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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.07.2023**

CORAM

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.337 of 2019

and

C.M.P.(MD)Nos.2673 and 9757 of 2019

1.The Principal Secretary to Government,
Public Works Department, Secretariat, Chennai.

2.The Engineer in Chief (General),
Public Works Department, Chepauk, Chennai-5.

3.The Executive Engineer,
Gundaru Basin Division,
Water Resource Organisation,
Public Works Department,
Tallakulam, Madurai-2.

...Appellants

-Vs.-

P.Koothan

...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to
set aside the order dated 13.02.2018 made in W.P.(MD)No.1833 of 2018
on the file of this Court.



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For Appellants : Mr.T.Amjad Khan
Government Advocate

For Respondent : Mr.V.Thirumal

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

The State is the appellant in the present Writ Appeal and challenges order dated 13.02.2018. The Appeal has a chequered history and the following paragraphs capture the sequence of dates and events, as relevant to decide the same.

2.The Writ Petitioner was appointed as a Mazdoor on daily wages in the Nominal Muster Roll (NMR) of the Public Works Department (PWD) on 14.06.1975. He completed ten years of service in 1986 and an order of regularisation was passed on 29.03.1990 regularising his services in the post of head mazdoor, with effect from 01.01.1986. That order of regularisation has not been challenged till date.

3.On the heels of such regularisation, he filed a Writ Petition bearing W.P.(MD)No.4029 of 2009 seeking a Mandamus directing the Secretary to Government, Public Works Department, to regularise his



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services with effect from 01.01.1986 in the post of Work Inspector Grade-II. He sought a consequential direction to the respondents to sanction all attendant and monetary benefits.

4.The Executive Engineer of Public Works Department had filed a counter therein to the effect that the post of Work Inspector Grade-II carried required qualification of a pass in SSLC with a course in Bifurcated Engineering as per G.O.Ms.No.461, Public Works Department, dated 15.03.1980. In fact, the question of regularisation would itself be specific only to the post to which a candidate was appointed. Thus, as the appointment of the petitioner was as a Mazdoor, the question of regularising to him to the some other post would not arise.

5.That Writ Petition was disposed on 07.07.2011 after hearing both sides. Learned Judge had proceeded on the basis that the work qualifications were relaxed and re-fixed as per G.O.Ms.No.193 Public Works (C2) Department dated 25.01.1990. However, on a perusal of G.O.Ms.No.193 dated 25.01.1990, we find that that Government Order only provides the benefit of regularisation of services and not re-fixation or relaxation of qualification.



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6.The relevant portion of the Government Order reads thus:

“3.The Government have examined the above proposals of Chief Engineer (General)/(Ground Water), Public Works Department have decided to provincialise the services of 310 N.M.R.s, who are qualified to hold their respective posts as per the norms prescribed “ad hoc rules issued in G.O.Ms.No.461, P.W. Dated 15.3.80. They accordingly direct that the services of 310 N.M.Rs. as detailed in the annexures to this order who have put in a service of 10 years as on 31.12.84, 31.12.85, 30.6.86 and 31.12.85, 30.6.86 and 31.12.86 and who are qualified to be provincialised be brought to regular establishment with effect from 1.1.85, 1.1.86, 1.7.86 and 1.1.1987 in the time scales of pay in the respective divisions of Public Works Department. The Government also sanction the creation of 310 (Three hundred and ten only) post with effect from 1.1.85, 1.1.86, 1.7.86 and 1.1.87 respectively as indicated in the Annexure I to IV to this order.

4.The orders issued in para 3 above, will take retrospective effect from 1.1.85, 1.1.86, 1.7.86 and 1.1.87 respectively. Consequently, the incumbents are eligible to draw arrears of pay and allowances as per orders in force. In respect of N.M.R. who have completed 10 years of service and are not qualified with reference to the orders issued in G.O.(Ms.)No.461, Public Works dated 15.3.80 orders will be issued separately.”

