



W.P.(MD)No.13873 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.13873 of 2020

R.Subramani

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
Public Works Department,
Fort St.George,
Chennai - 600 009.
2. The Chief Engineer (General) /
Engineer-in-Chief (W.R.O),
Public Works Department,
Chennai.
3. The Chief Engineer (W.R.O),
Public Works Department,
Madurai Region,
Madurai.
4. The Executive Engineer (W.R.O),
Public Works Department,
Periyar Vaigai Basin Division,
Madurai.
5. The Executive Engineer (W.R.O),



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Public Works Department,
Manjalar Basin Division,
Periyakulam,
Theni District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to regularise the petitioner's service and consequently direct the respondents to disburse the monetary benefits to him by considering his representation dated 28.08.2020.

For Petitioner : Mr.C.Prithviraj

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

This Writ Petition has been filed for a direction to the respondents to regularise the petitioner's service and consequently direct the respondents to disburse the monetary benefits to him by considering his representation dated 28.08.2020.



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2. The case of the petitioner is that he was appointed as NMR on daily wages basis on 01.09.1987 and he has completed his ten years of service on 31.08.1997. He requested the respondents to regularise his service since he has completed his ten years of service, but the same has not been considered. Hence, he filed Original Application in O.A.No.3552 of 2000 and the matter was transferred to the Writ Court in W.P.No.41689 of 2006 and this Court directed the respondents to consider his request for regularisation. The Superintending Engineer, Periyar Vaigai Division, Madurai vide his letter dated 19.07.2005 made a proposal to the third respondent in respect of regularisation of the petitioner and 17 others who have completed ten years of service. Thereafter, the fifth respondent has sent proceeding dated 22.07.2010 to the fourth respondent enclosing the particulars of the petitioner for the purpose of regularisation. However, the same have not been considered. In the meanwhile, this Court in W.P. (MD)No.24081 of 2018 dated 31.01.2019 directed the Government to give equivalent to basic pay at the minimum of pay scale to the post of Sweeper / Scavenger and hence, the first respondent issued G.O.(Ms)No.137, Public Works (C2) Department, dated 13.09.2019 and thereafter, his name was



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included for the minimum scale of pay equivalent to the basic scale of pay.

On 30.05.2020, the fifth respondent without any relieving order orally informed the petitioner that he has attained superannuation. The respondents, without any relieving order, has expelled him from discharging his duty. Moreover, he has been working from the year 1987 and he was also entitled for regularisation and hence he made a representation to the respondents on 28.08.2020, but the same has not been considered. Therefore, the petitioner has filed this Writ Petition with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that though the petitioner has entered into service as NMR in the year 1987, he has not been regularised till date and he has also relieved from his service in the year 2020 due to superannuation without any formal order which is unsustainable. He is also entitled for regularisation from the date of completion of ten years of service till the date of relieving and accordingly, he prays for allowing the Writ Petition.



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4. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the petitioner was engaged as Mazdoor Grade-II on Nominal Muster Roll basis in the year 1987. After engaging into service, the petitioner has not properly attended his assignment works. The third respondent vide proceedings dated 19.01.2009 has stated that in respect of Nominal Muster Roll, the employee has to work compulsorily for 60 to 90 days totally in a year and the same would be taken into consideration for completion of ten years. Only after the orders of the Tribunal, the petitioner has regularly come to work during the period from 2001 to 2018 and prior to that the petitioner has put in only a total of 144 days of service. Hence, the petitioner has completed his ten years of service for the period from 01.04.2001 to 31.03.2011. Thereafter, the petitioner has attained his superannuation on 31.05.2018 and subsequently, he was relived from his job. At this juncture, the second respondent has constituted a committee to verify the service particulars of the contract basis employees and Nominal Muster Roll Employees. While the matter stood thus, the Government has passed G.O.No.223, Public (C2) / Department, dated 06.12.2019 to engage 3407 persons, who are all working as Nominal Muster



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directed the respondents therein to consider the request of the petitioner for regularisation and no affirmative direction was issued. Therefore, the said decision cannot be the basis for the petitioner to claim that he has been in service and completed ten years of service as NMR by the cut-off date. Further, no material has been placed before the Court to show that the petitioner had completed ten years of service in terms with the Government Order by the cut-off date. Therefore, in the aforesaid backdrop, it is the claim of the respondents that they have rejected his claim for regularisation. If at all the petitioner is aggrieved by the non-grant of permanent status or regularisation, in terms with the Government Order, the proper course for the petitioner is to have approached the competent forum and claimed appropriate relief. The petitioner not having established his claim of completion of ten years prior to the cut-off date to enjoy the relief granted in the Government Order, cannot belatedly come and claim the relief of regularisation. Further, keeping silent all through, the petitioner, after the alleged superannuation, has knocked the doors of this Court in the year 2020 belatedly and in the wake of the dispute with regard to the service rendered by the petitioner, no affirmative direction can be issued to the



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respondents with regard to the claim of the petitioner for regularisation.

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7. Accordingly, this Writ Petition is dismissed in the above terms. No

costs.

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NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

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Engineer-in-Chief (W.R.O),
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