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W.P.Nos.22336 /2019
and 3055 / 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 06.06.2024
DELIVERED ON: 01.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.Nos.22336 of 2019 and 3055 of 2020
and CMP.Nos.21654 of 2019 and 3573 of 2020

1.L.Vaidehi
2.K.Vijayalakshmi ... Petitioners in W.A.No.22336 of 2019

3.N.N.Lavanya .. Petitioner in W.P.No.3055 of 2020

Vs.

1.Union of India,
Rep by the Secretary to Government,
Ministry of Earth Sciences,
Government of India,
Maha Sagr Bhavan,
No.12, CGO Complex, Lodhi Road,
New Delhi-110 003.

2.The Director,
National Institute of Ocean Technology (NIOT),
Velacherry - Tambaram Main Road,
Pallikaranai, Chennai-100.

3.The Central Administrative Tribunal,
Rep. by its Secretary,
High Court Building, Chennai-104. .. Respondents



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Prayer in W.P.No.22336 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent made in O.A.No.386 of 2009 dated 12.07.2010 and quash the same and consequently direct the 2nd respondent to regularize our services in the post of Junior Assistants with effect from the date of the petitioners initial appointment and grant all consequential monetary and service benefits and maintain inter-se seniority.

Prayer in W.P.No.3055 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent made in O.A.No.930 of 2008 dated 25.03.2009 and quash the same and consequently direct the 2nd respondent to fix the inter-se seniority and create supernumerary posts and absorb the petitioner with full pay protection and to place the petitioner above his juniors.

For Petitioners : Mr.S.R.Rajagopal, Senior Counsel
for Ms.Selvi George

For Respondents : Dr.G.Babu,
Central Govt. Standing Counsel for R1
Mr.V.Vijay Shankar for R2

COMMON ORDER

D.KRISHNAKUMAR, J.

The issues involved in both the writ petitions are one and the same and therefore, they are taken up together for final disposal. W.P.No.22336 of 2019 has been filed to set aside the order of the Central Administrative Tribunal [in short "Tribunal"] dated 12.07.2010 made in O.A.No.386 of 2009 and for a



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consequential direction to the second respondent to regularize the services of the petitioners in the post of Junior Assistants with effect from the date of their initial appointment with all consequential monetary and service benefits. W.P.No.3055 of 2020 has been filed to set aside the order of the Tribunal in O.A.No.930 of 2008 dated 25.03.2009 and to direct the second respondent to fix the interse seniority and create supernumerary posts and absorb the petitioner with full pay protection and to place the petitioner above his juniors.

2. The petitioners in W.P.No.22336 of 2019 were initially appointed as Junior Assistant on 04.06.2003 and 19.06.2003 respectively. They were appointed on contract basis in sanctioned vacancies and working in the second respondent department, namely National Institute of Ocean Technology [NIOT]. All the petitioners herein filed O.A.No.927/2008 etc., batch seeking regularization of services in their respective posts with effect from the date of their initial appointment. The Tribunal disposed of the original application on 25.03.2009 by directing the second respondent / NIOT to consider the case of the applicants keeping in mind their objections and to pass appropriate orders within a period of two months.



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3. Accordingly, vide OM dated 08.04.2009, the petitioners were informed that whenever regular vacancies arise, the contract employees including the petitioners could apply and that such applications would be considered with due weightage for the service rendered on contractual basis, provided all other eligibility conditions are satisfied. Challenging the office memorandum of the second respondent dated 08.04.2009, the petitioners have filed O.A.No.386 of 2009 before the Tribunal. The Tribunal, vide order dated 12.07.2010, has dismissed the claim of the petitioner and however, taking into account of the fact that the respondents are taking steps to sanction for the posts to be filled as per recruitment rules, directed the respondents to consider the petitioners while filling up the sanctioned posts as per recruitment rules and giving service weightage to the petitioners for the services rendered by them when the vacancies are notified and subject to their eligibility in all respects, the respondents are directed to grant age relaxation in such of the cases wherever it is necessary.

