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W.A.Nos.1868 & 1869 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM :

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice D.BHARATHA CHAKRAVARTHY

W.A.Nos.1868 and 1869 of 2022

P.Murugesan

.. Appellant
in WA 1868/22

P.Pandiyarajan

.. Appellant
in WA 1869/22

vs

1.Tamil Nadu Pollution Control Board
Rep. By its Chairman,
No.76, Mount Salai,
Guindy, Chennai - 600 032.

2.The Member Secretary
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy, Chennai - 600 032.

.. Respondents
in both WAs

Appeals filed under Clause 15 of Letters Patent against the
order dated 07.07.2022 made in W.P.Nos.6815 & 6816 of 2014.

For Appellant : Mr.Balan Haridas
in both W.As.

For Respondents : Mrs.Vijayakumari Natarajan
in both W.As.



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COMMON JUDGMENT
(Delivered by D.BHARATHA CHAKRAVARTHY.,J)

These writ appeals are directed against the Order of learned Single Judge dated 07.07.2022 in and by which the writ petitions filed by the writ petitioners for regularizing them from the date of initial appointment was rejected by the learned Single Judge.

2. The learned Single Judge, after taking into consideration the prayer and after adverting to the general law laid down by the Hon'ble Supreme Court that appointing the employees on temporary basis and thereafter absorbing them on permanent basis in a routine manner would affect the fundamental rights of the other candidates and taking into account that retrospective regularization is not permitted by the Hon'ble Supreme Court, rejected the prayer of the writ petitioners. Aggrieved by the same, the present appeals are before us.

3. Heard Mr.Balan Haridass, learned counsel for the appellants and Mrs.Vijayakumari Natarajan, learned advocate for the respondents / Board.



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4. Learned counsel appearing on behalf of the appellants would submit that, in this case, the initial appointment was made upon sponsor of names of the petitioner by the employment exchange and not by way of back door entry. Considering the administrative exigencies, though they were initially appointed on daily rated / consolidated basis, the respondent / Board itself has chosen to regularize them. But however while regularizing them, they were artificially regularized from the date of the order of regularization. Under these circumstances, three sets of earlier litigations were filed by the similarly situated employees and in all three occasions, this Court had held that having taken the decision to regularize the service of the employees, there was no justification to regularize them from the later date and had ordered regularization from the date of initial appointment. As a matter of fact, the respondent / Board went on appeal to the Division Bench and the Division Bench has also confirmed the order and even the Special Leave Petition filed was dismissed.

5. Therefore, the writ petitioners prayed for similar benefits. The request was rejected by the order impugned in the writ petition on the sole ground that the benefit is given only to the persons who have gone to the Court. Therefore, when the writ petitioners have



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also approached this Court, the learned Single Judge ought to have granted them the relief in view of the relief being granted to the similarly situated employees.

6. Per contra, learned counsel appearing on behalf of the respondent / Board would submit that the writ petitioners cannot claim regularization as a matter of right. In support of her contention, reliance was placed on the decisions of the Supreme Court in the case of *State of Rajasthan and Others Vs. Daya Lal and Others reported in (2011) 2 SCC 429* and in the case of *School Education Dept., Chennai Vs. R.Govindaswamy reported in (2014) 4 SCC 769*, whereunder the Hon'ble Supreme Court has come down against the practice of granting retrospective regularization by the Courts under Article 226 of the Constitution of India. Learned counsel also sought to distinguish the earlier three orders by this Court by stating that in those cases, the regularization was granted from the date of sanction of those posts. It is submitted that in this case, the earlier appointment was on daily basis as there was no sanctioned post on the date of the appointment and therefore was irregular. Therefore, she would submit that the learned Single Judge was right in rejecting the writ petitions and prayed that these appeals be dismissed.



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

8. At the outset, we are unable to subscribe to the reasonings of the learned Single Judge as the same are made without adverting to the facts and circumstances of the case. As a matter of fact, in this case, it is not the regularization which is prayed in the instant case and the respondent themselves have regularized the writ petitioners with effect from 28.10.1999. Therefore, the only question which needs to be considered is that whether the respondents were right in regularizing the services with effect from 28.10.1999 when the appointment was made with effect from 05.02.1997. When the writ petitioners were appointed through employment exchange and they were in continuous service, when the similarly situated employees have approached this Court and this Court having ordered that their regularization should be made from their date of respective appointment, and when the appeal filed by the respondent /Board to the Division Bench and thereafter to the Hon'ble Supreme Court having been dismissed, and that the respondent / Board having implemented the orders in their case, and in the impugned order, the only reason which is stated is that the writ petitioners did not approach this Court, we find that in the facts and



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circumstances of the case, the claim of the writ petitioners is justified as the benefit has already been granted to the similarly situated employees. This is not a case of back door entry in violation of the recruitment rules. On the other hand, it is a case of initial constitution of service of the respondent board when its functions started under the various environmental legislations.

9. The Learned counsel for the respondent / Board sought to distinguish that in the earlier cases the posts were sanctioned and the posts were not sanctioned in the present case. However, the counter affidavit which was filed in the writ petition did not contain such an objection. The objections which were taken in the counter affidavit is that the writ petitioners were not engaged continuously and they were engaged only on need basis and the writ petitioners have already accepted the regularization without any demur. That being the situation, we are unable to accept the fresh stand they which is sought to be taken before us orally for the first time, that too, without any materials or particulars to substantiate the stand.

10. In that view of the matter, we find that, the case of the writ petitioners herein are similar and akin to the earlier cases which have been cited by the writ petitioners. As a matter of fact, the



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Division Bench of this Court in W.A.No.528 of 2016 etc., batch had considered the very same issue and the very same distinction which is sought to be drawn by the respondent / Board was disallowed and the writ appeals were dismissed.

11. For the above reasons, we find that the order of learned Single Judge is unsustainable and the following order is passed:-

- (i) These writ appeals are allowed;
- (ii) The order dated 07.07.2022 passed by learned Single Judge is set aside;
- (iii) W.P.Nos.6815 and 6816 of 2014 are allowed;
- (iv) The writ petitioners are directed to be regularized from the date of initial appointment. The actual difference in pay and back wages for the said period is denied to the writ petitioners considering the efflux of time. However for all other purposes, including pension and retiral benefits, the writ petitioners' service will be treated as regular service from the date of initial appointment.
- (v) No costs.

(P.U., J) (D.B.C., J)
11.10.2022

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To

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2.The Member Secretary
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PARESH UPADHYAY, J.
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