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W.P.No.32231 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

W.P.No.32231 of 2016
and W.M.P.No.27952 of 2016

V.Venkatachalam

.. Petitioner

Vs.

1. The Chief Engineer (General)
Highways Department,
Chepauk, Chennai 600 005.

2. The Superintending Engineer (Highways),
Coimbatore.

3. The Divisional Engineer,
Highways, Construction and Maintenance,
Pollachi, Coimbatore District

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified mandamus calling for the records of the third respondent in connection with his proceedings Ka.No.114/2015/A4 dated 17.04.2015 whereby he rejected the petitioner's request for appointment as a permanent road worker (Salai Paniyalar) quash the same and direct him to consider the



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petitioner for appointment as Road worker (Salai Paniyalar) on permanent basis, introduced by the G.O.Ms.No.230 dated 01.10.1999 of the Government of Tamilnadu, Department of Highways and Rural Development from the date one of the similarly placed persons who was appointed to the said post under the third respondent with all consequential benefits.

* * *

For Petitioner : Mr.P.Ulaganathan
For Respondents : Mr.M.Alagu Gowtham
Government Advocate

ORDER

The petitioner has filed the above writ petition seeking to quash the order passed by the third respondent on 17.04.2015 in and by which he has rejected the petitioner's request for appointment as a permanent Road worker and direct him to consider his appointment as a road worker on permanent basis in keeping with the terms of G.O.Ms.No.230 dated 01.10.1999 from the date one of the similarly placed persons was appointed to the said post under the third respondent with all consequential benefits.



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2. It is the case of the plaintiff that he passed 10th standard and was engaged as a temporary employee on daily wage basis for 6 years, i.e from 1988 to 1991 and once again from 1993 to 1996. The services of the petitioner were utilized in Special Gang for special duties and for temporary duty during the visits of Ministers etc., The petitioner has been issued with a service certificate by the third respondent stating that he worked on a daily wage basis from 1993 to 1996.

3. In order to streamline and regularize several temporary employees working in the Highways Department, the first respondent issued G.O.Ms.No.230 dated 01.10.1999 wherein it was stated that out of 9813 posts of Road workers (Salai Paniyalar) created, 764 posts were earmaked for the employees who were working in the department on a daily wage basis. The Government had also announced relaxation in age, nomination from the employment exchange and educational qualification as a special case for those temporary workers who have been working in the respndent-Department to regularize them with



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effect from 29.05.1997. The petitioner, who had worked during the above period, was called for interview and skill test on 23.08.1997 by the third respondent. The petitioner had performed well in the interview as well as in the skill test and the third respondent had opined that he was eligible for regularization. The petitioner was waiting for regularization when, all of a sudden, he discovered that he had not been selected, while others who were less qualified were selected for regularization. For example, one K.Thangavelu whose name appeared at S.No.32 was an S.S.LC failed candidate. Likewise, one M.Sundaram had only passed the second standard. Both of these candidates had been selected, whereas the petitioner, who had passed the 10th standard had been left out. Therefore, the petitioner had made a representation to the respondents to regularize the service. Despite the fact that from the year 2009, the petitioner has been requesting for regularization, the third respondent has not considered his representation. In response to the petitioner's representation dated 25.06.2007, he had received a reply stating that his request had been rejected as approval had not been



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obtained for his appointment from the Government. In fact, the first respondent had overlooked the letter of the third respondent wherein he had given a proforma statement showing the period during which the petitioner has worked. The said statement had categorically stated that the petitioner had worked from 1998 to 1991 and 1993 to 1996 and the statement also stated that due to urgent work, the petitioner was engaged as NMR on a daily wage. Once again on 24.11.2009, the office of the third respondent informed the petitioner that his service particulars has been forwarded to the first respondent. However, there has been no response. Ultimately, the petitioner had filed W.P.No.11649 of 2015 seeking a direction to the respondents to appoint him as a road worker. This writ petition was disposed of on 21.04.2015 with a direction to the first respondent to consider the representation of the petitioner by taking note of the recommendation made by the third respondent in his proceedings dated 16.02.2015. Subsequently, the third respondent, pursuant to the direction of this Court, had passed an order on 01.07.2015. In the said order, he had



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mentioned that the petitioner had worked only for 45 days during the period from 1988-89 to 1991 and from 1993-1996. There were no vouchers for payment of wages to the petitioner during his service. Such a statement from the third respondent is rather strange, since the third respondent had himself given the proforma statement earlier stating that the petitioner had worked from 1998 to 1991 and 1993 to 1996 whereas in the impugned order he had mentioned that the petitioner had only worked for 45 days. Such a stand now taken is rather baffling. Therefore, the petitioner has come forward with the writ in question.

4. In the counter filed by the third respondent, it is stated that the petitioner had not qualified in the interview and skill test. That apart, the third respondent would submit that the petitioner did not qualify to be included in the list of eligible persons because he did not possess the requisite number of working days, i.e. the petitioner had worked only for 44 days. This appear to be the reason for rejecting the petitioner's representation.



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5. Heard the learned counsels and perused the materials available on record.

6. A perusal of proforma statement issued by the third respondent on 05.11.2009 clearly sets out that the petitioner had worked as a Nominal Mustar Roll (NMR) from 1988 to 1991 and thereafter from 1993 to 1996. It is clearly stated that the petitioner had been engaged as an NMR on daily wages. The third respondent has stated that the petitioner has worked only for 44 days. However, the details have not been furnished. G.O.Ms.No.230 dated 01.10.1999 had been issued with the aim of providing regularization to those workers who have been working days together in the respondent-department without claiming regularization and were being continuously appointed on a temporary basis. The Government order seeks to protect those of the temporary workers who have been employed for a very long time in the third respondent's department.



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7. The only ground on which the representation of the petitioner has been turned down is that his name was not included in the list of eligible persons since he did not possess the requisite qualification i.e the number of working days which according to the records of the respondents is only 44 days. The respondents have failed to appreciate the original statement issued by the third respondent tabulating the number of days that the petitioner had worked. There is nothing to show how the respondents had come to the conclusion that the petitioner has worked only for 44 days.

8. The learned single judge of this Court, in the order in ***W.P.No.15972 of 2009 dated 19.09.2013/A. Murugesan Vs. State of Tamil Nadu and Others*** which is once again a case of regularization of NMRs in road service, held that the petitioners therein who had



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completed 3 years of service on the relevant date, are entitled to the benefit of the order dated 17.05.1996 in O.A.No.1543 of 1991 batch.

The Court had taken into account the G.O.Ms.No.22 dated 28.02.2006. No doubt this G.O. had been set aside by the Division Bench and the same is now pending review.

9. The Government Order namely G.O.Ms.No.230 dated 01.10.1999 which is called into question herein does not prescribe the minimum number of days of work required for a temporary worker to qualify for regularization. The number of days that the petitioner has worked pales into insignificance in the light of the certificate issued by one of the officials namely, the Divisional Engineer, who has categorically stated that the petitioner has worked from 1988 to 1991 and from 1993 to 1996. Therefore, the petitioner qualifies the criteria set out in G.O.Ms.No.230 dated 01.10.1999. Therefore, the writ petition is allowed as prayed for and the order of the third respondent is quashed. There shall be no order as to costs. Consequently, connected



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miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes

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