



W.P(MD)No.21706 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 26.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21706 of 2021

R.Mullukkan

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board (TWAD),
Chepauck,
Chennai – 600 005.

2.The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board (TWAD),
Madurai - Dindigul -Theni Circle,
Ganesh Nagar,
Madurai.

3.The Executive Engineer,
Urban Division,
Tamil Nadu Water Supply and Drainage Board (TWAD),
Round Road Puthur,
Dindigul.

... 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 records from the first respondent relating to the impugned order passed in Lr. No. 19350/WCE/HO/2019 dated 02.09.2020, quash the same and consequently direct the first respondent to treat the petitioner as permanent workman w.e.f. 01.10.1984 as per the settlement dated 08.08.1996 made under Section 12 (3)



W.P(MD)No.21706 of 2021

of the I.D.Act and as his co-workmen covered by the order dated 23.12.2010 in W.A.(MD).Nos.726 to 743 of 2007 were treated by the first respondent and accordingly to pay him all consequential and monetary benefits, including 50 percentage back wages for the period from 16.02.1990 to 23.12.2003 and full back wages from 24.12.2003 to 31.12.2011 as per the award dated 23.12.2003 in I.D.No.83/95 as modified in the order dated 04.04.2018 in W.A.No. 1466/2016 and to sanction/pay him all terminal and pension benefits for his entire service period from 01.06.1983 to 31.12.2011, together with 18% interest per annum, within a time fram as may be fixed by this Court.

For Petitioner : Mr.N.G.R.Prasad
Senior Counsel
for Mr.S.Arunachalam

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.B.Vijay Karthikeyan
Standing Counsel

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by the learned Standing Counsel appearing for the respondent Board.

2.The writ petitioner was appointed as Electrician Cum Pump Driver by the respondent Board on 31.05.1983 on temporary basis as NMR. The writ petitioner was posted at various places such as Andipatti, Silukkuvarpatti and Dindigul. He was terminated with effect from 16.02.1990. Aggrieved by the



W.P(MD)No.21706 of 2021

same, the petitioner raised an industrial dispute in I.D.No.83/95, on the file of Labour Court, Trichy. The ID was allowed vide award dated 23.12.2003 and the Board was directed to reinstate the writ petitioner with continuity of service with backwages and other attendant benefits. Questioning the same, the Board filed W.P.No.19350 of 2004. The said writ petition was taken up for final disposal only on 17.02.2016. It was partly allowed in the following terms:

“Heard the learned counsel for the parties. The petitioner has challenged the award passed by the Labour Court, Madurai in I.D.No.83 of 1995, which was initially filed before the Labour Court, Tiruchirapalli and was assigned as I.D.No.130 of 1991. It is not in dispute that similar award were passed in a batch of Industrial Disputes on the same date, viz., 23.12.2003 and these awards came to be challenged by the Tamil Nadu Water Supply and Drainage Board in W.P(MD)No.3815 of 2005 etc. batch which was dismissed, by an order dated 27.08.2007. As against the same, the petitioner went before the Hon'ble Division Bench in W.A. (MD)Nos.726 to 743 of 2007 which by a judgment dated 23.12.2010 dismissed the appeals with a slight modification by reducing back wages to 50%.

2. It is submitted by the learned counsel for the first respondent / workman that the judgment has been complied with.



W.P(MD)No.21706 of 2021

3. In the light of the above, the writ petition is partly allowed and while confirming the award of the Labour Court, following the judgment of the Hon'ble Division Bench, the back wages stands reduced to 50%. The statement that the first respondent has already attained superannuation is taken note of.

4. The petitioner / Management shall implement the award as directed by this Court within a period of three months from the date of receipt of a copy of this order.”

3. Challenging the same, the Board filed W.A.No.1466 of 2016 but the Hon'ble Division Bench dismissed the writ appeal vide order dated 04.04.2018. By way of implementing the Labour Court award, the Board paid the writ petitioner a total sum of Rs.1,07,482/- (Rupees One Lakh Seven Thousand Four Hundred and Eighty Two only). Without prejudice to his rights, the petitioner had accepted the said amount.

4. The learned counsel submitted that in W.P(MD)No.27364 of 2019 vide order dated 12.02.2020, the Board was directed to consider the petitioner's representation. Pursuant to the said order, the impugned order dated 02.09.2020 came to be passed according to which when payment of a sum of Rs.1,07,852/- (Rupees One Lakh Seven Thousand Four Hundred and Eighty Two only) was made to the petitioner, the Labour Court award was



W.P(MD)No.21706 of 2021

implemented in full and no further amount is to be paid to the writ petitioner.

