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W.P. No.5517 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2024

CORAM:

THE HON'BLE MR. JUSTICE N. ANAND VENKATESH

W.P. No.5517 of 2023

N. Kathiravan

Petitioner

v

1 The Superintending Engineer
Mechanical Engineering Department
Greater Chennai City Corporation
Chennai 600 003

2 The Commissioner
Greater Chennai City Corporation
Ripon Building
Chennai 600 003

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the impugned order passed by the first respondent herein in his proceedings E.Po.Thu.Na.Ka.No.M-6/1029/2021 dated 08.06.2022 and quash the same and consequently, issue a direction to the respondents to regularise the services of the petitioner notionally from 15.12.1993 for the purpose of pensionary benefits and for all other purposes with effect from 29.09.2009 as Driver together with all consequential service and monetary benefits within a time frame.

For petitioner Mr. P. Ilamvaludhi
for Mr. H. Adaikala Arockiaraj

For respondents Mr. S. Gopinathan
Standing Counsel



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This writ petition has been filed challenging the proceedings dated 08.06.2022 of the first respondent and for a consequential direction to the respondents to regularise the services of the petitioner, as Driver, notionally from 15.12.1993 for the purpose of pensionary benefits and for all other purposes with effect from 29.09.2009 together with all consequential service and monetary benefits.

2. Heard Mr. P. Ilamvaludhi, learned counsel representing Mr.H.Adaikala Arockiaraj, learned counsel on record for the petitioner and Mr. S. Gopinathan, learned Standing Counsel for the respondents/Chennai Corporation.

3. The petitioner was appointed as a Temporary Driver under the second respondent on 15.12.1993. He was implicated in a criminal case and as a result, he was arrested and remanded to judicial custody. In view of the same, he was not allowed to report to duty. Ultimately, he was acquitted in the criminal case. Simultaneously, disciplinary proceedings were initiated against him on the ground that he wilfully absented from duty.

4. The petitioner raised an industrial dispute in I.D. No.477 of 2014



before the I Additional Labour Court, Chennai, seeking reinstatement with continuity of service, backwages and all other attendant benefits as was done in the case of other daily wage workers who were seniors to him. The Labour Court, *vide* award dated 29.09.2009, ordered reinstatement, however, without continuity of service, backwages and other attendant benefits. The petitioner filed a writ petition being W.P. No.15863 of 2011 challenging the award of the Labour Court in not granting the relief of continuity of service, backwages and other attendant benefits. *Vide* order dated 11.10.2012, this Court was not inclined to interfere with the portion of the award of the Labour Court in not granting the relief of continuity of service, backwages and other attendant benefits. However, this Court disposed of the said writ petition by directing the respondents to implement the award of the Labour Court immediately. Pursuant to the order passed in the said writ petition, the petitioner was reinstated into service with effect from 29.09.2009.

5. The petitioner filed W.A. No.678 of 2013 challenging the order dated 11.10.2012 passed in W.P. No.15863 of 2011. The said writ appeal was disposed of by this Court *vide* judgment dated 13.03.2019, the relevant portion of which is extracted below:

“6. It is seen that after the award of the Labour Court, the appellant is still continuing as a temporary driver from 2009. If that is so, it is high time the respondent Corporation considers the case of the appellant for regularisation with prospective effect, since he has been in continuous employment of temporary driver since 2009 and



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it appears that the appellant has not come to the adverse notice of the respondent during this period. A decision in this regard may be taken by the respondent Corporation as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this judgment.”

6. The aforesaid direction issued by the Division Bench was not complied with and therefore, the petitioner filed Cont. Petn. No.108 of 2020. During the pendency of the contempt petition, the request made by the petitioner seeking regularisation was rejected and therefore, the Division Bench, *vide* order dated 15.12.2020, was not inclined to go into the issue and closed the contempt petition, leaving the issue open.

7. Thereafter, the petitioner filed W.P. No.26219 of 2021 against the rejection order dated 24.08.2021. This Court, after considering the petitioner's claim and the stand taken by the respondents/Chennai Corporation, allowed the writ petition *vide* order dated 13.12.2021 and the relevant portion of the said order is extracted below:

“6. Admittedly, the writ petitioner was removed from service by the respondent-Corporation since he was involved in a private criminal dispute. Subsequently, the aforesaid criminal case was ended in acquittal. The petitioner had filed a petition before the Labour Court in I.D.No. 477 of 2004 and an award came to be passed on 29.09.2009 directing the respondents to reinstate the petitioner without any back wages. Challenging the aforesaid award, the petitioner has filed a writ petition before this Court and the same was disposed of with directions to the respondent-Corporation to implement the award passed by the Labour Court. As against the said order of this Court, the petitioner had preferred Intra Court Appeal before the Hon'ble Division Bench of this Court. The said Writ Appeal was also disposed of with the observation to consider for regularisation as expeditiously as possible, since the petitioner is still continuing as a temporary driver since 2009. Apart from that at the



