



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) Nos. 17455 of 2019

WEB COPY

P. Murugesan,
S/o. Pitchai,
Helper,
Public Works Department,
Buildings (Construction and Maintenance) Town Section,
Dindigul. ... Petitioner

Vs.

1. The Principal Secretary to Government,
Public Works Department (C2),
St. George Fort, Secretariat,
Chennai.
2. The Engineer in Chief,
Water Resources Department and Chief Engineer (General),
Public Works Department,
Chennai - 600 005.
3. The Chief Engineer (Buildings),
Madurai Region,
Public Works Department,
Tallakulam,
Madurai.
4. The Superintending Engineer,
Buildings (Constructions and Maintenance) Circle,
Public Works Department,
Tallakulam,
Madurai.
5. The Executive Engineer,
Buildings (Constructions and Maintenance),
Public Works Department,
Salai Road,
Dindigul.
6. The Assistant Executive Engineer,
Buildings (Constructions and Maintenance),
Sub Division,
Public Works Department,
Salai Road,
Dindigul. ... Respondents



PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the first respondent to consider and dispose of the representation of the petitioner dated 20.06.2019 submitted through the sixth respondent, for passing amended Government Order to regularise the services of the petitioner, with effect from 01.01.2004 with notional fixation of pay from 01.01.2004, the date on which services of the petitioner have to be regularised with monetary benefits from 15.04.2010, the date of G.O.Ms.No.117, Public Works (C2) Department dated 15.04.2010, within a time trame.

For Petitioner : Ms.J.Anandhavalli
For Respondents : Mr.A.K.Manikkam
Special Government Pleader

O R D E R

The relief sought for in the present Writ Petition is to direct the first respondent to consider and dispose of the representation of the petitioner dated 20.06.2019, for amending the Government Order issued regularizing the services of the writ petitioner, with effect from 01.01.2004 with notional fixation of pay from 01.01.2004.

2. The petitioner was initially appointed as daily wages employee in the Public Works Department, Dindigul. The petitioner submitted an application to regularize his services in the sanctioned post in the time scale of pay. In view of the fact that the service of the petitioner was not regularised, he has filed W.P. (MD) Nos. 10880 to 10882 of 2007 along with other two similarly placed employees for regularization of services. In view of the order passed in the Writ Petitions, the Government issued G.O.Ms.No.117, Public Works (C2) Department dated 15.04.2010 regularizing the services of the writ petitioner with effect from 01.01.2004. The Government Order was issued based on G.O.Ms.No.26, Personnel and Administrative Department dated 28.02.2006. The said Government Order provides benefit of regularization to the daily wages employees on completion of ten years of service. Subsequently, the said Government Order had been withdrawn by the Government.

3. The Constitutional Bench of the Hon'ble Supreme Court of India has settled the principles for regularization and permanent absorption, more specifically, with reference to irregular and illegal appointments. The Constitutional Bench in unequivocal terms has ruled that all appointments are to be made under the constitutional scheme by following the procedure and through open competitive process. Equal opportunity in public employment is the



made and such illegal appointments are back door entries. A person, who entered through back door entries, must be sent out from the door through which he / she entered. Therefore, the back door appointments at no circumstances be encouraged nor such appointments are to be regularised and the benefit of permanent absorption is to be granted. However, the Constitutional Bench of the Hon'ble Supreme Court of India in the case of **State of Karnataka Vs. V.Umadevi and others reported in 2006 4 SCC 1**, in paragraph No.53, has clarified that in respect of the proposals for regularization already under process, must be considered as one time measure. In view of the said one time measure permitted by the Constitutional Bench, various Governments across the Country finalise the proposals already pending. However, such one time measure cannot be extended for an indefinite period as the Supreme Court has clearly ruled that such one time measure is to be done in a restricted manner only with reference to the proposals pending.

4. In the present case, even after the Constitutional Bench Judgement, the order passed by this Court to consider the case of the writ petitioner was taken positively and the Government issued G.O.Ms.No.117, Public Works (C2) Department, dated 15.04.2010 regularizing the services of the writ petitioner. Thus, the benefit of regularization and permanent absorption already granted to the petitioner itself is a concession and such concession extended cannot be further extended so as to give retrospective regularization with monetary benefits. The benefit of regularization since granted to the petitioner already by way of concession and more specifically by relaxing the Rules, further concession cannot be granted. Even the Government Order issued in G.O.Ms.No.117 reveals that the Government Order cannot be followed as a precedent as it is one time arrangement. In view of the fact that the benefit of regularization has already been granted to the writ petitioner by way of concession, he is not entitled to seek retrospective regularization or monetary benefits which is impermissible and in violation of the principles laid down by the Constitutional Courts.

5. Accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

1. The Principal Secretary to Government,
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6. The Assistant Executive Engineer,
Buildings (Constructions and Maintenance),
Sub Division,
Public Works Department,
Salai Road, Dindigul.

+1 CC to M/s.J.ANANDHAVALLI, Advocate (=SR-13715[F] dated 23/03/2022)

+1 CC to M/s.SPL GP (SR-14226[F] dated 24/03/2022)

W.P. (MD) Nos. 17455 of 2019
22.03.2022
(1/2)

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