



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.4282 of 2020
and W.M.P.No.5074 of 2020
and W.M.P.No.8654 of 2022

- 1.A.Anandan
- 2.D.Vijayakumar
- 3.K.Rajasekaran
- 4.R.Ilangovan
- 5.N.Parthasarathy
- 6.P.Jayachandran
- 7.A.Soundararajan
- 8.K.Kumar
- 9.M.Raja

...

Petitioners

versus

- 1.The Secretary to Government,
Public Works Department,
Fort St.George, Chennai - 9.
- 2.The Engineer in Chief (WRD)
and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai - 5.
- 3.The Executive Engineer,
Water Resources Management,
Public Works Department,
Lower Pennayar Basin Division,
Villupuram.



4.The Asst. Executive Engineer /
Sub-Divisional Officer,
Water Resources Department,
Public Works Department,
Lower Pennayar Basin Sub Division,
Tirukovilur @ Villupuram.

5.The Asst. Executive Engineer /
Sub-Divisional Officer,
Water Resources Department,
Public Works Department,
Lower Pennayar Sub-Division,
Sankarapuram.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 4 and 5 to implement the orders of the 3rd respondent in his letter No.258/2011/Aatchi/1 dated 16.03.2011 by engaging the petitioners as NMRs in the project handled by the respondents 4 and 5 and consequently direct the respondents 1 and 2 to order regularisation of their services based on their completion of more than 10 years of service as NMR with all consequential service and monetary benefits.

For Petitioners : Mr.K.Venkataramani
Senior Counsel

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

ORDER

The petitioners had filed this petition seeking a writ of Mandamus, directing the respondents 4 and 5 to implement the orders of the 3rd respondent in his Letter No.258/2011/Aatchi/1 dated 16.03.2011 by



engaging the petitioners as NMRs in the project handled by the respondents 4 and 5 and consequently direct the respondents 1 and 2 to order regularisation of the services based on their completion of more than 10 years of service as NMRs with all consequential service and monetary benefits.

2. Heard Mr.K.Venkataramani, learned Senior Counsel for the petitioners and Mr.K.H.Ravikumar, learned Government Advocate for the respondents and perused the materials available on record.

3. Mr.K.Venkataramani, learned Senior Counsel for the petitioners submitted that the petitioners had already filed Writ Petition in W.P.No.17048 of 2011 by claiming the right under entitlement of the regularisation of their services in pursuant to the issuance of G.O.(Ms).No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. It is further submitted that as on the date of issuance of the above Government Order, the petitioners have already completed 10 years of service and hence, the respondents have initiated some action for consideration. Subsequently, the petitioners had withdrawn the above Writ



WEB COPY

Petition. The petitioners contention is fortified by the Letter of the 3rd respondent dated 16.03.2011 by calling for the particulars of the petitioners and others totalling to 55 number of NMRs for the purpose of regularisation in accordance with the recommendation of the Government. These petitioners' names have found place in the list attached with the above Letter.

4. Mr.K.H.Ravikumar, learned Government Advocate for the respondents submitted that the petitioners have stopped coming to work from the year 2011 and that they have chosen to file this Writ Petition after a delay of 10 years.

5. Mr.K.Venkataramani, learned Senior Counsel for the petitioners submitted that the petitioners' services are utilised in a peaceful manner and whenever directions are obtained from the Court, their services will be utilised by the respondents.

6. Whatever may be the case, the fact remains that the petitioners had completed 10 years of service as on 01.01.2006. It is the crucial date



fixed in G.O.(Ms).No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. Even though it is claimed that the subsequent G.O.(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 has been issued superseding the earlier Government Order made in G.O.(Ms).No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, the said Government Order restricts the operation of G.O.(Ms).No.22, dated 28.02.2006 only to full-time employees.