4. Aggrieved by the order of the Tribunal in O.A.No.386 of 2009, similarly placed persons filed W.P.Nos.22461, 22933 to 22935 of 2010, 3012, 18165, 18166 and 9755 of 2011 and vide order dated 09.02.2017, the said writ petitions were disposed of with the following directions:



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"8.Having concluded thus, we cannot lost sight of the fact that regular work has been extracted from the petitioners for more than 13 to 14 years continuously without any certainty of future employment. Instability of employment will have its toll on the performance of the petitioners and that will not in the interest of administration. Moreover, the case of the present petitioners is factually distinguishable for the reason that they were admittedly subjected to regular selection before their appointment. The Government norms and regulations have been followed in their appointment. That being the case, they cannot be denied regular appointment indefinitely, as that would do violation to the principles of legitimate expectation and equity. Therefore, in the fitness of things, in view of our considered opinion, that the second respondent may take up the case of the petitioners with the competent authority and seek appropriate directions for sanctioning of adequate posts in the respective categories, whether the petitioners are working either as one time measure or in a phased manner, in the near future, so that the petitioners shall be accommodated on regular basis like their counterparts who were accommodated on regular basis earlier. This direction is passed in view of the fact that the work, though termed as contractual in nature, appears to be permanent in nature and the petitioners have been in employment uninterruptedly, without any break, for 13 - 14 years and they were subjected to regular selection process before their initial appointment, in terms of



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Government regulations and norms. In the whole, the second respondent will initiate steps towards the directions indicated above as expeditiously as possible."

5. In the meanwhile, vide OM dated 07.02.2019, the respondent sought to fix the pay and recover in 180 equated monthly instalments, a sum of Rs.3000/- per month by contending as if excess payments were made while fixing out pay. According to the petitioners, there is no excess payment made and therefore, they filed O.A.No.465 of 2019 and the Tribunal was pleased to direct the respondents to consider our representation dated 18.02.2019 within a period of three months. Despite the aforesaid directions, the respondents have not considered the claim of the petitioners seeking regularization from the date of their initial appointment and fix the inter-se seniority and therefore, the present writ petitions are filed.

5. Mr.S.R.Rajagopal, learned Senior Counsel appearing for the petitioners would contend that the petitioners were appointed in regular vacancies in the sanctioned posts on time scale of pay and hence, they are entitled for regularization from the date of their initial appointment. It is further contended that similarly placed persons who have filed W.P.Nos.22461 of 2010 etc., were granted the benefits, whereas the petitioners were deprived of the said benefits and as a



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consequence, the petitioners are getting lesser pay than their juniors and if inter-se seniority is not fixed, the petitioners will be put to irreparable loss and hardship and therefore, prays for appropriate orders.

6. Mr.V.Vijay Shankar, learned counsel appearing for the second respondent / NIOT has drawn the attention of this Court to the counter affidavit filed in these cases, wherein it was contended as under:

(i) The petitioners were appointed to the post of Junior Assistant on a regular basis only after consideration was given to the services rendered by them and by affording them age relaxation. The petitioners applied for the post of Junior Assistant pursuant to a recruitment notification issued by the respondents. Once they were appointed on a regular basis, they will be considered only as fresh recruits will all the terms and conditions applicable to new appointees. Hence, their request to count their service from their date of initial appointment on contractual basis is untenable.

(ii) As per Sub-Rule (2) of Rule (4) under Clause 14 of the Service Rules of NIOT, interse seniority of the staff and officers in each grade, who are appointed at the initial constitution shall be



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determined as on the date of regular appointment to the respective cadre subject to the condition that their inter-se seniority within their respective grades shall not be disturbed. Therefore, the petitioners are entitled to be placed in the seniority only from the date on which they had been regularly appointed to the post and not from the date of appointment on contract basis.

(iii) The petitioners prayer for regularization of services had already been accomplished in the year 2009 on joining the post of Junior Assistant on regular basis and they are enjoying all the privileges, perks and benefits of regular employees like pay & allowances, leave, medical treatment for self and family, LTC, Encashment, NPS etc., from October, 2009 onwards.

(iv) The benefit of the order dated 09.02.2017 made in W.P.No.22461 of 2010 etc., batch was only for the employees who were still continuing in contractual posts and whereas the petitioners, who are already appointed on regular basis in 2009 cannot be appointed against 27 supernumerary posts.

(v) As regards recovery based on audit objection is concerned, the objection with regard to their initial fixation of pay was dropped



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by Audit and the pay has been restored and refixed.

(vi) The claim/prayer of the petitioner got accomplished in 2009 itself much before the order passed by this Court and their claim for entitlement out of the outcome of the verdict is beyond the scope of the order of this Court.

