



WEB COPY



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.25712 of 2022 and
W.M.P.No.24758 of 2022

S. Thangaiyan

... Plaintiff

vs.

1. The Principal Secretary to Government,
Water Resources Department,
Secretariat, Chennai 600009.

2. The Engineer in Chief, W.R.D &
Chief Engineer (General) P.W.D.,
Chepauk, Chennai 600005.

3. The Chief Engineer, W.R.D.,
Trichy Region,
Trichy District 620 020.

4. The Superintending Engineer,
Water Resource Department,
Middle Cauvery Basin Circle,
Trichy District 620020.

5. The Executive Engineer, PWD/WRD
Marudaiyaru Basin Division,
Ariyalur, Ariyalur District.

... Respondents



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

Prayer: Writ Petition filed under Section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of writ calling for the records in Letter No.29149/C1/2018-6, dated 02.04.2020 passed by the 1st Respondent and quash the same and consequently to direct the respondents to calculate the petitioner's service from the date of initial appointment on 12.12.1984 and sanction all monetary and service benefits payable to the petitioner and consequently fixation of the full pension for completion of more than 30 years of service by the petitioner.

For Petitioner : Mr. L. Chandrakumar for
Mr.S. Satheeshkumar

For Respondents : Mr. S. Prabakaran
Government Advocate [for R1 - R5]

ORDER

This Writ Petition has been filed to quash the impugned proceedings in Letter No.29149/C1/2018-6, dated 02.04.2020 passed by the 1st Respondent and to direct the respondents to calculate the petitioner's service from the date of initial appointment on 12.12.1984 and sanction all monetary and service benefits and also fixation of full pension for completion of more than 30 years of service.

2.a It is the case of the Petitioner that he was appointed as Technical Assistant under Rule 10(a)(i) of General Rules for TNS&SS (new



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

TNGS(COS)Act) in the Executive Engineer Office, PWD, R.L.E.G.P. Division,

Perambalur District through Employment Exchange and joined on 12.12.1984 in the time scale of pay Rs.400-15-490-30-650-25-750. The petitioner was directed to work on a temporary basis. Since the said section was ordered to defunction on 05.07.1985, the Petitioner was ousted from service for want of vacancy on 06.07.1985. Thereafter, he was re-appointed in the year 1985 under NMR Provisions of rules for 40 days and in 1986 for 59 days and 90 days in the year 1988 as daily labour Technical Assistant, NMR (Nominal Muster Roll) in Ariyalur Division, Ariyalur and some of the PWD officers from the year 1985 to 1988. Thereafter, after the gap of five years, he was appointed as Technical Assistant once again on 17.06.1993 and joined on 08.07.1993 and the service has been regularised in G.O.Ms.No.12 dated 13.01.2006 after completion of 10 years considering the service under NMR Provision of rules and Government Order, simply neglecting his initial service in the regular post.

2.b The Petitioner's request for retrospective regularisation was also not considered in the light of the similar cases in G.O.Ms.No.108, P.W.D.(A1) Department dated 26.06.2006 and G.O.Ms.No.(1-D) 129, Public Works (A1)



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

Department dated 24.07.2017. However, the impugned order has been passed rejecting his representation. Hence, the same has been challenged before this Court.

3.a In the counter it is the contention of the 5th Respondent that the Writ Petitioner was break in service for four years starting from 1989 to 1992. Thereafter, he joined the office of Tank Modernisation Division, Viralimalai from 08.07.1993 to 12/1993 as a daily wage Technical Assistant. Subsequently, he had completed 352 days of service in the year in the year 1994. Only in that year the Petitioner had worked continuously for more than 240 days in a Calendar year. Thereafter till the year 2006 the Petitioner was working in the office of Planning and Design Division, Ariyalur. As per G.O.Ms.No.12, PWD, dated 13.01.2006 order was issued regularising the petitioner among others. After being regularised in the post of Technical Assistant, with effect from 13.01.2006, based on his completion of 10 years in NMR service, his probation in the post of Technical Assistant was declared as completed on 11.01.2008. As per G.O.Ms.No.124 Public Works Department dated 15.05.2008, the services of 333 Technical Assistants were regularised from the date of completion of 10 years of service



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

retrospectively, with effect from 1.07.2004 and the petitioner was also accorded the benefit in the said Government Order.

