



W.P.No.25889 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.07.2023

DELIVERED ON:22.08.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.No.25889 of 2019

S.Arikrishnan

.. Petitioner

Vs.

1.Union of India,
The Chief Engineer,
Public Works Department,
Union Territory of Puducherry,
Puducherry.

2.The Engineer Assistant to Chief Engineer,
Public Works Department,
Union Territory of Puducherry,
Puducherry.

3.The Executive Engineer.
Public Works Department,
Union Territory of Puducherry,
Puducherry.

4.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600 104.

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order dated 08.04.2015 made in O.A.No.157 of 2012 and quash the same and consequently, direct the respondents to absorb the petitioner as Mazdoor with effect from 27.02.2002 along with all monetary and other benefits on par with his counter parts who are absorbed in the service, by order dated 27.02.2002 made in No.1-3/PW/CF/C4/2001-2002/354.

For Petitioner : Mr.M.Gnanasekar

For Respondents : Mr.Syed Mustafa,
Special Government Pleader for R1 to R3

R4-Tribunal

ORDER

D.KRISHNAKUMAR, J.

The petitioner, challenging the impugned order passed by the Central Administrative Tribunal, Madras Bench, Chennai dated 08.04.2015 made in O.A.No.157 of 2012, has filed the instant writ petition.



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2. Facts of the case, briefly narrated, are as follows:

2.1. The petitioner joined as NMR in the respondents Public Health Division on 29.06.1987 and subsequently he was granted temporary status as CLR on 05.04.1995, vide Seniority No. 473 as CLR. There were some family disputes between the petitioner and his wife, in which his wife had given a complaint and he was arrested in a criminal case and subsequently came out on bail on 28.01.2002. On account of his implication in a criminal case, by order dated 12.02.2002, he was suspended from service with effect from 28.01.2002.

2.2. While so, the second respondent issued an interview call letter on 13.02.2002 for absorbing him under the erstwhile Group D post of Mazdoor and the authority also passed orders to absorb him on 27.02.2002, but he was not permitted to join duty and the order of suspension was also not revoked. Therefore, he gave a letter dated 16.06.2003 praying to revoke the order of suspension.



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2.3. On 08.09.2003, the third respondent has passed orders revoking his suspension in the post of CLR on condition that his orders will be terminated if he is found guilty in the criminal case pending against him in C.C.No.101/2002 on the file of the Judicial Magistrate No.1, Cuddalore. The petitioner made a request to the respondents to absorb him as Mazdoor with effect from 27.02.2002, the date from which his counter parts were absorbed as Mazdoors along with all other monetary benefits. The third respondent gave a reply stating that his case would be considered based on the outcome of the judgment of the pending criminal proceedings.

2.4. The petitioner was acquitted in the criminal case in C.C.No.101 of 2002 on the file of the Judicial Magistrate No.I, Cuddalore, vide judgment dated 27.04.2005 and after receipt of the representation, the petitioner made a representation to the respondents seeking to absorb him as Mazdoor with retrospective effect, however he was absorbed as Mazdoor along with his junior, vide order dated 27.10.2006.



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2.5. Aggrieved by the same, the petitioner had filed O.A.No.157 of 2012 before the Central Administrative Tribunal, Madras Bench, in which the Central Administrative Tribunal, Madras Bench, has dismissed the original application, vide order dated 08.04.2015. Challenging the same, the present writ application is filed.

3. The learned counsel for the petitioner would submit that the respondents failed to consider that the petitioner was not in a position to join, pursuant to the Interview Call Letter on 30.03.2002, since he was detained in custody from 28.01.2002. It is further contended that though the respondents granted him temporary status in the year 1995, he was regularized only in the year 2006 and the respondents regularized his juniors on 27.07.2003 and the petitioner alone was singled out and there is a clear discrimination on the part of the respondents and the only reason for denying the request of the petitioner was on account of pendency of criminal case and the Tribunal was erroneously accepted the case of the respondents agreeing for prospective regularization and therefore, prays for interference.



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4. Mr.Syed Mustaf, learned Special Government Pleader has drawn the attention of this Court to the reply statement filed by the respondents before the Tribunal, wherein the respondents have averred that the applicant had wantonly suppressed his detention to the Departmental Recruitment Committee while appearing before the personal interview conducted by it on 19.07.2002 and the applicant, being a Casual Labourer, conferred with temporary status, do not come under the purview of the service conditions prevailed in CCS(CCA) Rules, 1965, to seek the remedies of suspension and revocation which in-turn is applicable only to regular government servants and instead comes under the purview of the scheme of conferment of temporary status, issued by the Government of India as implemented by Government of Puducherry, vide G.O.Ms.No.20, dated 05.04.1995, Department of Personnel and Administrative Reforms (Personnel Wing), Puducherry. It is further contended that the period of suspension even in a case of regular government servants are not regularized till the criminal cases against them are finalized as per CCS (CCA) Rules, 1965, whereas in the case of applicant, being a Casual Labourer (Temporary Status), he had been



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reinstated and had been allowed to continue as Casual Labourer (Temporary Status) even during the pendency of a criminal case against him based on his representation. In the light of the aforesaid reasoning, the respondents has rightly rejected the claim of the writ petitioner and the Tribunal has affirmed the decision of the respondents and therefore, prayed for dismissal of the writ petition.