7.On the basis of the aforesaid position, Mandamus was issued to the respondents to regularise the services of the petitioner in the post of Work Inspector Grade-II with effect from 01.01.1996 with all attendant and monetary benefits.



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8.The State filed a Writ Appeal as against the aforesaid order pointing out specifically that the petitioner did not possess the requisite educational qualification or experience as required under the applicable regulations. They pointed out that the requisite qualification for appointment to the post of Work Inspector Grade-II was an SSLC pass and experience as per G.O.Ms.No.193 dated 25.01.1990 and the petitioner did not satisfy that requirement.

9.That Writ Appeal, bearing W.A.(MD)No.1095 of 2015, came to be disposed on 16.02.2017 by the Division Bench. After considering the rival contentions and noting that the Writ Petitioner had, in fact, reached the age of superannuation as on 30.04.2012, the respondents were directed to regularise the services of the petitioner in the post of Work Inspector Grade-II notionally and sanction attendant and monetary benefits to which he was legally entitled to.

10.The Division Bench has noted that there were several instances where those persons who had sought relief of regularisation in the post of Work Inspector Grade-II had been granted similar benefits. The distinction between those cases and the case of the Writ Petitioner appears to be that recruitment in those cases had itself been in the post of



Work Inspector Grade-II, whereas, in the case of the petitioner, order of regularisation dated 29.03.1990 with effect from 01.01.1986 is to the post of Head Mazdoor only.

11.This is perhaps the reason why the Division Bench has been cautious to state that while notional posting may be accorded in the post of Work Inspector Grade-II, the attendant benefits must be quantified only in terms of his legal entitlement. It is as a consequence thereof, that the impugned order in G.O.Ms.No.152 dated 03.07.2017 has come to be passed by the respondents granting a posting notionally as Work Inspector Grade II with effect from 01.01.1986 with monetary benefits from date of order, being 03.07.2017.

12.The petitioner thus alleged contempt of the order of the Division Bench and filed Cont.P(MD)No.764 of 2017. The rival positions adopted by the petitioner and respondents have been captured at paragraphs 2 to 4 of the order in Contempt Petition dated 07.07.2017, that read as follows:

“2.According to the learned counsel appearing for the petitioner, after the Contempt Petition is entertained, an order has been passed by the first respondent in G.O.Ms.No.152, Public Works (C2) Department, dated 03.07.2017, by which retrospective regularisation of service was effected with effect from 01.01.1986.



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3.The learned counsel appearing for the petitioner would submit that the said Government Order is not in compliance with the order passed by the Division Bench, which confirms the order of the learned Single Judge. In sum and substance, the learned counsel for the petitioner would submit that the monetary benefit would mean the salary, otherwise would be payable on regularisation of service of the petitioner though not worked actually.

4.The learned Special Government Pleader would submit that the monetary benefits would be construed only to mean the effect of the regularisation stands (sic. sans) the difference in salary.”

13.At paragraph No.5, the Division Bench declines to decide the dispute relating to quantification of the benefits. However and fortifying the view of the Division Bench in Writ Appeal order dated 16.02.2017 to the effect that the quantification must be in accordance with law, they grant liberty to the petitioner to challenge G.O.Ms.No.152 dated 03.07.2017, if so aggrieved.

14.In G.O.Ms.No.152, after capturing the history of the matter, the direction at paragraph 11 is in line with the consistent view of the respondent that the petitioner was not qualified to hold the post of Work Inspector Grade-II. However, they proceed to grant him relaxation of Rule 4(b) of Special Rules for Tamil Nadu Engineering Subordinate Services issued in G.O.(Ms)No.12, Public Works Department dated



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20.01.2019 as far as quantification is concerned. Actual monetary benefits have been granted from the date of issuance of Government Order being 03.07.2017.