3.b Further it is the contention of the Petitioner that he is entitled on par with Mr.R.Manivannan. In reply to that it is the contention of the Respondent that Manivannan was recruited as Technical Assistant and was regularised retrospectively with effect from 17.04.1984 and his probation was declared to have been completed on 18.11.1996. The said Manivannan was terminated during the period 31.08.1998 to 30.09.2003 and subsequently he was again appointed as Technical Assistant on 01.10.2003. Thereafter he was promoted as Junior Engineer on 13.07.2006 and his service was regularised in the post of Junior Engineer with effect from 10.07.1997 retrospectively. Hence the petitioner cannot be equated with Mr. R.Manivannan as the petitioner was appointed on Nominal Muster Roll as Technical Assistant. The Daily Wages Technical Assistants may be regularised only after completion of 2400 days within a span of 10 years and only after completion of 240 days in a calendar year, the said year will be calculated as 1st year service commencement. The Petitioner's claim was already examined and rejected in Government letter No.17315/C1/2017-1, Public Works



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

Department, dated 11.10.2017. Thereafter, he has filed Review Application dated

14.02.2018 which was also dismissed and the dismissal order has been challenged.

3.c. Further it is also the case of the Respondent that the petitioner cannot be equated with Mr.Manivannan for the following reasons:

<i>Service particulars of Thiru R.Manivannan</i>	<i>Service particulars of Thiru S.Thiagarajan</i>
i) Initially appointed temporarily in the post of Technical Assistant on 17.04.1984 under rule 10(a)(i) of the General rules for the Tamil Nadu State &Subordinate Service.	Initially appointed temporarily in the post of Technical Assistant on 12.12.1984 under rule 10(a)(i) of the General Rules for the Tamil Nadu State & Subordinate Service.
ii) The Division in which Thiru Manivannan was working was not defunctioned.	R.L.E.G.P.Division, Perambalur in which the Petitioner was working was defunctioned on 05.07.1985.
iii) Thiru Manivannan was still working as Temporarily Technical Assistant as on 06.07.1985	The temporary service of Thiru S.Thangaiyan has been terminated from 06.07.1985 as the said Division was defunctioned.
iv) Considering that Thru Manivannan has completed 2 years of continuous temporary service and his meritorious service, he was regularised retrospectively w.e.f. 17.04.1984 and his probation was declared to have been completed on 08.11.1986.	Thiru S. Thangaiyan's service was terminated from 06.07.1985and he had not even completed one year of service. So, he is not similarly placed as that of Thiru Manivannan and ineligible for regularisation of his service.
v) Thiru Manivannanwas working against sanctioned post in the years 1985, 1986, 1987 and 1988 till 10.4.1988 and not as daily wages labourer.	Engaged as daily wage Nominal Muster Roll in the year 1985 for only 40 days, in the year 1986 for only 59 days and in the year 1988 for only 90 days and that too not against a sanctioned post.
vi) Ousted from service on 19.04.1988	He was not at all engaged from 1989 till



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

<i>Service particulars of Thiru R.Manivannan</i>	<i>Service particulars of Thiru S.Thiagarajan</i>
due to want of vacant sanctioned post	1992.
vii) Not working from 19.04.1988 as he was ousted from service for want of vacancy.	Re-engaged as daily wage Nominal Muster Roll on 08-07-1993 and engaged for the duration of Project / Work neds on a casual basisand not against a sanctioned post.
Viii) Re-appointment on 01.10.2003 in a vacant sanctined post of Technical Assistant.	Only engaged as daily wage Nominal Muster Roll from 08.07.1993 on a casual basis.
ix) After re-appointment on 01.10.2003, Thiru.Manivannan was working against a sanctioned post of Technical Assistant on a regular basis as he was regularised w.e.f. 17.04.1984.	Reuglarised w.e.f.01.07.200, i.e., the date of completion of 10years of daily wages services, considering the plight of such labourers, in G.O.Ms.No.12, Public Works Department, dated 13.01.2006.

