellants, taking this Court through the



W.A.No.447 of 2020

service particulars furnished by him in the additional typed set of papers, would submit that the writ petitioners have all worked from the dates as mentioned in the writ petition and as a matter of fact, they produced the relevant service particulars including the payment voucher details etc., and therefore the finding of the learned single Judge that they were engaged by the fifth respondent only after the years 2008-2010 is factually incorrect.

5.1 Learned counsel would submit that three of the writ petitioners were appointed in the year 1996, they had even completed ten years of service as on 12.01.2010 but merely because they lost by 12 days, their cases were not considered. Even in respect of other three writ petitioners, they completed ten years of service as on 29.12.2008, 07.02.2008 and 19.01.2009 respectively and therefore only one or two years of service was short. In this regard, learned counsel relied upon the earlier order of the Division Bench of this Court in W.A. No.686 of 2017. The Division Bench considered the cases similar to that of the writ petitioners. There was lack of ten years of service by few months or one or two years. Taking into consideration the action of the respondents in several cases in invoking the very same scheme and regularising the workers who



W.A.No.447 of 2020

were in short of ten years of service, the Division Bench confirmed the order of the learned single Judge in that case. This apart, learned counsel also would cite the other instances where the respondents had granted the benefit of the scheme framed in G.O.Ms.No.22 dated 28.02.2006 in respect of similarly situated persons who also have put in long years of service but had missed the bus for only want of a few days/months of service.

6. Per contra, learned Additional Advocate General would submit that their counter affidavit is categorical that because the writ petitioners had not satisfied the scheme as framed in G.O.Ms.No.22 dated 28.02.2006, as they did not have requisite ten years of service and they were not regularised in service. Therefore, he would submit that in the absence of any scheme, even though they are in service of the respondents till date, their claim for regularisation that too by way of filing writ petition under Article 226 of the Constitution of India is unsustainable.

7. We have considered the rival submissions made by either side and perused the material records of this case.



W.A.No.447 of 2020

WEB COPY

8. The basic fact which is to be noted at the outset is that the writ petitioners are engaged by the respondents and are working continuously for 26-24 years as on today. On a perusal of G.O.Ms.No.22 dated 28.02.2006, it is clear that the scheme framed by the Government is for the daily wage employees who have completed more than ten years of service as on 01.01.2006. In that view of the matter, the first finding of the learned single Judge that they did not work as against the sanctioned posts, was not a relevant consideration. Now the second ground on which the writ petition was rejected is the finding of fact that the writ petitioners were working only from the year 2008-2010 onwards which is factually incorrect. Even the respondents in the counter affidavit have not taken such a stand and as a matter of fact, indirectly the date of engagement as projected by the writ petitioners which is extracted above is admitted by the respondents. The only objection is that the engagement was not based on proper selection. Even that stand taken is not in consonance with G.O.Ms.No.22 dated 28.02.2006 as the said Government Order also does not envisage such a criteria.

9. Now the only infirmity in the case of the writ petitioners is



W.A.No.447 of 2020

that as far as the first three writ petitioners are concerned, their services fall short of 12 days as on 01.01.2006. Even in respect of other three writ petitioners, they were also working for long number of years i.e. 8 years and 9 years even though they have not completed ten years of service as on 01.01.2006. In this regard, in similarly situated cases, the benefit has been extended by the respondents themselves in several Government Orders and the orders have already been passed by this Court including the order cited by the learned counsel for the appellants in W.A. No.686 of 2017. In that view of the matter, we find it appropriate to extend the benefit given in similarly situated cases as well as the orders passed in respect of the persons who are similarly situated as that of the appellants herein. Therefore, we have no other option than to interfere with the order of the learned single judge.

10. In the result;

(i) This writ appeal in W.A. No. 447 of 2020 is allowed;

(ii) The order of learned single Judge dated 05.12.2019 in W.P.No.33807 of 2018 is set aside;

(iii) The writ petition filed by the writ petitioners in W.P.No.33807 of 2018 is allowed on the following terms:



W.A.No.447 of 2020

WEB COPY

(a) The order of the first respondent dated 31.01.2017 and 26.07.2018 are set aside;

(b) The respondents are directed to regularise the services of the writ petitioners as Mazdoor Grade I and Grade II with effect from the date of their completion of ten years of service with all consequential benefits.

(iv) There shall be no orders as to costs.

(P.U., J) (D.B.C., J)
17.10.2022

Index:Yes/No
mmi/38

To

- 1.The Secretary to Government,
Public Works Department,
Fort St. George, Chennai – 9.
- 2.The Chief Engineer and Engineer in
Chief (General),
Public Works Department,
Chepauk, Chennai – 5.
- 3.The Chief Engineer (Buildings),
Public Works Department,
Chepauk, Chennai – 5.

Page 10 of 12



W.A.No.447 of 2020

WEB COPY

- 4.The Executive Engineer,
Water Resource Organization,
Kodayar Basin Division,
Nagercoil – 629 001.
- 5.The Assistant Engineer,
Planning and Designing Sub Division,
Nagercoil.



WEB COPY



W.A.No.447 of 2020

**PARESH UPADHYAY, J.
and
D.BHARATHA CHAKRAVARTHY, J.**

mmi

W.A.No.447 of 2020

17.10.2022