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W.P. No.31011 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.31011 of 2022 and W.M.P. Nos.30412 to 30414 of 2022

- 1.P.Esakkiappan
- 2.V.Sivalingam
- 3.T.Subbaiah
- 4.K.Gnana Soundari

... Petitioners

vs.

- 1.The State of Tamil Nadu,
rep. by its Secretary,
Public Works Department,
Fort St. George,
Chennai – 600 009.
- 2.The Chief Engineer and
Engineer in Chief (General),
Public Works Water Resources Department,
Chepauk,
Chennai – 600 005.
- 3.The Chief Engineer (Buildings),
Public Works Department,
Chepauk,
Chennai – 600 005.
- 4.The Executive Engineer,
Water Resources Organisation,
Kodayur Basin Division,
Nagarkovil – 629 001.



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5. The Assistant Engineer,
Planning and Designing,
Sub Division,
Nagarkovil.

6. The Assistant Executive Engineer,
Water Resource Organisation,
Kodayar Basin Division,
Nagarkovil – 629 001.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders letter No.S.4(1)/24103/2019 dated 21.03.2019 passed by the second respondent and quash the same as illegal, improper, arbitrary, unreasonable and thereby direct the first respondent to regularise the petitioner's service as Mazdoor Grade-I and pay back all service and monetary benefit.

For petitioners : Mr.S.Ashok Kumar

For respondents : Mr.R.U.Dinesh Rajkumar,
Additional Government Pleader

ORDER

Challenging the impugned letter No.S.4(1)/24103/2019 dated 21.03.2019 addressed by the second respondent and seeking a direction to the first respondent to regularise the petitioners' services as Mazdoor Grade-I and pay back all service and monetary benefits, the petitioners have filed this writ petition.



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2.The petitioners are seeking for regularisation in the post of Mazdoor Grade-I. The grievance of the petitioners in this writ petition is that they have not been regularised into service despite the fact that they have been working for a long number of years and they have satisfied the requirements under G.O. Ms. No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. As per the aforesaid G.O., the benefit of regularisation will have to be granted to the employees, who had completed ten years of service or more as on 01.01.2006. Two of the petitioners, namely, P.Esakkiappan and V.Sivalingam have completed ten years of service on or before 01.01.2006, the cut off date as per G.O. Ms. No.22, Personnel and Administrative Reforms (F) dated 28.02.2006. The remaining two petitioners, namely, T.Subbaiah and K.Gnana Soundari have completed ten years of service on 01.01.2007 and 26.04.2007 respectively.

3.A proposal has also been sent by the fourth respondent to the first respondent in the year 2011 and 2012 requesting for regularisation of the respective petitioners into service. The respondents have also not disputed the fact that the proposal was sent by the fourth respondent in the year 2011 and 2012 seeking for regularisation of the petitioners'



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services respectively as Mazdoor Grade-I. The details of the respective petitioners' services are detailed hereunder:

<i>Sl. Nos.</i>	<i>Name</i>	<i>Date of appointed year</i>	<i>Date of proposed</i>	<i>Post in which regularisation is proposed</i>
1.	P.Esakkiappan	26.04.1990	15.07.2011	Mazdoor Grade-I
2.	Sivalingam	01.01.1993	15.07.2011	Mazdoor Grade-I
3.	Subbaiah	01.01.1997	15.07.2011	Mazdoor Grade-I
4.	Gnana Soundari	26.04.1997	05.01.2012	Mazdoor Grade-I

4.Learned Additional Government Pleader appearing for the respondents has placed before this Court the written instructions received by him from the fourth respondent on 24.11.2022. As per the written instructions, the respondents contend that the subject posts are not sanctioned posts and that the respective petitioners are Casual Labourers from day one and therefore, they are not entitled for regularisation. According to him, on their own willingness, the petitioners continued to work as Casual Labourers, till date, by getting the necessary emoluments from the respondents and therefore, the question of regularisation of their services at this stage cannot be granted by the respondents.



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5.It is not in dispute that the respective petitioners have been working as NMRs for a long number of years. In identical set of facts, three Division Benches of this Court in the following judgments had granted regularisation to the petitioners therein. In those cases also, the very same stand that has been taken by the respondents in this writ petition was taken. However, considering the fact that the said petitioners have been working for long number of years and they have satisfied the requirement for regularisation as per G.O. Ms. No.22, Personnel and Administrative Reforms (F) dated 28.02.2006, the Division Benches directed the respondents to regularise the services of those petitioners, who are similarly placed as that of the petitioners herein. The relevant portion of the Division Bench judgments referred to supra are extracted hereunder:

S.Vettyvel Kumar and others vs. The State of Tamil Nadu, rep. by the Secretary and others in W.A. No.447 of 2020 dated 17.10.2022

'8.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. Therefore, 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 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



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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.'

The Government of Tamil Nadu rep. By its Secretary to Government and others vs. S.Murugan in W.A. (MD) No.686 of 2017 dated 12.07.2017

'3.Even though the appellant is right in contending that as on 01 January 2006, the writ petitioner had not completed 10 years and therefore he cannot avail the benefit in terms of G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28 February 2006, we are still not inclined to interfere with the order passed by the learned Single Judge. We note that in similar cases, the Government had granted relaxation and regularized such services. For instance in G.O.Ms.No.3, Environment and Forest Department, 2013, dated 10 January 2013, the services of as many as 14 persons who were working in the appellant department were regularized. In fact the said 14 persons had completed 10 years only as on 01 January 2011. It is not the case of the appellant that the writ petitioner had gained back door entry.