3.d Hence it is the contention that the Petitioner has completed 2400 working days, only in the year 2004 and therefore his services were regularised with effect from 13.01.2006. However, as per G.O.Ms.No.124 dated 15.05.2008 333 Technical Assistants were regularised after completion of their 10 years of service retrospectively, with effect from 01.07.2004 and the petitioner was also accorded the benefit of the said G.O. along with 332 Technical Assistants.

4.a. Learned counsel appearing for the petitioner mainly contended that though the petitioner was originally appointed on 12.12.1984 as Technical



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

Assistant on daily wages he was terminated in the year 1984. Thereafter he was appointed only in the year 1988. However, he was re-appointed on 25.06.1993 as Technical Assistant daily wages and after completion of the 240 days in the year 1994 his service has been regularised in G.O.Ms.No.12 dated 13.01.2006. Hence, It is the contention of the learned counsel that G.O.Ms.No.12 has been issued specifically for 32 persons considering 240 days norm and the Petitioner's case cannot be equated with Mr. Manivannan. Mr. Manivannan service was regularised even before termination, whereas the Petitioner was terminated from 06.07.1985 and the said Manivannan was working on that day and he has completed two years of continuous temporary service he was regularised retrospectively w.e.f. 17.04.1984 and his probation was also completed on 08.11.1986.

4.b It is his further contention that the said Manivannan was working against sanctioned post. Whereas the Petitioner was engaged as daily wage NMR in the year 1985 for only 40 days, in the year 1986 for only 59 days and in the year 1988 for only 90 days and that too not against a sanctioned post. Thereafter, he was re-engaged as daily wage Nominal Muster Roll on 08.07.1993 on a casual basis and not against a sanctioned post. Therefore, only after completing 2400



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

days of continuous service the petitioner's service has been regularised w.e.f.

01.07.2004. Hence it is his contention that G.O.Ms.No.134 PWD dated 07.05.2010 is not applicable to the Technical Assistant. The above G.O.is only applicable to the Assistant and other categories and not applicable to the Technical Assistants. Similarly the other Government Order in G.O.Ms.No.202 Public Works (C2) Department dated 01.08.2012 is also not applicable. Further his contention is that the request of the Petitioner has been rejected in the year 2017 itself. Thereafter, under the protest of review, representation has been given in the year 2019. Thereafter, based on the direction of this Court to consider his representation, the impugned order has been invited by the Petitioner. Hence it is his contention that the original order rejecting the case of the Petitioner has not challenged. Hence the writ petition is not maintainable and the same is liable to be dismissed. In support of his contention learned counsel referred the following Government Orders:

1. G.O.Ms.No.34 Public Works Department (C2) Department
Dated 07.05.2010.
2. G.O.Ms.No.202 Public Works Department (C2) Department
Dated 01.08.2012



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

WEB COPY

5. I have perused the entire materials. The Main grievance of the Petitioner is that his period of service ought to have been regularised from the year 1984. therefore, he is entitled for Pensionary benefits. The fact that the Petitioner was originally appointed on temporary basis in Nominal Muster Roll as Technical Assistant is not in dispute. He was relieved from the said post on 05.07.1985 since the division in which he was appointed was defunctioned. Thereafter, he was given some work for 40 days, 59 days and 90 days in the year 1985, 1986 and 1988 respectively as daily wage Technical Assistant Nominal Muster Roll. Thereafter only he was appointed as Technical Assistant on 17.06.1993 and joined on 08.07.1993. After completion of 2400 days he has been regularised in G.O.Ms.No.12 dated 13.01.2006.

6. The grievance of the Writ Petitioner is that since he was working as a Casual Labour on Temporary basis in Public Works Department. As per G.O.Ms.134 dated 7.5.2010, 240 days norm will not be applicable. As per the said G.O.the daily wags who worked only 3 months in a year out of three months he was worked 60 days, his name has been forwarded for regularisation. Based on



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

the said G.O., subsequent G.O.Ms.No.202 dated 01.08.2012 was also passed.

