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W.P.No.43192 of 2016

IN THE HIGH COURT AT JUDICATURE AT MADRAS

DATED: 23.10.2024

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THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.43192 of 2016

and

WMP.No.37023 of 2016

M.Rengasamy

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Public Works Department,
Fort St. George,
Chennai-600 009.

2. The Engineer in Chief,
Water Resources Organisation,
Chepauk, Chennai-600 005.

3. The Chief Engineer,
Water Resources Organisation,
Pollachi Region,
Coimbatore.

4. The Superintending Engineer,
Water Resources Organisation,
Public Works Department,



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Special Project Circle, Palani.

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5. The Executive Engineer,
Water Resources Organisation,
Public Works Department,
Amaravathi Besin Division,
Tharapuram.

...Respondents

Writ petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the impugned order in letter No.4(1)/51063/2008 dated 05.03.2014 passed by the 2nd respondent and quash the same and for a consequential direction to direct the respondents to regularize the services of the petitioner from the date on which the similarly situated persons were regularized, as per the order of this Court in W.P.No. 11806 of 2007.

For Petitioner : Mr.S.Conscious Ilango

For Respondents : Mrs.S.Anitha

Special Government Pleader

ORDER

Writ petition is filed for issuance of a writ of certiorarified mandamus, to call for the records relating to the impugned order dated 05.03.2014 passed by the 2nd respondent and quash the same and for a consequential direction to direct the respondents to regularize the services of the petitioner from the date on



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which the similarly situated persons were regularized, as per the order of this Court in W.P.No. 11806 of 2007.

2. The petitioner was appointed as Nominal Muster Roll workman in the Public Works Department in 1996. The petitioner worked for more than 20 years from the date of appointment continuously as NMR on meagre daily wages. The services of similarly placed persons were regularized by the Government, but the petitioners services was not regularized. The petitioner therefore filed Original Application in O.A.No.1565 of 2002 before the Tamil Nadu Administrative Tribunal seeking a direction to the respondents to regularize his services. During the pendency of the above O.A, the 3rd respondent vide proceedings dated 30.01.2009 sent a proposal to the 2nd respondent recommending the names of several persons including the petitioner for regularization as they had completed 10 years of service. Meanwhile, the said O.A was transferred to this court and renumbered as W.P.No.11806 of 2007. This court by order dated 09.10.2009, disposed of the writ petition with a



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direction to the respondents to consider the claim of the petitioner for regularization in the light of the order dated 13.03.2007 passed in a batch of writ petitions in W.P.Nos'.27705, 33011, 33017, 33022 to 33030 etc. of 2006 and to pass orders regularizing the services of the petitioner from the date on which similarly placed persons were regularized, within three months. In obedience to the order of this Court, the 5th respondent after ascertaining the eligibility of the petitioner on 11.12.2012 sent a proposal to the 1st respondent to regularize the services of the petitioner. Thereafter the 3rd respondent in his proceedings dated 19.12.2012 recommended to the 2nd respondent for regularization of the petitioner's service. While the petitioner was eagerly awaiting favorable orders, to his shock and surprise, the 2nd respondent vide the impugned proceedings dated 05.03.2014, rejected the proposal for regularization on the ground that petitioner had not completed 10 years of service as on 01.01.2006 as per G.O.(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013. Aggrieved by the impugned order dated 05.03.2014, the petitioner has filed the above writ petition.



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3. The respondents filed detail counter reiterating the stand that the petitioner had not completed 10 years of service as Nominal Muster Roll as stipulated in G.O.(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 and hence not eligible for regularization. According to the respondents, the petitioner was engaged as daily wage employee both on Nominal Muster Roll basis and on contract basis. While servicing under the contractor, the petitioner received wages from the private contractor and not from the Public Works Department. According to the respondents if the petitioner's services under the contractor were excluded he would not complete 10 years of service as NMR as on 01.01.2006 and therefore he was not eligible for regularization. The respondents also referred to the judgments of the Hon'ble Supreme Court in *State of Karnataka & Others Vs. Umadevi & Others, Union of India vs A.S.Pillai & Others* and *State of Rajasthan & Others Vs. Daya Lal & Others* in support of their contention that this court under Article 226 of the Constitution of India could not issue directions for regularization, absorption or permanent continuance, unless the



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person claiming the regularization was appointed in pursuance of regular recruitment in accordance with relevant rules in an open competitive process and against sanctioned posts. The respondents therefore stated that there were no merits in the writ petition and the same deserved to be dismissed.

