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W.P.No.25313 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

W.P.No.25313 of 2015

D.Suresh

...Petitioner

Vs.

1. Union of India, Rep. by its The General Manager,
Southern Railways
Park Town,
Chennai 600 003

2. The Chief Personnel Officer,
Southern Railways,
Park Town
Chennai 600 003

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to reinstate the petitioner in service wef. 19.02.1990 with continuity of service and consequently direct the 2nd respondent to grant all consequential benefits of grant of temporary status, regularization, pay fixation seniority, promotion on par with his juniors and all other consequential monetary benefits.



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For Petitioner : Mr.M.Gnanasekar
For Respondents
1 and 2 : Mr.C.V.Ramachandramoorthy,
Standing Counsel

ORDER

The writ petitioner seeks to have himself reinstated in service with effect from 19.02.1990 with continuity of service and consequential benefits like grant of temporary status, regularization, pay fixation, seniority, promotion on par with his juniors and all other consequential monetary benefits.

2. This mandamus is sought for on the strength of the order passed in W.PNo.24473 of 2006 dated 12.01.2011. The facts are briefly set out hereinbelow.



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3. The petitioner was originally appointed as a substitute Bungalow Lascar in the pay scale of Rs.750-940/- in the Bungalow of Divisional Railway Manager, Madras Division by order dated 19.02.1990. On transfer of the Divisional Railway Manager as Chief Project Manager (GC), the petitioner was also transferred and posted as Substitute Bungalow Lascar to the Chief Project Manager (GC). On 17.08.1992, on the basis of certain allegations made by the said Officer, a show cause notice was issued to the petitioner alleging that he had committed acts of theft, had been disobedient, quarrelsome and argumentative with the lady members of the house, did not turn up for duty on two dates despite specific instructions to make himself available and also pilfered food articles from the house. The petitioner had submitted his reply on 21.08.1992 denying each and every allegation made against him.



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4. The authorities thereafter came to the conclusion that the petitioner's services had to be terminated as his continuance in service would be unreasonable. Therefore, with effect from 28.08.1992, afternoon, the petitioner's services were terminated and he was given compensation. The termination order stated that the petitioner's explanation was not satisfactory to the Officer under whom the petitioner was engaged as a Bunglow Lascar. Therefore, the petitioner approached the Central Administrative Tribunal by filing O.A.No.1185 of 1992. By order dated 01.10.1992, the Tribunal rejected the application and directed the applicant therein to approach the Industrial Tribunal, if aggrieved. Therefore, the petitioner had moved an application under Section 2A of the Industrial Disputes Act before the Assistant Commissioner of Labour (Central). Since the conciliation had failed, a reference was made to the Central Government Industrial Tribunal for adjudication. However, the reference was not made constraining the petitioner to approach this Court. By order dated



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06.12.1999 in W.P.No.8306 of 1999, this Court directed the Union of India to refer the dispute to the Industrial Tribunal within four months from the date of communication of that order. The dispute was also referred to the Industrial Tribunal on the following question:

"Whether the action of the management of Southern Railway, Madras and terminating the services of Shri.D.Suresh, Ex-peon/Lascar without holding proper enquiry leveled against him is just, proper and legal. If not to what relief the workman is entitled to".

On 12.06.2001 in I.D.No.28 of 2001, the Tribunal rejected the petition filed by the petitioner. Against the Award of the Tribunal, the applicant had filed W.P.No.24473 of 2006. This Court, by order dated 12.01.2011 was pleased to allow the writ petition. Consequent to the orders of this Court, the petitioner had made a representation to the respondents to comply with the order of the High Court. However, by order dated 25.04.2011, the second respondent had appointed the petitioner as a Substitute Trackman as if he was being recruited on the



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said date ignoring his previous services for the purpose of regularization. The second respondent had passed an order of re-engagement which was in gross violation of the orders passed by this Court. Therefore, once again, the petitioner had submitted a representation on 16.09.2011 reiterating the earlier contention. Since there was no response, another representation dated 04.10.2012 had been submitted, followed by a reminder dated 14.06.2013. Since there was no compliance, the petitioner had filed O.A.No.1474 of 2013 on the file of the Central Administrative Tribunal. By an order dated 19.06.2015, the Tribunal had dismissed the application granting liberty to the applicant to approach this Court for addressing the grievance considering the earlier order passed by this Court.