7. This Court has considered the rival submissions and also perused the materials available on record.

8. The primordial claim of the writ petitioners is for fixation of interse seniority, creation of supernumerary posts and regularization to be considered from the date of their initial appointment.

9. The undisputed fact remains that the petitioners were initially appointed as Junior Assistant on 04.06.2003, 19.06.2003 and 01.08.2000 respectively on contractual basis. As regards their claim for regularization from the date of their initial appointment is concerned, the petitioners earlier have filed O.A.No.927 / 2008 and 386/2009 and the Tribunal has directed the respondents to consider the case of the petitioners in future. In compliance of the order passed by the Tribunal



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in O.A.No.927 of 2008, the respondents considered the request of the petitioners and appointed them to the post of Junior Assistant on regular basis and they also joined duty on 07.10.2009. Subsequently, the petitioners completed their probation period and their services were confirmed in the post of Junior Assistant with effect from 07.10.2011.

10. Similarly placed persons whose services were not regularized have filed writ petitions in W.P.Nos.22461 of 2010 etc., batch seeking regularization and it was disposed of by this Court on 09.02.2017 with a direction to the respondents to take appropriate action for sanctioning of adequate posts in the respective categories and the matter was also placed before Ministry of Finance, which in-turn after getting some queries issued proceedings for creation of 27 supernumerary posts in the year 2019. The claim of the petitioners having got accomplished in the year 2009 itself much before the order of this Court and they having been appointed on regular basis in the year 2009 and enjoying all the privileges, perks and benefits of regular employees like pay & allowances, leave, medical treatment for self and family , LTC, NPS Etc., from October 2009 and while that being so, the plea of the petitioners claiming inter-se seniority in contract employment is unfounded and untenable.



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11. It is the stand of the respondents that the order of this Court dated 09.02.2017 passed in W.P.Nos.22461 of 2010 etc., batch has been complied with in letter and spirit and 27 supernumerary posts were created in compliance of the said order. The petitioner were appointed as Junior Assistants on regular basis way back in the year 2009 and the said fact was also brought to the notice of this Court while disposing of W.P.Nos.22461 of 2010 etc., batch and it was taken on record and therefore, the benefit of the order dated 09.02.2017 was applicable only to employees who are continuing in contractual posts at that point of time and since the petitioners were already appointed on regular basis in 2009, they cannot be appointed against the 27 supernumerary posts.

12. The petitioners also raised a grievance that they are getting lesser pay than that of their juniors by citing that one Mr.M.Vadivelu, who joined as Junior Assistant in August 2005, is getting more pay than the petitioners. As per Clause 14, Rule 4(2) of the Service Rules of NIOT, inter-se seniority of staff and officers in each grade who are appointed at the initial constitution shall be determined on the date of regular appointment to the respective grade. In the light of the aforesaid rule, the petitioners are entitled to be placed in the seniority only from the date on



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which they had been regularly appointed to the post and not from the date of appointment on contract basis. Since the petitioners were appointed on regular basis from the year 2009, their seniority should be counted from their date of appointment in the year 2009 and their claim of the petitioners seeking regularization from the date of their initial appointment and consequent inter-se seniority is wholly unsustainable.

13. As regards the impugned order of recovery dated 07.02.2019 based on audit objections is concerned, the petitioners and 30 other staff members have filed O.A.No.365/2019 and the Tribunal, vide order dated 08.03.2019 had directed the authorities to consider the claim of the petitioners within a time frame. In compliance of the order of the Tribunal, the order of recovery was dropped and the pay has been restored. The petitioners have not produced any substantive material to controvert the aforesaid taken by the second respondent in the counter affidavit. The claim of the writ petitioners were already redressed and addressed in the year 2009 itself and their present claim at this distant point of time, is legally unsustainable. This Court finds considerable force in the submission made by the learned counsel for the second respondent and finds no reason to interfere with the order passed by the Tribunal.



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14. In the light of the reasons assigned above, these Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

(D.K.K.J.) (K.B. J.)
01.07.2024

Jvm
Internet: Yes/No
Index : Yes/No

To

- 1.The Secretary to Government,
Union of India, Ministry of Earth Sciences,
Government of India, Maha Sagr Bhavan,
No.12, CGO Complex, Lodhi Road,
New Delhi-110 003.
- 2.The Director,
National Institute of Ocean Technology (NIOT),
Velacherry - Tambaram Main Road,
Pallikaranai, Chennai-100.



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Common Judgment in
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