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time of appointment itself the petitioner had satisfied the respondent Corporation with regard to the educational qualification, therefore he was appointed by the respondent-Corporation as driver. The present impugned order rejecting the petitioner's plea on the ground that he did not possess the required qualification for the post of driver cannot be accepted as the said ground was not raised by the respondent-Corporation before the Labour Court as well as this Court.

7. Therefore, in view of the observations made by the Hon'ble Division Bench of this Court in W.A.No. 678 of 2013 dated 13.03.2019 and in the absence of grounds before the Labour Court and before this Court, the contentions of the learned counsel for the respondent-Corporation that the petitioner did not possess the required educational qualification for the post of driver cannot be accepted and hence, the impugned order passed by the respondents-Corporation requires interference by this Court.

8. Accordingly, the impugned order is quashed and remitted to the first respondent to consider afresh on merits and pass appropriate orders, in accordance with law, as expeditiously as possible, preferably within a period of twelve (12) weeks from the date of receipt of the copy of this order.”

8. Pursuant to the above order, the matter once again went before the first respondent, who, *vide* the impugned proceedings dated 08.06.2022, once again rejected the petitioner's claim for regularisation. Aggrieved by the same, the present writ petition has been filed before this Court.

9. The petitioner has been driven from pillar to post for a long number of years and he is being denied the relief of regularisation by coming up with a new ground every time when this Court remanded the matter to the file of the Corporation. On the first occasion, the petitioner's case was

~~rejected~~ *vide* order dated 24.08.2021 on the ground that he did not possess



the required educational qualification. This Court interfered with the same in

W.P. No.26219 of 2021 and quashed the order impugned and remanded the

matter to the file of the first respondent to consider the petitioner's claim.

After such remittal, the first respondent has now passed an order dated

08.06.2022 by assigning a completely different reason. The first respondent

has taken note of a common order dated 15.02.2022 passed in W.P. (MD)

Nos.10673 to 10675 of 2019 and based on some observations made in that

order, proceeded to reject the petitioner's claim for regularisation. The order

that has been relied upon by the first respondent is totally irrelevant and it has

absolutely no application to the facts of the present case. That was a case

where some Guest Lecturers were employed on temporary basis, subject to

some terms and conditions. They were seeking regularisation of their service

and this Court had held that those Guest Lecturers had joined service on

temporary basis knowing fully well that they are not entitled to regularisation.

The terms and conditions of temporary appointment were put against them.

This order can never apply to the facts of the present case. In fact, the first

respondent has relied upon this order only to find a ruse somehow to reject

the petitioner's claim for regularisation. The order passed by the first

respondent is an error of law apparent on its face and hence, the same

requires interference by this Court. The petitioner had joined the services of

the respondent Corporation in the year 1993. He was not permitted to join



duty and pursuant to the award passed by the Labour Court, he was reinstated into service. Ultimately, when the matter reached the Division Bench in W.A. No.678 of 2013, this Court took into consideration the fact that the petitioner has been working as Temporary Driver continuously from 2009. Therefore, this Court directed the respondent Corporation to take a decision on the petitioner's request at least from the year 2009.

10. The above judgment passed by the Division Bench was not complied with and the petitioner's claim was initially rejected on the ground that he did not possess the necessary educational qualification. This Court interfered with the said order in W.P. No.26219 of 2021 *vide* order dated 13.12.2021. The matter was remanded to the file of the first respondent only to enable the first respondent to pass fresh orders regularising the services of the petitioner. However, the first respondent found out some other ground by relying upon an irrelevant order and once again denied the petitioner's request for regularisation. The order dated 08.06.2022 passed by the first respondent is totally unsustainable and hence, the same is quashed.

In the result, this writ petition is allowed and there shall be a direction to the respondents to regularise the services of the petitioner notionally from 15.12.1993 for the purpose of pensionary benefits and from 29.09.2009 for



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all other purposes, with all service and monetary benefits. This process shall be completed by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs.

20.09.2024

cad

To

- 1 The Superintending Engineer
Mechanical Engineering Department
Greater Chennai City Corporation
Chennai 600 003
- 2 The Commissioner
Greater Chennai City Corporation
Ripon Building
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N. ANAND VENKATESH, J.
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