



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.2744 of 2014

R.Venkatesan

... Petitioner

Vs.

1.Government of Tamil Nadu,
Rep. by its Secretary,
Highways Department,
Fort St.George,
Chennai - 600009.

2.The Chief Engineer,
Highways and Rural Works Department,
Chepauk, Chennai - 600005.

3.The Divisional Engineer,
Highways and Rural Works Department,
Chengalpattu Division,
Kancheepuram District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the entire records which culminated in passing the order in Letter No.10734/HM2/2012-9 dated 25.07.2013 on the file of the first respondent, quash the same and consequently, direct the respondents to absorb the petitioner as daily wage employee under the Non Muster Roll category and to regularise the service of the petitioner with all consequential benefits within a time limit to be stipulated by this Hon'ble Court.

For Petitioner : Mr.S.Mani

For Respondents: Mr.E.Veda Bagath Singh,
Special Government Pleader

ORDER

The petitioner herein, who was engaged in a Non-Muster Roll (NMR) category under the respondents/Department, claims for absorption as a daily wage employee and for regularisation of



his service. The petitioner's claim for such regularisation on completion of three years, came to be rejected through the impugned order of the first respondent dated 25.07.2013.

2. While the learned counsel for the petitioner submitted that since the services of the similar NMRs who have completed three years, have been regularised, the petitioner would be entitled for such regularisation, the learned Special Government Pleader submitted that in view of G.O.Ms.No.22, P & AR Department, dated 28.02.2006, the petitioner would not be entitled for regularisation, since he had not completed 10 years of service as on 01.01.2006.

3. For such a claim, the learned counsel for the petitioner places reliance on the various orders of this Court including the order passed in WP.No.36623 of 2004 in the case of V.Kaliappan & 26 others Vs. The State of Tamil Nadu, Highways Department and others dated 09.12.2005.

4. It is not in dispute that the petitioner herein had worked as NMR from 01.01.1994 to 28.02.2003 for 6 years, 3 months and 23 days, as ratified by the respondents in their counter-affidavit. It is also not in dispute that the order of this Court passed in WP.No.36623 of 2004 came to be confirmed by the Hon'ble Supreme Court and it has thus become final. When this Court in the case of V.Kaliappan & 26 others (supra), had directed the Highways Department to regularise the services of those NMRs, who had completed three years of service and the petitioner's case is also identical to that of those NMRs, he would be entitled for a similar relief. For the sake of convenience, the order passed by this Court in WP.No.36623 of 2004 is extracted hereunder:-

"With the consent of the learned counsel on either side, the writ petition itself is taken up for final disposal. A number of persons, who are similarly placed like the petitioners, went before the Tamil Nadu Administrative Tribunal in O.A.No.1543/1993 batch. The Tribunal, by order dated 17.05.1996, gave a direction as hereunder:

"1.The services of those applicants, who have been working for three years and more as N.M.Rs with short breaks, shall be regularised in their posts. If there is a gap of more than three months between the period of termination and re-appointment, that period may be excluded in the computation of three years period.

2. The process of identifying those persons who have been working for three years and more as N.M.Rs with short breaks as above, shall be completed in a



period of three months.

3. Depending upon the needs, those casual workers/N.M.Rs, who have been working for less than three years, shall continue to be engaged, according to the seniority and eligibility, till their services are regularised in a phased manner depending upon the financial constraints.

4. There shall not be any new recruitment of N.M.Rs till the services of the aforesaid applicants are regularised.

5. Such of those applicants, who are entitled to the benefit of G.O.Ms.No.702, Transport Department dated 18.06.1981, G.O.Ms.No.135, Transport Department, dated 07.02.1983 and G.O.Ms.No.95, Transport Department, dated 04.02.1988, shall be given the benefit of the same. This process shall be completed in three months."

The petitioners went before the Government seeking similar relief and they were denied on the ground that they have not obtained orders similar to the order referred to above. Inasmuch as there is no dispute that the petitioners herein are similarly placed like the applicants before the Tamil Nadu Administrative Tribunal, they cannot be denied the benefit of the same relief. Accordingly, I am also inclined to dispose of the writ petition by giving the directions as given by the Tamil Nadu Administrative Tribunal and they are extracted as hereunder:

"1.The services of those applicants, who have been working for three years and more as N.M.Rs with short breaks, shall be regularised in their posts. If there is a gap of more than three months between the period of termination and re-appointment, that period may be excluded in computing the three year period.

2. The process of identifying the persons, who have been working for three years and more as N.M.Rs with short breaks as above, shall be completed on or before 30.04.2006.

3. Depending upon the needs, those casual workers/N.M.Rs, who have been working for less than three years, shall continue to be engaged, according to the seniority and eligibility, till their services are regularised in a phased manner depending upon the financial constraints.



4. There shall not be any new recruitment of N.M.Rs till the services of the aforesaid applicants are regularised.

WEB COPY

5. Such of those applicants, who are entitled to the benefit of G.O.Ms.No.702, Transport Department dated 18.06.1981, G.O.Ms.No.135, Transport Department, dated 07.02.1983 and G.O.Ms.No.95, Transport Department, dated 04.02.1988, shall be given the benefit of the same. This process shall be completed on or before 30.04.2006."

5. When the respondents themselves have regularised the services of many of the NMRs on completion of three years of service, the present impugned order placing reliance on G.O.Ms.No.22 dated 28.02.2006 and claiming that the petitioner has not completed 10 years of service as on 01.01.2006, cannot be substantiated since it would amount to discrimination. Incidentally, the first respondent has also passed an order in G.O.Ms.No.55 Highways and Minor Ports Department, dated 19.05.2014, wherein, the services of the NMRs who have completed three years of service were regularised in the case of one P.Arumugam, on the basis of the order passed by this Court in WP.No.30080 of 2013 dated 07.11.2013.

6. In the light of the above findings and in the light of the orders passed by this Court in WP.No.36623 of 2004 dated 09.12.2005 as well as the G.O.Ms.No.55 Highways and Minor Ports Department, dated 19.05.2014, the impugned order is quashed. Consequently, there shall be a direction to the first respondent herein, to pass suitable orders for the purpose of absorption and regularisation of the petitioner's services in the Department, within a period of three months from the date of receipt of a copy of this order.

7. With the above directions, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

Sni



To

1.The Secretary to Government of Tamil Nadu,
Highways Department,
Fort St.George,
Chennai - 600009.

2.The Chief Engineer,
Highways and Rural Works Department,
Chepauk, Chennai - 600005.

3.The Divisional Engineer,
Highways and Rural Works Department,
Chengalpattu Division,
Kancheepuram District.

+lcc to Government Pleader SR.No.26359

W.P.No.2744 of 2014

AK II(CO)
GMY(05/05/2022)