5. In the counter filed on behalf of the respondents 1 and 2, they would contend that the petitioner was engaged as a substitute Bungalow Lascar who was attached to the then Divisional Railway



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Manager, Chennai. The Officer under whom the petitioner worked had expressed dissatisfaction with his work and the services were terminated from 28.08.1992. The respondents would submit that the petitioner has now been re-engaged as Substitute Trackman in Pay Band Rs.4440-7440 with grade pay Rs.1400 in the Chennai Division. Since the Officer under whom the petitioner was originally attached was not in service, he was re-engaged as substitute Trackman in the existing vacancy. The respondents would submit that a Bungalow Lascar is engaged on the basis of the choice of the Officer on whose recommendation the candidate was engaged and not governed by normal recruitment Rules. Therefore, the petitioner cannot be reinstated. They would further submit that there is no further direction from this Court to grant continuity of service, leave encashment, promotion and other benefits.

6. The learned counsel for the petitioner would submit that one



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Venkatesh, who was similarly placed, has been reinstated in service.

With reference to the case of the co-worker as pleaded in the writ petition, there is no response in the counter of the respondent. He would further submit that the petitioner has been engaged as a Bungalow Lascar on 19.02.1990 and the allegations in the counter that it was co-terminous with the Officer to whom he was attached is without any basis and contrary to the terms of the employment. In the light of the specific order passed in W.P.No.24473 of 2006, the respondents, by passing the order of reengagement, have committed contempt of the orders of this Court. Therefore, the petitioner is entitled to be reinstated with all backwages and other attendant benefits granted in the order in W.P.

7. Learned counsel for the respondents 1 and 2 would attempt to reopen the order pronounced in W.P.No.24473 of 2006 by contending that the petitioner is only a temporary worker and that his employment



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is co-terminous with the officer who appointed him. He would submit that since the Officer under whom the petitioner was employed at the time of termination of service had demitted office, the petitioner's right to continue as a Bungalow Lascar has also come to an end. Therefore, he would submit that the petitioner is not entitled to the relief claimed.

8. Heard the learned counsels on both sides and perused the materials available on record.

9. The petitioner was appointed as a Bungalow Lascar on 19.02.1990. The order prescribed the following conditions.

"i. His services will be terminated within 3 years if found unsatisfactory or his services are not required by DRM/MAS or his successor or any other Administrative Officer within 3 years.

ii. He will be eligible for regular absorption as



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Peon/Lascar in scale of 750-940 after three years continuous service either in open line or construction, provided vacancy exists.

iii. If after regular absorption, he is not required in the Bungalow due to transfer of the Officer concerned or his successor he will be transferred as Lascar/Peon only in office against existing Class IV vacancy and he will seek further avenue along with office Peon/Lascar as per existing channel of promotion."

The contention of the respondents' counsel that the employment runs coterminous to that of the Officer who had appointed the petitioner is totally contrary to the conditions imposed. On the contrary, the first condition clearly states that the petitioner's services would be terminated within 3 years if found unsatisfactory or his services are not required by DRM/MAS or his successor or any other administrative



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Officer within 3 years. Clause (iii) makes it clear that if after regular absorption, the petitioner is not required in the Bungalow due to the transfer of the Officer concerned or his successor, he would be transferred as Lascar / Peon only in the office against existing Class IV Vacancy and he has to seek further avenue along with the office peon / Lascar as per existing channel of promotion. These conditions would make it clear that the appointment of the petitioner as a Bungalow Lascar is not running alongside the employment of the Officer. Therefore, the denial of the reinstatement on the ground that the Officer has retired is absolutely without any basis and is totally malafide. The respondents deemed it fit to reinstate the services of Venkatesh. The learned counsel for the respondent would submit that the same was on account of the fact that the order passed in the writ petition filed by the Venkatesh clearly states that he has to be absorbed in a Group D service. The petitioner is also entitled to be absorbed as a group D employee. The conditions of service as provided in the letter of appointment clearly show that the petitioner has been appointed as a



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Bungalow Lascar as a railway employee and not as an employee of the Officer of the railways. The respondents are attempting to rewrite the order passed in W.P.No.24473 of 2006 earlier. Therefore, taking into account the fact that similarly placed persons have been reinstated in service and the petitioner has been denied the order which has been passed by this Court, the Writ Petition is allowed as prayed for. There shall be no order as to costs.

25.06.2024

Index : Yes/No

Internet : Yes

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To

1. The General Manager,
Union of India,
Southern Railways
Park Town,
Chennai 600 003

2. The Chief Personnel Officer,
Southern Railways,
Park Town

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