7. However the position of law in this point has been settled in the later judicial pronouncements and the effect of G.O.(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 and it is held to have prospective effect and not retrospective effect. Several orders have been passed in this regard subsequently and attention of this Court was drawn to the Full Bench of this Court made in ***W.P.No.23823 of 2023 dated 26.02.2024 [M.Sivappa Vs. State of Tamilnadu]*** wherein it is held as under:-

“35. The other judgment, which is cited in the order of reference as one that would support the view that G.O.Ms.No.74 dated 27.06.2013 is retrospective, of the



WEB COPY



*Division Bench in **State of Tamil Nadu, by its Secretary, Public Works Department and another vs. S. John Charles and others.** The Appeal arose out of a judgment of the learned Single Judge of this Court, which had quashed Clause 6 of G.O.Ms.No.74 dated 27.06.2013, which restricts the operation of G.O.Ms.No.22 dated 28.02.2006 only to full time employees. The power of the Government to change its policy was upheld and in the course of the order, the Division Bench has observed that the Government has not taken away the right to regularize the services subsequently provided those persons had completed 10 years of service as on 28.02.2006. The Division Bench described the action of the Government in passing G.O.Ms.No.74 dated 27.06.2013 as an attempt to streamline the scheme relating to regularisation. Even the other judgments of this court, which have been referred to by us earlier, reaffirm the view that parity should be maintained, there should be no exploitation by the Government which is a welfare State and temporary or part-time employment to permanent posts should be stopped.*

*36. Having considered the entire literature that is available in the form of various pronouncements of this court, as well as the Hon'ble Supreme Court, we find it difficult to accept the judgment of the Division Bench in **State of Tamil Nadu. by its Secretary, Public Works Department and another vs. S. John Charles and others,** as one laying down*



WEB COPY



the law to the effect that the Government is free to appoint persons either in part-time or on a full-time temporary basis to permanent posts and oust them out at its whims and fancies and we conclude that such unbridled exercise of indiscretions by the State Government would amount to exploitation.

37. We are of the considered opinion that wherever the posts are permanent in nature and they come within 86 categories of posts which form the Tamil Nadu Basic Service, temporary or part-time employment should be avoided and those persons, who have been appointed to such posts and who have completed 10 years of service as on 28.02.2006 would be entitled to regularisation dehors the nomenclature that is given to the appointment.

38. In fine, we hold

(a) If it is shown that the appointment is made to anyone of the 86 categories of posts enumerated in the Tamil Nadu Basic Service immaterial of the fact that whether such appointment is part-time or full-time, the employee would be entitled to the benefit of regularisation dehors G.O.Ms.No.74 dated 27.06.2013.

(b) If it is shown that the nature of employment is temporary and the requirement will cease to exist after a particular time, like those appointments that are made under various welfare schemes, it will then be open to the



Government to engage temporary employees or part-time employees.”

WEB COPY

8. Since the petitioners were also similarly placed, they are entitled to the benefits of G.O.(Ms).No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006.

9. It is seen that the petitioners have not given any representation so far to the respondents. It is up to the petitioners to give a representation to the respondents within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of the same, the respondents are directed to pass appropriate orders on its own merits and in accordance with the earlier judicial pronouncements made in this regard, within a period of four (4) weeks thereafter.

With the above observation, this Writ Petition is **disposed**. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.03.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri



To

WEB COPY

- 1.The Secretary to Government,
Public Works Department,
Fort St.George, Chennai - 9.
- 2.The Engineer in Chief (WRD)
and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai - 5.
- 3.The Executive Engineer,
Water Resources Management,
Public Works Department,
Lower Pennayar Basin Division,
Villupuram.
- 4.The Asst. Executive Engineer /
Sub-Divisional Officer,
Water Resources Department,
Public Works Department,
Lower Pennayar Basin Sub Division,
Tirukovilur @ Villupuram.
- 5.The Asst. Executive Engineer /
Sub-Divisional Officer,
Water Resources Department,
Public Works Department,
Lower Pennayar Sub-Division,
Sankarapuram.



WEB COPY

W.P.No.4282 of 2020



R.N.MANJULA, J.

sri

W.P.No.4282 of 2020
and W.M.P.No.5074 of 2020
and W.M.P.No.8654 of 2022

12.03.2024