Therefore, it is his contention that while regularising the petitioner in G.O.Ms.No.12 dated 13.01.2006 the Respondent ought not to have calculated 240 days norm. Therefore, if the G.O.Ms.Nos.134 and 202 followed the Petitioner ought to have been regularised from the year 1984 or atleast much prior to 2004. Further, other grievance of the Writ Petitioner that similarly placed person Manivannan was granted such remedy, therefore, he is also entitled to.

7. On perusal of the entire materials particularly the request of the Petitioner to regularise service from the date of his initial appointment as daily wages was rejected on 11.10.2017 in Government Letter No.17315/C1/2017-1 Public Works Department. The said rejection order has not been challenged. But the petitioner has finally filed representation in the year 2019 seeking verification of the earlier order. His representation dated 26.01.2019 without challenging the Rejection Order passed in the year 2017. Having filed the representation dated 27.01.2017, he has filed a Writ Petition before this Court and sought direction to dispose his representation. Based on the direction of this Court in the W.P.No.24266 of 2018,



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

to the 1st respondent to dispose of his application, the impugned order came to be passed.

8. It is relevant to note that the Petitioner was appointed as daily wages and he was not worked continuously. There were break in service and he was reappointed in the year 1993. Thereafter, taking of his continuous service for a period of 2400 days Petitioner and other 33 persons have been regularised in G.O.Ms.No.12 dated 13.01.2006 which has not been put in challenge. Therefore, at this stage, this Court is of the view that the Petitioner cannot seek remedy under the pretext of giving the representation and create a cause of action and challenge the order of the Respondent to give retrospective regularisation from the date of his initial appointment. The Respondent have clearly explained the difference between the Manivannan and the Petitioner in the counter. The tabular column referred above clearly shows that the case of the petitioner cannot be equated with the said Manivannan since the said Manivannan before his termination, his service has been regularised and he has completed two years of temporary service whereas the Petitioner has not even completed one year of service before his



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

termination. Further the said Manivannan was appointed in a sanctioned post,

whereas the Petitioner all along worked as Nominal Muster Roll.

9. The G.Os. relied on by the learned counsel for the Petitioner particularly G.O.Ms.No.134 PWD dated 7.5.2010 and G.O.Ms.No.202 Public Works (C2) Department dated 01.08.2012 are not applicable. The above G.Os are applicable to the post of Assistant, other categories and not Technical Assistants. The Technical Assistant post has not covered in the above G.O.s. Therefore, when the petitioner category is not covered under G.O., the petitioner cannot take advantage to the G.O.which has been passed only to the other categories. Accordingly, when the Petitioner has not challenged his original rejection order dated 11.10.2017, besides also not challenged the G.O.Ms.No.12, PWD, dated 13.01.2006, wherein his service was not regularised from 17.04.1984, at this stage he cannot challenge the regularisation. G.O.Ms.No.12 PWD dated 13.01.2006 which has been passed specifically with regard to 32 persons. If the Petitioner contention at this belated stage is accepted, it may open to Pandora Box to others and it may, in fact, lead to financial burden to the exchequer. I do not find any merits in this writ petition.



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

10. Accordingly, the Writ Petition is dismissed. No cost. Consequently,

connected W.M.P.is closed.

18.08.2023

Index : Yes/No

Neutral Citation : Yes/No

ggs

copy to:

1. The Principal Secretary to Government, Water Resources Department, Secretariat, Chennai 600009.
2. The Engineer in Chief, W.R.D & Chief Engineer (General) P.W.D., Chepauk, Chennai 600005.
3. The Chief Engineer, W.R.D., Trichy Region, Trichy District 620 020.
4. The Superintending Engineer, Water Resource Department, Middle Cauvery Basin Circle, Trichy Disgtrict 620020.
5. The Executive Engineer, PWD/WRD Marudaiyaru Basin Division, Ariyalur, Ariyalur District.



WEB COPY



W.P.No.25712 of 2022 and W.M.P.No.24758 of 2022

N. SATHISH KUMAR, J.

ggs

W.P.No.25712 of 2022 and
W.M.P.No.24758 of 2022

18.08.2023