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W.P.No.28581 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM:

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.28581 of 2012

1. C.Manikandan
 2. V.Malaisamy ...Petitioners
- Vs
1. The State of Tamil Nadu,
Rep. by its Secretary,
Public Works Department,
Fort St. George, Chennai -9.
 2. The Chief Engineer (General) &
Engineer in Chief,
Public Works Department,
Chepauk, Chennai – 5.
 3. The Principal Accountant General,
(Accounts and Entitlement)
No. 361, Anna Salai,
Chennai – 18.
 4. The Asst. Executive Engineer,
PWD/WRO, Periyar Vaigai Basin,
Sub-Division, Uthamapalayam ...Respondents



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Prayer: Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the third respondent's order in No. GPF14/LPS/TRs-145417/2010-2011/208565 dated 31.01.2011, to quash the same and consequently direct the respondents to extend the benefits of pension scheme to the petitioners herein.

For Petitioner	: Mr. L.Chandrakumar
For R1 & R2	: Mr.M.Murali Government Advocate
For R3	: Mr.V.Vijay Shankar
For R4	: No appearance

ORDER

This writ petition is filed seeking for issuance of Certiorarified Mandamus to quash the records relating to third respondent's order in No. GPF14/LPS/TRs-145417/2010-2011/208565, dated 31.01.2011 and consequently direct the respondents to extend the benefits of pension scheme to the petitioners.

2. Heard both sides and perused the materials available on record.



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3. The case of the petitioners is that the petitioners were initially appointed as casual labourers and consequent upon the completion of 10 years of such services and on the basis of the policy of the Government their services were regularized with effect from the date of completion of 10 years. The services particulars and the Government order through which they were regularized with that of the date of regularization of the petitioners herein which will establish the accrued right of the petitioners.

4. The learned counsel appearing for the petitioners would submit that through the Government Order in G.O.Ms.No. 334 PWD dated 19.10.2007 and G.O.Ms.No.351 PWD dated 05.08.2010, the services of the petitioners were regularized. While issuing the said Government Order the power conferred by the Rules 48 of the General Rules contained in Part II of the Tamil Nadu State and Subordinate Services came to be complied with and thereby the Government order relaxed the provision of the Rules for bringing them into regular establishments, thereby the date of regularization was on the basis of



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completion of 10 years of services as casual labourers and it may not be out of place to mention that having chosen to relax the relevant rules for the purpose of regularization of the services as per settled principles of law once the provisions of relaxation having been complied with by an order of governor, then it is nothing but automatic in relation to grant of all consequential benefits.

5. The learned counsel for the petitioners would further submit that as per the Government order, the date on which the petitioners have completed 10 years was on 31.12.2001 and the date of regularization was also on the said dates. That apart the reckoning of 10 years is from a retrospective date and further they have been continuously discharging duties under the nomenclature of NMRs and the regularization has been done in the post of Irrigation Assistant vide G.O.Ms.No.334 dated 19.10.2007 and G.O.Ms.No.351 dated 05.08.2010, a clarification came to be sought for as to whether the pension scheme would be applicable for these categories of persons. The Principal Accountant General, on an erroneous view of law and facts, in a letter addressed to the Assistant Executive Engineer, PWD-Ariyalur had stated that



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the persons who were recruited in regular time scale of pay on or after 01.04.2003 would be eligible for contributory pension scheme and the existing pension scheme shall not be applicable which is without any basis and therefore the communication which affects the accrued rights of the petitioners is called in question to this writ petition.

6. The learned counsel for the petitioners would further submit that as per the settled principles of law and that of Doctrine of Relation Back, it shall be from the date of initial engagement which shall be criteria for consideration of grant of service benefits, when the Government had chosen to relax rules by order of Governor under General Rule 48, which shall not be less beneficial to the individual and in the instant case, both the petitioners have been continuously engaged prior to 01.04.2003 and it is on the basis of their initial engagement the reckoning of 10 years is arrived at and therefore what was and what were applicable to those employees on the date of their initial engagement shall have applicability, apart from enforceability of the petitioners and therefore to deny them the pension scheme on another premises, much less on



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the premises that their regularization years have been made on the subsequent date to that of the coming into being of the contributory pension scheme is against law and also tainted with arbitrariness and therefore aggrieved against the same, the petitioner have come forward with the present writ petition.

7. The learned counsel for the petitioners would further submit that much prior to the introduction of contributory pension scheme, in fact, it is only on the basis of their initial engagement of the petitioner on 01.01.1992. The petitioners services came to be regularized on completion of 10 years of such service and in certain cases much prior to the above mentioned Government order, the criteria being 10 years of NMRs services.

