



W.P.No.20846 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.12.2022
Pronounced on	08.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.20846 of 2019

1.D.Thomas

2.A.Kannan

3.C.Balamurugan

4.M.Venkatesan

...Petitioners

Vs.

1.The State of Tamil Nadu

Rep. by the Principal Secretary to Government,
Public Works Department,
Fort St. George, Chennai-600 009.

2.The Principal Chief Engineer,
Engineer (Building) General,
Public Works Department,
Chepauk, Chennai – 600 005.

3.The Executive Engineer,
Building Contraction and
Maintenance Division,
Theni.

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to the order of the first respondent made in Letter No.125/C2/2017-3 dated 31.07.2017 to quash the same insofar as the petitioners are concerned and to consequently direct the first respondent to regularize the service of the petitioners on completion of 10 years of service and pay back all service and monetary benefits.

For Petitioners : Mr.D.Charles Muthu Shanthan

For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

Heard Mr.D.Charles Muthu Shanthan, learned counsel for the petitioners and Mr.K.H.Ravikumar, learned Government Advocate for the respondents.

2. To the request of the petitioners for regularization of their services on completion of 10 years of service on NMR basis, the Government, through the impugned letter dated 31.07.2017, had rejected their request, by stating that they have rendered services on both Nominal Muster Roll (NMR) basis and on contract basis, during which period, they have been receiving



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wages through private contractors and that there is no rule provision to include the contract period for arriving 10 years of service. It was further stated therein that the petitioners have not completed 10 years of service also. Challenging the same, the present writ petition has been filed.

3. All the petitioners herein were engaged as NMRs between 01.04.1996 and 01.09.1997. The reasoning adopted by the first respondent in rejecting the petitioners' request on the ground that relaxation of the 10 years period, under G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, as well the entitlement of NMRs/contract workers for regularization, is no more res integra.

4. The Hon'ble Division Benches of this Court, on several occasions, had dealt with this issue and have directed the Government to regularize the services of similarly placed NMRs.. A learned single Judge of this Court, in a batch of writ petitions, in the case of ***G.Sivagiganesan and others Vs. State of Tamil Nadu, Public Works Department*** passed in ***W.P.Nos.29346 of***



2014, etc. dated 22.04.2022, had placed reliance on such decisions and

granted regularization to the petitioners therein. The relevant portion of the

order reads as follows:-

"3. The batch of writ petitions allowed by this Court was a subject matter of Writ Appeals in W.A.Nos.2875, 2644 of 2018 and 1015 to 1019 of 2018. The Division Bench heard the appeals and disposed of the same by order dated 16.08.2019 holding that it was well within the prerogative of the Government to change its policy by superseding its earlier G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006 vide G.O.Ms.No.74, Personnel and Administration Reforms(F) Department dated 27.06.2013. By holding as such, the Division Bench has held in paragraph 29 which is extracted hereunder.

"29. The order passed by the learned single Judge quashing clause 6 is set aside. The writ petitions are remitted to the writ court for fresh consideration to decide as to whether each of the respondents are eligible for regularization in accordance with the order in G.O.Ms.74, Personnel and Administrative Reforms (F) Department, dated 27 June 2013, or any other relevant Government Orders governing the matter. The individual cases must be decided on merits, taking into account the nature of service and the period of such service."



Thus, these writ petitions are back on the lap of this Court for consideration of the claims of these petitioners without reference to the G.O.Ms.No.22. In view of the present remit before this Court, the only aspect that is left open for further consideration of the claim of these writ petitioners is de hors the conclusion by this Court in setting aside the offending para No.6 of the G.O.Ms.No.74, dated 27.06.2013, the order of this Court could still be sustained or not? The cardinal issue before this Court is whether the employees' claim for regularisation could still be considered favourably on other grounds or not?

4. The answer to the above question would have to be found by making reference to some of the orders passed by the Division Bench of this Court as relied upon by the learned counsel for the writ petitioners. The first of the decisions of the Division Bench of this Court was dated 21.02.2017 rendered in W.A.(MD).No.913 of 2015. The learned Division Bench of this Court on this issue after referring to various objections from the Government on the retrospective implementation of G.O.Ms.No.74 dated 27.06.2013 has held in paragraphs 6 to 10 as follows:

"6. We have heard the learned Special



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Government Pleader appearing for the appellants and the learned counsel appearing for the respondents.

7. This appeal has been filed based on the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.2726 to 2729 of 2014, dated 21.02.2014. According to the appellants, as per the dictum laid down in the said judgment, the respondents are not entitled for regularization. That apart, the learned Special Government Pleader, by relying upon G.O.(Ms)No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, has submitted that as per the said Government Order, the services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and those who have completed 10 (ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength. In the case on hand, the respondents were not appointed in consultation with the Employment Exchange. Therefore, they are not entitled for regularization.