4. The learned counsel for the petitioner submits that respondents in the earlier writ petition admitted that the petitioner worked as NMR from 1996 and it was only on the basis of said admission, this court directed the respondents to consider the claim of the petitioner and to regularize his services on par with similarly placed persons. The learned counsel further submitted that G.O.(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, was not applicable to the petitioner as the said G.O was passed subsequent to the orders passed in the aforesaid writ petition. The learned counsel relied on the judgment of this court in W.A.No.493 of 2016 dated 25.04.2016 in support of his contention that G.O.(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 was not applicable



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to the petitioner as the orders were passed even before the said G.O. The learned counsel further submitted that the impugned order deserved to be set aside, as the reasons stated therein were against the order passed by this court in W.P.No.11806 of 2007.

5. Learned Special Government Pleader appearing for the respondents on the other hand relying on para '5' of the counter submitted that the petitioner had not completed 10 years as Nominal Muster Roll as on 01.01.2006 and therefore he was ineligible for regularization, even as per G.O.(Ms).No.22, P & AR (F) department, dated 28.02.2006, which was superseded by G.O.(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013. The learned counsel therefore submitted that writ petition was devoid of merits and same deserved to be dismissed.

6. I have heard both the learned counsels and perused the materials placed on record.



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7. As rightly contended by the learned counsel for the petitioner, the respondent in W.P.No.11806 of 2007 admitted that petitioner was employed as Nominal Muster Roll from 1996, and based on such submission, this court directed the respondent to consider the claim for regularization of the petitioner within 3 months on par with similarly placed persons. Even as per the tabular column submitted by the respondents in the counter, it is seen that petitioner worked with the respondents right from 1999. This court having passed order's in favour of the petitioner in W.P.No.11806 of 2007 on the basis of the admission of the respondents that the petitioner completed 10 years of service, I am of the view that the respondents cannot be permitted to retract the same in the present writ petition. As far as applicability of G.O.(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 is concerned, the learned counsel for the petitioner relied on the Division Bench judgment of this court in W.A.No.493 of 2016 dated 25.04.2016. The Hon'ble Division Bench at para '6' has held as follows:

“6. The learned Single Judge allowed the writ petition by



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order dated 4.7.2012, directing the appellants to regularise the services of the respondents within a period of eight weeks and also to pay the arrears of salary within a period of four weeks thereafter, but, the appellants without complying with the orders passed by the learned Single Judge, filed the writ appeal belatedly, based on G.O., viz., G.O.(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.6.2013, which came to be passed subsequent to the orders passed by the learned Single Judge. The orders passed by the learned Single Judge reached finality before the issuance of G.O. viz., G.O.(Ms).No. 74, Personnel and Administrative Reforms (F) Department, dated 27.6.2013, the appellants without obeying the order and regularizing the services of the respondents, cannot take advantage of the subsequent G.O., which came to be passed nearly after one year of the orders passed by the learned Single Judge and deny the regularization of services of the respondents. The modalities laid down in G.O. viz., G.O.(Ms).No. 74, Personnel and Administrative Reforms (F) Department, dated 27.6.2013 cannot be made applicable to the respondents.”



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8. In the present case, the learned Single Judge on 09.10.2009 passed orders in favour of the petitioner, directing the respondents to consider the claim of the petitioner for regularization in the light of the Judgment dated 13.03.2007 passed in a batch of writ petitions with further direction to pass appropriate orders, regularizing the services of the petitioner from the date on which similarly placed persons were regularized, within a period of three months from the date of receipt of a copy of order. It is seen from the status report of the 3rd respondent dated 23.05.2012 that he recommended to the 2nd respondent to regularize the services of the petitioner as he had completed 10 years of service on daily wages. It is also seen that in pursuance of the order of this court, the respondents 3 and 5 sent proposals on 11.12.2012 and 19.12.2012 to the 2nd respondent to regularize the services of the petitioner. Therefore the contention of the respondents that the petitioner did not complete 10 years of service as on 01.01.2006 is diabolically opposed to the above proceedings and hence the said contention is rejected.



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9. Further as the aforesaid proposals were sent even before G.O.(Ms).No.

74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, in pursuance of the order of this court in W.P.No.11806 of 2007 dated 09.10.2009, the contention of the petitioner that G.O.(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 is not applicable is justified. I am therefore of the view that the impugned order dated 05.03.2014 cannot be sustained and hence it is set aside. The respondents are directed to regularize the services of the petitioner from the date on which similarly placed persons were regularized as per the order of this court in W.P.No.11806 of 2007 dated 09.10.2009, within a period of six (6) weeks from the date of receipt of copy of this order.

The writ petition is accordingly allowed. No costs. Consequently connected WMP is closed.

23.10.2024

dsn

Index:Yes/No

Speaking order:Yes/No

Neutral Citation:Yes/No



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To

1. The Secretary to Government,
Public Works Department,
Fort St. George,
Chennai-600 009.

2. The Engineer in Chief,
Water Resources Organisation,
Chepauk, Chennai-600 005.

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N.MALA,J.

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