Challenging the said communication, the present writ petition has been filed.

5. The learned counsel appearing for the respondents filed a detailed counter affidavit and also a calculation memo.

6. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and contended that the respondents must be directed to pay all the terminal and pensionary benefits to the petitioner by treating his service with effect from 01.06.1983. The learned counsel appearing for the petitioner drew my attention to the proceedings of the Board vide B.P.Ms.No.110 dated 06.04.1987. The said Board proceedings contain an annexure. The writ petitioner figures at S.No.353. The Board proposed to bring the petitioner into regular service with effect from 01.01.1994. The learned counsel pointed out that the policy of the Board was to make all the NMRs who have put in 11 years of service as permanent. That is why the Labour Court directed the petitioner's reinstatement with continuity of service and attendant benefits. Similarly placed persons who were disengaged likewise had also raised industrial dispute and their cases were also allowed on 23.12.2003. Unfortunately, the Board filed one set of writ petitions before the Madurai Bench while the writ petition relating to the



W.P(MD)No.21706 of 2021

petitioner was filed before the principal seat. W.P(MD)Nos.3815 to 3832 of 2005 filed by the Board questioning the award dated 23.12.2003 in ID Nos. 83/1995, etc were dismissed on 27.08.2007. Aggrieved by the same, the Board filed W.A(MD)Nos.726 to 743 of 2007. The Hon'ble Division Bench vide order dated 23.12.2010 modified the order limiting the payment of backwages to 50%. Deriving inspiration therefrom, when the writ petitioner's petition was taken up on 17.02.2016, the learned Judge also modified the award reducing the payment of backwages to 50%. Of course, before the learned Single Judge, the Board made a statement that the writ petitioner had already reached the age of superannuation and the said statement was taken note of. However, a direction was issued to the Management that the award shall be implemented within a period of three months. In all other aspects, award of the Labour Court was confirmed. This order was confirmed by the Hon'ble Division Bench also.

7. Now, the only question that calls for consideration is whether the award of the Labour Court as modified by this Court, had been implemented in letter and spirit. The fact remains that the petitioner succeeded before the Labour Court on 23.12.2003. It is also not in dispute that other workmen who were disengaged like the writ petitioner and who succeeded before the Labour Court have since has been made regular employees of the Board. It is true that they were given monetary benefits only from the date when the proceedings



W.P(MD)No.21706 of 2021

concluded before the Hon'ble Division Bench. But then it is seen that the date of regularization was made with effect from 1988-1990. It is seen that almost all of them have joined the respondent Board as NMR only subsequent to the writ petitioner. The case of the writ petitioner is truly unfortunate. If the petitioner had been reinstated in service immediately after the Labour Court award was passed, in all probability he would have been made as a regular employee with effect from 30.09.1984. As rightly pointed out by the learned Additional Advocate General, the writ petitioner's litigation went before the Hon'ble Principal Seat and it got concluded only in the year 2018. It is well settled that the benefit of regularization can be given only in favour of a person who is in service. Since the writ petitioner had already reached the age of superannuation way back in the year 2011 and he was not in service in the year 2018, he could not have been given the benefit of regularization. But at the same time, this Court cannot lose sight of the equities obtaining in this case. The Board itself had proposed to regularize the writ petitioner with effect from year 1994. If the petitioner is given the benefit of settlement which was entered into later, he would have been regularized in service from 13.09.1984 itself. He had succeeded before the Labour Court, before the learned Single Judge as well as before the Hon'ble Division Bench. Only due to efflux of time, the petitioner has been denied relief which he was legitimately entitled to. The writ



W.P(MD)No.21706 of 2021

Court had ordered enforcement of the award of the Labour Court and modified it only in respect of backwages. The petitioner's erstwhile juniors in the list of NMRs had been made regular employees. Due to delay in the conclusion of the proceedings instituted by the Board in the High Court, the petitioner could not be absorbed. The petitioner cannot be faulted for the delay. When enforcement of the award has been frustrated in other respects, the petitioner must be at least compensated.

8. Considering the overall facts and circumstances, even though I have to deny the benefit of regularization sought for by the writ petitioner with all consequential benefits, in view of the reasons already mentioned above, I direct the respondents to pay the writ petitioner a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation within a period of eight weeks from the date of receipt of a copy of this order. This writ petition is allowed accordingly. No costs.

26.10.2022

Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.21706 of 2021

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W.P(MD)No.21706 of 2021

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