8. Keeping in mind the above said submission, we have carefully gone through the judgment relied upon by the learned Special Government Pleader. The said judgment dealt with the issue relating to Part Time Sweeper. Coming to the case on hand, we find that the respondents are the daily wage employees and hence, the said judgment cannot be made applicable to the facts of the case to deny the claim of the respondents for regularization.

9. Yet another submission made by the learned Special Government Pleader is that as per



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G.O.(Ms)No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, the services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and those who have completed 10 (ten) years of service as on 01.01.2006 shall be regularized. However, we find that the said Government Order came into effect only on 27.06.2013 and it was issued by way of clarification of G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. G.O.Ms.No.74 was issued only on 27.06.2013, whereas, the respondents were appointed in the year 1984, 1995 and 1998 respectively, that is to say, much earlier to the said Government Order. Therefore, the second submission made by the learned Special Government Pleader cannot be accepted. Therefore, we are of the opinion that absolutely, there is no infirmity in the order passed by the learned Single Judge warranting interference at the hands of this Court.

10. In fine, the Writ Appeal fails and the same is dismissed accordingly. The appellants are directed to comply with the order of the learned Single Judge, within a period of six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected miscellaneous petition is closed."

5. In the above case, the Division Bench has confirmed the order of the learned single Judge in respect of the employees who have completed 10 years



of service after 01.01.2006. In that case, Division Bench also held that G.O.Ms.No.74 was issued well after the appointment of the casual employees therein and the same cannot negate the rights of the petitioners therein. By such reasoning, the Division Bench confirmed the order of the learned single Judge granting the benefit of regularisation.

6. One other Division Bench, vide its order rendered in W.A.No.686 dated 12.07.2017, has referred to G.O.Ms.No.22 dated 28.02.2006 confirmed the order of the learned single Judge granting regularisation of employees who have completed 10 years of service after the cut off date 01.01.2006. The observation of the Division Bench in paragraph Nos.3 and 4 are extracted hereunder.

"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



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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.

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."

7. As facts would disclose, against the order, Special Leave Petition was filed and the same was also dismissed vide order dated 04.09.2013 (SLP.Diary No.29276/2019) by the Hon'ble Supreme Court.

8. One the Judges who was part of the Division Bench who had remitted the matter to this Court has in fact, is part of the other Division Bench but taken a contrary view in the matter, in favour of claim for regularisation. In W.A.No.1133 of 2014 dated 29.06.2018, the Division Bench referred to the challenge made against the judgment of the Division Bench in identical issue and recorded the fact of dismissal order of the Hon'ble Supreme Court in S.L.P. The Division



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Bench has referred to certain earlier orders and finally ruled as under:

"2.The respondent was appointed as a Night Watchman in the office of the 4th appellant on 02.07.1992. He has been working as such since then. He made a representation on 09.04.2012 seeking regularisation of the services in terms of G.O.Ms.No.22, P & AR (F) Department, dated 28.02.2006. Since the said request is not complied with, the respondent had approached this Court seeking regularisation as aforesaid.

3. Taking note of similar orders passed by this Court in WP (MD) No.11707 of 2006 dated 22.12.2006 which was confirmed in WA (MD) No.391 of 2007 on 25.10.2007 and orders in WP No.18126 of 2008 dated 29.07.2008, which was confirmed in WA No.230 of 2009 dated 03.08.2009, the learned Single Judge had allowed the Writ Petition directing regularisation of the services of the respondent.

4. Aggrieved, the State is before us by way of this intra Court Appeal.

5. Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the appellants and Mr.G.Elanchezhian, learned counsel appearing for the respondent.

6. Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the appellants would contend that in view of the subsequent Government Order in G.O.Ms.74, P & AR (F) Department, dated 27.06.2013, the respondent cannot be regularised as the same would amount to creation of supernumerary post. Very same issue was considered by the Division Bench of this Court in WA No.273 of 2016 dated 16.03.2016. The same contention raised by the



learned Additional Government Pleader placing reliance on G.O.Ms.74, P & AR (F) Department, dated 27.06.2013 was rejected by the Division Bench. The Division Bench had concluded that the subsequent G.O. cannot take away the rights, which are already accrued to the respondent therein.

7. The Special Leave Petition filed by the State challenging the said judgment of the Division Bench in WA No.273 of 2016 was also dismissed by the Hon'ble Supreme Court on 25.01.2018. We see no reason to take a different view.

8. Hence the Writ Appeal fails and the same is dismissed, confirming the order of the learned Single Judge. However, in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petition is closed."