15.The challenge in the Writ Petition in this round of litigation is on the ground that the attendant benefits must be paid over from date of regularisation being 01.01.1986, and not from date of Government Order. The Writ Court while accepting the plea proceeds on the basis that regularisation was in the cadre of Work Inspector Grade-II, which is contrary to the factual position, as under proceedings dated 29.03.1990, the services of the petitioner were regularised only in the cadre of Head Mazdoor.

16.Before us, the appellants urge that while the appointment of the petitioner has been granted in the cadre of Work Inspector Grade-II by relaxation of the Rules, the actual payout of attendant benefits is only from date of order. Reliance is placed on Rule 23A(ii) of Tamil Nadu State and Subordinate Service Rules as applicable then.

17.We see no reason to specifically delve into the Rules for the reason that the orders passed thus far make it clear that the legal entitlement of the Writ Petitioner to the monetary benefits must flow



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from date of regularisation only. Reliance upon the date, 01.01.1986, is no assistance to the respondent seeing as that date represents the date of his regularisation in the post of Head Mazdoor only.

18.It is only from date of the impugned Government Order being 03.07.2017 that the petitioner, has in fact, attained the post of Work Inspector Grade-II notionally and with retrospective effect. The payout of monetary benefits will thus flow from that date only.

19.Learned Counsel for the respondent has relied on a judgment of the Division Bench of this Court in the case of *J.Felix Balanayagam vs State of Tamil Nadu* [2020 (1) CWC 339] specifically the reference to the judgment of the Hon'ble Apex Court in *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others* [AIR 1978 SC 851]. We do not find any relevance to that reference in the present context.

20.The writ petitioner also relies upon G.O.Ms.No.461, public Works Department, dated 15.03.1980 stating that he possesses the qualifications under that G.O and hence the contention that he was not qualified holds no merit. G.O.Ms.461 prescribes a qualification of SSLC with bifurcated Engineering course for Work Inspector Grade II.



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According to the petitioner, there was no bifurcated engineering course that was being conducted and the qualification that he held must be held to suffice.

21.The Writ petitioner held a Secondary School Leaving Certificate (old pattern). He relies on G.O.Ms.No.193 Public Works (C2) Department dated 25.01.1990 that provided for creation of 614 regular posts for bringing under regular establishment NMRs, who had completed 10 years of service as on 31.12.1985, 30.06.1986 and 31.12.1986. It is only pursuant to that G.O., that the service of the writ petitioner was regularised on 29.03.1990 with effect from 01.01.1986.

22.Learned Government Pleader, for his part, brings to our notice G.O.Ms.No.12 dated 20.01.2019, which supersedes the adhoc rules prescribed under G.O.Ms.No.461, Public Works Department dated 15.03.1990, and has been accorded retrospective effect from 1984.

23.Writ Petitioner would then rely on a decision of the Division Bench in *The Secretary, Karapettai Nadar Girls Higher Secondary School, Tuticorin vs the State of Tamil Nadu and others* [2018 (1) TLNJ 85 (Civil)]. The Division Bench was dealing with a challenge premised on G.O.Ms.No.601, Education (D1) Department dated



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21.06.2009 and had rendered a finding to the effect that that Government Order did not apply retrospectively. Nothing turns on this decision and it is distinguishable on facts and legal matrices.

24. There is no justification in the petitioner seeking parity with the post of Work Inspector Grade II, as admittedly he did not hold the prescribed qualification for that posts. In any event, there is no necessity to go into that question as it is an admitted position that his appointment and regularisation, both, are only in the post of Head Mazdoor. The order, of appointment and regularisation, have attained finality.

25. The grant of Mandamus by the Writ Court is on the basis of a Government Order which, we have already noted at paragraph 5, does not relax the eligibility conditions but deals with some other issue. The decision cited also does not support the case of the writ petitioner as the situation dealt with therein is, in no way analogous to the present matter.



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26.This Writ Appeal is allowed and the order passed in W.P(MD)No.1833 of 2018 dated 13.02.2018 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

[A.S.M.J.,] & [R.V.J.,]
28.07.2023

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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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