5. This Court has considered the submission made and also perused the materials on record.

6. The fact remains that the petitioner was initially engaged as Casual Labour on Nominal Muster Roll basis on 29.06.1987 for attending jobs which are purely casual in nature. The applicant was conferred with temporary status with effect from 05.04.1995, vide proceedings of the third respondent dated 11.08.1995, as per G.O.Ms.No.20, Personnel and Administrative Reforms (Personnel Wing), Puducherry dated 05.04.1995. The petitioner along with similarly placed casual labourers were issued with offer of appointment



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to the temporary post of Mazdoor, vide proceedings of the second respondent dated 27.02.2002, based on the recommendation of the Recruitment Committee. The petitioner was not considered for absorption as Mazdoor on account of his implication and arrest in a criminal case and he has placed under suspension and his claim for absorption was considered only after his acquittal in the criminal case in respect of family dispute, vide proceedings of the second respondent dated 11.09.2006.

7. It is the grievance of the petitioner is that he is entitled for absorption as Mazdoor with effect from 27.02.2002 along with other monetary benefits, whereas he was was absorbed only during the year 2006 along with his juniors, vide order dated 27.10.2006.

8. It is to be pointed out at this juncture that the petitioner is serving only in a casual labour post with temporary status and he cannot claim regularization as a matter of right. There is no fundamental right to be absorbed in service as laid down by the Hon'ble Supreme Court in the



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landmark decision in *State of Karnataka v. Uma Devi and Others* [AIR 2006 SC 1806].

9. In the case on hand, the application was considered for absorption to Group D post of Mazdoor as per the conditions laid down in the memorandum dated 10.07.1992 issued by the Deputy Secretary to Government, Local Administration and Public Works Department (Public Works Wing), Puducherry, which clearly stipulates that those daily rated casual labourers who are in service at the time of absorption alone are to be considered for absorption. The applicant had also suppressed his involvement in the criminal case. But the respondents, being a model employer, did not terminate his services, and he was placed under suspension during the period of his detention and he was reinstated, vide proceedings of the third respondent dated 08.09.2003, consequent upon his representation dated 16.06.2003 and 10.07.2003 on condition that his service will be terminated if found guilty in the criminal case pending against him in C.C.No.101/2002 on the file of the Judicial Magistrate-I, Cuddalore.



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10. The criminal case against him had ended in acquittal, based on which he claim that he is entitled for absorption on par with his batch mates from 27.02.2002. It is stand of the respondents that the period of suspension even in the case of regular government servants are not regularized till the criminal cases against them are finalized as per CCS (CCA) Rules, 1965 and where in the case of applicant, he being a temporary casual labourer, had been reinstated and allowed to continue as casual labourer even during the pendency of a criminal case pending against him based on his representation.

11. It is a well settled position of law that seniority among the incumbents to a post in a grade is governed from the date of appointment made to that grade. In the case on hand, the petitioner, being a temporary casual labourer, was conferred with the benefit of absorption with effect from 11.09.2006 in the cadre of Mazdoor, after his acquittal in a criminal case, despite he having suppressed about his involvement in the criminal case and was allowed to continue in service during the pendency of



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criminal case. The respondents have taken a lenient view in the case of the writ petitioner and therefore, the claim of the petitioner claiming retrospective regularisation on par with his batch mates from 27.02.2002, that too after a huge delay i.e., almost 20 years is legally unsustainable. That apart, the petitioner had approached the Tribunal after a delay of 6 years by challenging the date of his absorption, which was given with effect from 27.10.2006. The Tribunal has considered all these aspects in proper perspective and the petitioner has not made out any legal ground to interfere with the order of the Tribunal.

12. In the light of the reasons assigned above, the Writ Petition stands dismissed. No costs.

[D.K.K., J.,] [P.B.B., J.]
22.08.2023

Index :yes
Internet:yes
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**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

Jvm

To

- 1.Union of India,
The Chief Engineer,
Public Works Department, Union Territory of Puducherry,
Puducherry.
- 2.The Engineer Assistant to Chief Engineer,
Public Works Department,
Union Territory of Puducherry, Puducherry.
- 3.The Executive Engineer.
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**Order in
W.P.No.25889 of 2019**

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