9. One other Division Bench had occasion to consider similar issue in W.A.No.493 of 2016 dated 25.04.2016. The Division Bench has held that the rights already accrued to the employees cannot be taken away by the issuance of the subsequent G.O. and dismissed the appeal. The observation of the Division Bench in paragraph Nos.6 and 7 is extracted hereunder:

"6.The learned Single Judge allowed the writ petition by order dated 4.7.2012, directing the appellants to regularise the services of the respondents within a period of eight weeks and also to pay the arrears of salary within a period of four weeks thereafter, but, the appellants without complying with the orders passed by the learned Single Judge, filed the writ appeal belatedly, based on G.O., viz., G.O.(Ms) No.74 Personnel and



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Administrative Reforms (F) Department, dated 27.06.2013, which came to be passed subsequent to the orders passed by the learned Single Judge. The orders passed by the learned Single Judge reached finality before the issuance of G.O. viz., G.O.(Ms) No.74, Personnel and Administrative Reforms (F) Department, dated 27.6.2013, the appellants without obeying the order and regularizing the services of the respondents, cannot take advantage of the subsequent G.O., which came to be passed nearly after one year of the orders passed by the learned Single Judge and deny the regularization of services of the respondents. The modalities laid down in G.O. viz., G.O.(Ms) No.74, Personnel and Administrative Reforms (F) Department, dated 27.6.2013 cannot be made applicable to the respondents.

7. In the above circumstances, we find no merit in the present writ appeal and the same fails consequently, it is dismissed. No costs. The connected miscellaneous petition is closed."

The said Division Bench decision was followed by another Division Bench subsequently in W.A.No.631 of 2016 dated 13.06.2016.

10. In view of the numerous decisions which had upheld the orders of the learned single Judge granting the benefit of regularisation for even such of those employees who had completed 10 years of service after 01.01.2006, it cannot be gainsaid that by restoration of paragraph 6 of G.O.Ms.No.74 dated 27.06.2013 the substratum of the claim of the petitioner would stated to



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be negated or reversed.

11. The Government itself has recognised the directions issued by this Court in various writ petitions and had implemented the same by regularising the services of several casual employees who had completed 10 years of service after 01.01.2006. In that view of the matter, Articles 14 and 16 are directly attracted in support of the claims of these writ petitioners. Therefore, their claims need not ultimately dependent on this Court setting aside paragraph No.6 of G.O. Ms.No.74 dated 27.06.2013 and their claims could otherwise also be allowed and sustained on the basis of the decisions of this Court rendered in the interregnum between 2006 and 2013 where two G.Os. were in force (G.O.Ms.No.22 and G.O.Ms.No.74). The above narrative would also point the fact that some of the decisions of this Court granting regularisation have also been confirmed by the Hon'ble Supreme Court."

5. The aforesaid order came to be passed in the second respondent's own department and the facts involved therein are identical to the present case.



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6. Insofar as the stand taken by the respondents that the petitioners herein have not completed 10 years is concerned, it is claimed by the respondents that the petitioners were initially engaged as NMRs on 01.04.1996, 01.09.1997, 01.05.1998 and 01.08.1997 respectively. As on 01.01.2006, these petitioners are short by 4 months to about 1½ years. The Hon'ble Division Bench of this Court, in the case of ***The Government of Tamil Nadu, Environment and Forest Department and others Vs. S.Murugan*** passed in ***W.A.(MD) No.686 of 2017, dated 12.07.2017***, had dealt with such shortage of service being less than 10 years, in the following manner:-

"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.

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."

7. In the aforesaid decision, the employees were short of completion of 10 years of service by 1 year. As such, the reasoning assigned by the respondents, by stating that the petitioners had not completed 10 years of service, cannot be sustained.

8. It is needless to point out that the Public Works Department themselves, in several other cases, have regularized the services of NMRs



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who are similarly placed like that of the petitioners herein. As such, the justification assigned by them in the impugned order, as well as in the counter affidavit, cannot be sustained.

9. The learned Government Advocate made an attempt to place reliance on a decision of the Hon'ble Supreme Court in the case of *The Government of Tamil Nadu and others Vs. C.Nandhakumar* passed in *Special Leave Petition (C) No.21285 of 2021, dated 30.09.2022*. The facts involved in the said decision before the Hon'ble Supreme Court would not be applicable to the case in hand. Therein, the claimants had continued in service for only 3 years. Furthermore, the issue involved therein was not based on the claim under G.O.Ms.No.22 and G.O.Ms.No.74 or on relaxation of 10 years of service. Thus, this stand taken by the Government does not deserve consideration.

10. For all the foregoing reasons, the impugned letter issued by the first respondent herein dated 31.07.2017 is quashed. Consequently, there shall be a direction to the first respondent to pass appropriate orders, regularizing the services of the petitioners, on completion of 10 years of



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service and disburse all the service and monetary benefits, within a period of six (6) weeks, from the date of receipt of a copy of this order. Accordingly, the writ petition stands allowed. No costs.

08.02.2023

Internet: Yes/No
Neutral Citation: Yes/No
Speaking order/Non-speaking order
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To

1. The Principal Secretary to Government,
Public Works Department,
Fort St. George,
Chennai-600 009.
2. The Principal Chief Engineer,
Engineer (Building) General,
Public Works Department,
Chepauk, Chennai – 600 005.
3. The Executive Engineer,
Building Contraction and Maintenance Division,
Theni.



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M.S.RAMESH,J.

hvk

PRE-DELIVERY ORDER MADE IN

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08.02.2023