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W.P.No.10734 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.10734 of 2020

M.Manoharan
Night Watchman
S/o.Marimuthu
O/o.The Assistant Commissioner of Labour (Conciliation)
Collectorate Campus
Thirupur and District. ... Petitioner

/Vs/

1.The State of Tamil Nadu Rep. by its
Secretary to Government
Labour and Employment (E2) Department
Secretariat
Chennai 9

2.The Commissioner of Labour
Teynampet
Chennai 6

3.The Assistant Commissioner of Labour (Conciliation)
Collectorate Campus
Thirupur and District

4.N.Murugan
Watchman
O/o.The Stamping Inspector



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Nilakottai
Dindigul District.

... Respondents

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Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the Respondents 1 to 3 to consider the Petitioner's claim for regularisation in the post of Night Watchman on par with junior Mr.N.Murugan and grant all benefits arising out of such regularisation.

For Petitioner : Mr.A.R.Suresh
for Mr.K.Arumugam

For Respondents : Mr.P.Sanjai Gandhi
Government Advocate

ORDER

This Writ Petition has been filed for issuance of Writ of Mandamus directing the Respondents 1 to 3 to consider the Petitioner's claim for regularisation in the post of Night Watchman on par with junior Mr.N.Murugan and grant all benefits arising out of such regularisation.

2.The Petitioner was temporarily appointed as a Watchman (daily wages) through Employment Exchange in the existing vacancy by an order of the Deputy Commissioner of Labour, Salem dated 01.10.1992. He



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joined duty on 08.10.1992 and he was continuously working till 15.02.2009. He was appointed on a regular time scale of pay on 16.02.2009 and posted at the office of the Stamping Inspector, Little Mount, Saidapet, Chennai and he joined duty on 23.03.2009. Thereafter he was transferred and posted to various posts and then retired. Since the Petitioner and similar other such persons' employment were not regularised for several years, steps have been taken by the Government of Tamil Nadu and G.O.Ms.No.58, Labour and Employment (E2) Department dated 21.05.2008 was issued by regularising such employees in a phased manner. One such batch was regularised on 21.05.2008 itself by virtue of G.O.Ms.No.58, Labour and Employment (E2) Department dated 21.05.2008. In the very same Government Order, it has been stated that the rest of the persons who had served for more than ten years will also be regularised as and when the vacancy arises.

3.The Petitioner's service was regularised by virtue of proceedings of the Labour Commissioner in G2/4434/09 dated 16.02.2009. Even though the earlier batch of persons were regularised, their services were not



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regularised for the purpose of getting retirement benefits from the year on which they actually joined the service. Hence, they have filed Writ Petition before this Court and as per the direction issued by this Court in W.P.Nos.15775 to 15778 of 2010, their services were regularised from the date of completion of 10 years of service, by virtue of G.O.(4D) No.5, Labour and Employment (E2) Department, dated 09.05.2012. The details of persons whose service was regularised from the date of completion of 10 years of service are as under:

<i>S.No.</i>	<i>Name</i>	<i>Date from which service are to be regularised</i>
1	K.Duraisamy	28.05.2002 FN
2	T.K.Ramprabu	26.02.2002 FN
3	G.Varadarajan	23.03.2000 FN
4	M.Ajaykumar	25.10.2001 FN
5	V.Soosai	01.09.1999 FN
6	N.Purushothaman	01.08.2002 FN

Since the Petitioner was also regularised with effect from 2009, he filed Writ Petition stating that his service should also be regularised from the date on which he joined, at least from 2001, on which date, he has completed 10 years of service in W.P.No.11974 of 2012 and the same was allowed, but, the Government has preferred Writ Appeal and the same has



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been allowed. However the Petitioner has filed a Review Petition.

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4.Heard the learned counsel for the Petitioner and the learned Government Advocate appearing on behalf of the Respondents.

5.Learned Counsel for the Petitioner brought to the attention of this Court about the pending review, which was filed by the Petitioner, challenging the Writ Appeal allowed in favour of the Respondents.

6.Learned Government Advocate appearing on behalf of the Respondents attracted the attention of this Court to Rule 11(4) of the Tamil Nadu Pension Rules 1978, wherein it is stated that half of the service rendered in the State Government in non-provincialised service, consolidated pay, honorarium or on daily wages basis on or after 01.01.1961 in respect of Government employees absorbed in regular service before 01.04.2003, shall be counted for retirement benefits along with regular service, subject to certain conditions. By applying the above Rule it is claimed by the Respondents that the Petitioner was not



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regularised before 01.04.2003 and hence the inclusion of his earlier service for the purpose of pensionary benefits cannot be accorded.

7.However, the fact remains that service of the similarly placed employees have been taken into account for the purpose of granting pensionary benefits and in fact the services have been counted from the time when they completed ten years of qualifying service and hence the Petitioner claims that no disparity be shown between the two similarly placed persons, who were working under the Government in similar capacity.

8.Though I find justification in the claim made by Petitioner, taking note of the fact that Writ Appeal filed by the Respondents was allowed and Review Petition filed by the Petitioner is also pending, I feel that the Respondent Government itself shall consider the similarities between the Petitioner and the other employees, whose services have already been regularised by giving them an advantage of their own G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006,



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and pass appropriate orders. The Petitioner is at liberty to give any fresh representation to the Government and on receipt of the same, the Government shall consider the said representation compassionately and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition is disposed of. No costs.

13.10.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To

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R.N.MANJULA, J.

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