8. The Counter affidavit is also filed by the third respondent on 17.06.2015.

9. The learned counsel appearing for the petitioners relied on the order passed by this Court in similar case in W.P.No.23743 of 2011 dated



18.12.2023 and the relevant portions of the order reads as follows:-

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“6. Per contra, the learned Government Advocate submitted that, not all the petitioners had completed 10 years of service as on 01.04.2003 for them to claim the pension. In view of the Full Bench Judgment of this Court, he would contend that, even from the list given by the petitioners in the typed set, petitioners 2, 3, 4, 8, 9 & 10 had only joined the services after 01.04.1994 and they would have completed 10 years services after 01.04.2003 and therefore they would not be entitled for the benefits of Full Bench Judgement. As regards to petitioners 1, 5, 6 and 7, he would contend that, their regularization happened only after G.O.M.S.No. 334 and therefore, they would not be entitled for the benefit of the Full Bench Order, since the actual period of regularization had taken place only in the year 2007, as the Government order ordering such regularization came to passed only in the year 2007. Therefore, he would contend that, the claim of the petitioners are wholly misplaced and seeks dismissal of the writ petition.

7. Considered the rival submissions and perused the



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records. It is an admitted fact that, the service of the petitioners had been all regularized pursuant to the G.O.334 dated 19.10.2007. It would be relevant to analyze the condition upon which, such regularization was directed to be passed:

(i) The Chief Engineer, Public Works Department concerned shall verify and clarify the fact that the Nominal Muster Roll have completed 10 years of service before issue of posting orders to the individual concerned and a certificate will be sent to Government accordingly.

(ii) where relaxation of eligibility criteria is involved, the financial benefit will be reckoned from the date of relaxation. In other cases, from the date they have completed 10 years of service. In either case actual monetary benefit will accrue from the date of issue of Government orders.

(iii) the priority be given to the category of irrigation Assistant (Formerly known as Lascar) while



allocation of posts among the 1056 Nominal Muster Roll employees and that the remaining posts be filled up according to the need and necessary.

8. As per the clause (2) of the condition prescribed, it could be seen that, what was reckoned to be made from the date of Government Order is only the actual monetary benefit. The reading of the three conditions prescribed in the Government Order, it could be only seen that the date of regularization will have to date back to the date on which the respective individuals who have completed 10 years of service as Nominal Muster Roll employees/casual labourers. Even according to the table given by the learned counsel for the petitioners, only petitioners 1, 5, 6 & 7 had completed 10 years of service on or before 01.04.2003, the date which, the Full Bench of this Court had fixed for persons who would be entitled to receive pension under the Old Scheme. In respect of other petitioners, they all have completed 10 years of service only after 01.04.2003 and therefore their claim cannot be countenanced. However, as regards to other petitioners



(1, 5, 6 & 7), *their service in consonance with the Government Order would have to be regularized on completion of 10 years of service i.e. Prior to 01.04.2003 in their cases. Even though the Government Order came to be passed, their right for regularization had been recognized by the Government and the said Government order had been issued. They had also been regularized pursuant to the said Government Order in the year 2007. Their regularization will date back to the date on which they had completed 10 years of service.*

9. *In such view of the matter, I am of the considered view that the full Bench Judgement of this Court would squarely be applicable to their case. Therefore, I am of the view that, the Writ petition with respect to 1, 5, 6 & 7 will have to be allowed with a direction to treat them as person who service had been regularized before 01.04.2003 and apply the ratio of the Full Bench and grant them appropriate relief. However, in respect of other petitioners (2, 3, 4, 8, 9 & 10), writ petition stands dismissed. The respondent*



shall carry out the direction issued in respect of petitioners 1, 5, 6 & 7 within a period of 12 weeks from the date of receipt of copy of the order.

10. In view of the above order passed by this Court in W.P.No.27343 of 2011 dated 18.12.2023 following the Full Bench Judgement of this Court, this Court is of the considered view that the writ petition has to be allowed with a direction to treat the petitioners as person whose services had been regularized before 01.04.2003 and apply the ratio of Full Bench and grant them appropriate relief. The respondent shall carry out the directions issued within a period of twelve weeks from the date of receipt of a copy of this order.

11. Accordingly, this Writ petition is allowed. No cost.

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Index:Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
nsl



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To

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Public Works Department,
Fort St. George, Chennai -9.
2. The Chief Engineer (General) &
Engineer in Chief,
Public Works Department,
Chepauk, Chennai – 5.
3. The Principal Accountant General,
(Accounts and Entitlement)
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J.SATHYA NARAYANA PRASAD, J.

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