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4. Admittedly, he had been in service right from 15 October 1997. There is no break in service. To deny the benefit of the regularization to an employee, who had completed 19 years as on date would not be just or equitable. Taking into account the special circumstances obtaining in this case, we do not wish to interfere with the order of regularization made in favour of the respondent herein.'

K.Murugesan vs. The State of Tamil Nadu rep. by the Secretary and others in W.A. (MD) Nos.337 and 338 of 2021 dated 06.05.2021

'9. The order passed in the writ petitions has referred to several decisions of the Honourable Supreme Court and in particular, the decision of the Constitution Bench of the Honourable Supreme Court in the case of Umadevi vs. State of Karnataka, [(2006) 4 SCC (1)]. On a reading of the order passed by the learned Writ Court, we find that the correctness of the stand taken by the petitioners qua that taken by the respondent ? Department appears to have not been dealt with. The crucial question would be as to whether the appellants satisfied the requirements to be treated on par with the other similarly placed persons. The appellants were nonsuited or in other words, denied the relief of regularization on the ground that they have not completed ten years of continuous service on the crucial date.



10. From the perusal of the records placed before this Court, we find that the respondent ? Department themselves have certified and recommended the case of the appellants to have completed ten years of service on contract daily wage basis and contract basis and these recommendations have been made by none other than the Superintending Engineer of the respondent ? Department as early as in the year 2017, precisely, on 08.12.2017 and 03.07.2017 respectively. This recommendation has not been disputed by the Department in their counter affidavit filed in the writ petitions. In fact, in the counter affidavit filed in W.P.(MD) No.14503 of 2017, filed by the appellant in W.A.(MD) No.338 of 2021, there is a reference to various Judgments of the Honourable Supreme Court and certain paragraphs from the Judgments have extracted. The only averment, which is contained in the counter affidavit, is that the appellant in W.A.(MD) No.338 of 2021, namely, N.Parthasarathy was paid wages through a private contractor. Admittedly, to tide over the exigencies and in order to fulfil certain very important water bodies, the Department had necessarily to engage NMRs / contract labourers. Such NMRs / contract labours continued to work for several years as in the case of the appellant for more than 20 years and the Government realizing the fact that these persons have been working for several years and their services were virtually indispensable thought fit to grant the relief of regularization. The relief of regularization was to be



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granted based on the fulfillment of certain parameters by fixing a cut off date within which the concerned NMRs/contract labours should have completed ten years of continuous service. The Superintending Engineer, who is the Head of the Department in the particular region, has recommended and certified that both the appellants have completed ten years of continuous service on the crucial date. Without disputing the said document by merely stating that one of the appellants was paid through a private contractor is to unjustly deny the relief of regularization to the appellants alone, which was extended to several 1000s of people in the State.

11. Identical issue was considered by the Honourable Division of this Court in the case of State of Tamil Nadu, Public Works Department and two others vs. P.Subramanian and three others [W.A.No.493 of 2016, dated 25.04.2016] and the appeal filed by the Government was dismissed. Thus, in the light of the fact that the certification done by the Superintending Engineer certifying that the appellants have completed the requisite number of ten years of continuous service having not been disputed, the appellants were entitled to be granted the relief extended to the other similarly placed persons. In this regard, it will be beneficial to refer to the decision of the Honourable Supreme Court in the case of



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Union of India, rep.by the Chief Postmaster General and another vs. G.Subramani and another [(2013) 7 MLJ 724], wherein, it was held that equal treatment should be accorded to similarly placed persons without any discrimination.

14. In the result, the writ appeals are allowed and the order dated 04.11.2020, passed in W.P.(MD) Nos.10066 of 2014 and 14503 of 2017, is set aside. Consequently, W.P.(MD) Nos.10066 of 2014 and 14503 of 2017 are allowed and the impugned orders in these writ petitions are quashed and the respondents are directed to extend the benefit of regularization of service of the appellants in terms of the relevant Government Orders and bring them under the time scale of pay, within a period of three months from the date of receipt of a copy of this judgment. No costs.'

6.The petitioners are also similarly placed as that of the petitioners in the above referred Division Bench judgments. Here also, the respective petitioners have completed ten years of service either before the deadline namely, 01.01.2006 or immediately thereafter. The petitioners have also been continuously working till date without any break of service. The respondents have also not disputed the same. The facts of the case involved in the aforementioned Division Bench



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judgments are identical to the facts in the instant case. Therefore, this Court is of the considered view that the second respondent has erroneously rejected the petitioners' request for regularisation and has not applied its mind to the decisions rendered by the Division Bench of this Court.

7.For the foregoing reasons, the impugned order has to be necessarily quashed and the writ petition will have to be allowed. Accordingly, the impugned order dated 21.03.2019 passed by the second respondents is hereby quashed and this writ petition is allowed. The respondents are directed to regularise the services of the writ petitioners as Mazdoor Grade-I with effect from the date of their completion of ten years of service with all consequential benefits. Consequently, connected W.M.Ps are closed. No costs.

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Index: Yes/No
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ABDUL QUDDHOSE, J.

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