



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.06.2022

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.3010 of 2014
and M.P.No.1 of 2014

S.Vallinayagam

... Petitioner

Vs

The Engineer-in-Chief (Building)
and Chief Engineer (Building), Chennai Region,
and Chief Engineer (General), PWD,
Chepauk, Madras-5.

... Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records on the file of the respondent in Letter Nos.S5(3)/25262/2011-2 dated 9.5.2012 and quash the same as illegal, unconstitutional, ultra vires and without jurisdiction.

For Petitioner : Ms.Mitranishaa
for Mr.V.Raghavachari

For Respondent : Mr.S.Prabhakaran
Government Advocate

O R D E R

The order dated 09.05.2012, rejecting the claim of the writ petitioner for regularization from his initial date of appointment i.e 10.07.1981, is under challenge in the present writ petition.

2. The petitioner was appointed as Junior Draughting Officer on 08.07.1981 through the District Employment Exchange. Thereafter, he was terminated from his service on 26.11.1981, as per the proceedings of the Superintending Engineer (PWD), Ramnad Circle, Madurai on the grounds that the communal rotation was not properly followed at the time of appointing the writ petitioner. However, the petitioner was reappointed on 18.02.1982. The petitioner has submitted that his seniority as Draughting Officer has to be calculated from the date of his first appointment. Therefore, the petitioner all along expected the date of regularization, which was done from



23.02.1982, when the seniority was fixed in the cadre of Draughting Officer. Then the petitioner raised an objection by stating that his seniority is to be fixed from the date of his initial appointment as Junior Draughting Officer i.e. on 08.07.1981.

3. The petitioner approached the Tamil Nadu Administrative Tribunal by filing O.A.No.4920 of 1993 and the said Original Application was transferred before High Court and re-numbered as W.P.No.16531 of 2006 and final order was passed on 05.09.2007, directing the authorities to reconsider the issue with reference to the service particulars of the writ petitioner.

4. The grievances of the writ petitioner is that the said direction issued by the High Court has not been implemented despite the fact that the petitioner approached the authorities for such reconsideration. However, the seniority of the writ petitioner was fixed from 23.02.1982, without considering his initial date of appointment as Junior Draughting Officer.

5. The learned counsel for the petitioner mainly contended that admittedly, the petitioner was appointed on 08.07.1981 and therefore, he is entitled to be regularized from the date of his appointment, contrarily, he was terminated and the date of re-appointment was considered for the purpose of regularizing his services.

6. The learned Government Advocate relying on the counter made a submission that the petitioner had joined the services in the Public Works Department as Draughtsman Grade III on 09.07.1981. Subsequently for want of vacancy, his service was terminated on 30.11.1981. He was reappointed on 23.02.1982 and his services were regularised from 23.02.1982. As per rule Note 1 under Fundamental Rule 26, condonation will arise only if the services rendered preceding the break should not be less than a year and the break should not be more than of six months duration. The petitioner had not put in one year of service preceding the break and hence, the services of the petitioner in the post of Draughtsman Grade III could not be regularised from the date of his initial appointment i.e. 09.07.1981 in accordance with law and merits.

7. Therefore, the case of the writ petitioner was considered with reference to Fundamental Rule 26 (Note-1). The authorities taking note of the fact that the condonation will arise only if the services rendered preceding the break should not be less than a year and the break should not be more than of six months duration, the date of regularization was fixed as 23.02.1982, which is the date of re-appointment of the writ petitioner after termination.



8. In view of the fact that the case of the writ petitioner was reconsidered pursuant to the orders passed by this Court in the year 2007 and further, he was terminated and thereafter re-appointed on 23.02.1982, the services of the writ petitioner was regularised from the said date.

9. The petitioner has all along worked for many years and first time he filed the Original Application in the year 1989 and several years lapsed. The writ petitioner has already reached the age of superannuation and retired from service and probably, all his terminal and pensionary benefits would have been settled. At this length of time, unsettling the date of regularization would prejudice and moreover, it is only about 6 1/2 months.

10. This being the facts and circumstances, this Court is not inclined to interfere with the order impugned and accordingly, the writ petition stands dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

The Engineer-in-Chief (Building)
and Chief Engineer (Building), Chennai Region,
and Chief Engineer (General), PWD,
Chepauk, Madras-5.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.32508

WP No.3010 of 2014

MT (CO)
CT 15/06/2022