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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.22793 of 2024

K.Thangaraj

... Petitioner

Vs.

- 1.The Secretary,
Public Works Department,
Secretariat,
Chennai.
- 2.The Chief Engineer (Buildings),
Public Works Department,
Chepauk, Chennai – 05.
- 3.The Superintending Engineer (Buildings),
Public Works Department, Chennai Circle,
Chepauk, Chennai – 05.
- 4.The Executive Engineer,
Public Works Department,
Chepauk, Chennai – 05.
- 5.The Assistant Executive Engineer,
Public Works Department,
Public Sub-Division,
Chepauk, Chennai – 05.



6. The Assistant Executive Engineer,
Public Works Department,
South East Sub-Division,
Chepauk, Chennai – 05.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to consider the representation dated 02.07.2024 and consequential directing the 1st respondent to comply the order dated 24.10.2009 in Review application No.141 of 2009.

For Petitioner : Mr.R.Ravindraram

For Respondents : Mr.V.P.R.Elamparithi
Additional Government Pleader

ORDER

This writ petition has been filed for issue of writ of mandamus directing the 1st respondent to consider the representation made by the petitioner on 02.07.2024 and to comply with the order dated 24.10.2009 made in Review Application No.141 of 2009 and pass orders within the time frame fixed by this Court.



2.Heard Mr.R.Ravindraram, learned counsel appearing on behalf of the petitioner and Mr.V.P.R.Elamparithi, learned Additional Government Pleader appearing on behalf of respondents 1 to 6.

3.The case of the petitioner is that he joined as a Gardener on a daily wages basis as a casual labour in the year 1982-83 before the 6th respondent. The petitioner and similarly placed persons were continuously engaged by giving artificial breaks. They approached the Tamil Nadu Administrative Tribunal in the year 1997 and filed M.A.No.7335 of 2000 in O.A.No.7391 of 1997 seeking for regularization of services.

4.The Tamil Nadu Administrative Tribunal on considering the grievances expressed by the petitioner and similarly placed persons passed an order directing the 3rd respondent to consider the regularization of the services of the petitioner and others on merits. Accordingly, the 3rd respondent also through proceedings dated 31.05.2001 opened the Service Register. However, the regularization did not take place. The services of the petitioner and others were continuously utilized.



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5. On 02.03.2007, the 2nd respondent admitted the fact that the petitioner and others have been engaged on contract basis and this communication was made by the 2nd respondent to the 3rd respondent. Since the regularization was not taking place, once again this Court was approached by filing a review application in Review Application No.141 of 2009. The review application was disposed of by an order dated 24.10.2009 and the relevant portion is extracted hereunder:

4. On a perusal of the letter of the Executive Engineer, It is evident that the applicants are continuing in service but, baring on the earlier orders passed in the writ petition, the directions were issued to terminate their services. The earlier order has been passed on the assumption that the applicants ware out of employment for a period of 15 years. As it has now been brought to the notice of the Court that the applicants are continuing in service as on date and the policy of the Government is to regularise the services of those who have completed ten years of service, the applicants should not be denied that benefit, on wrong facts. Consequently, the order dated 12.6.2009 stands to the effect that as the applicants are,



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as on date, continuing in the service of the respondents, the respondents are directed to retain the review applicants in service and to consider the claim of the applicants for regularisation of their services ac per G.O.Ms.No.22, Personnel & Administrative Reforms Department dated 28.2.2006 and to pass orders on the same, within period of four months from the date of receipt/production of a copy of this order.

6.In spite of the above order passed by this Court, the regularization did not take place and ultimately, the petitioner was permitted to retire on 30.06.2003. The Government also passed G.O.(Ms).No.202, dated 01.08.2012, in the meantime, wherein, it was decided to regularize the Nominal Muster Roll employees who have completed 10 years of service from the date of completion of ten years of their service. The name of the petitioner was also included in this list. But, however it did not reach the logical conclusion till the petitioner retired on 30.06.2023. Several such government orders have been passed by directing regularization of those persons who have put in 10 years of service as on the cut off date. The petitioner has satisfied all these requirements.



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7.As a result of the above inaction, the petitioner having put in 41 years of service as a daily wages employee, has been left high and dry and therefore, he approached this Court and filed W.P.No.17300 of 2023 for a direction to the respondents to consider his representation dated 23.05.2022. This writ petition is pending. In this writ petition, respondents 2 to 6 filed a counter affidavit. In that counter affidavit, they have stated as follow:

10. I also submit that since the petitioner completed 10 years of engagement in the year 2014, proposals have been submitted by the Executive Engineer which is under consideration of the higher officers and finally Government. It is the Government to consider and decide on the case of the petitioner along with 3406 others from throughout the State for regularization and no lower authorities have power to do notwithstanding the fact that the petitioner cannot duress the respondents to regularize him as per the settled law position stated supra. The Hon'ble Madurai Bench of this Hon'ble Court by the order dated 08.04.2022 in W.P.Nos 8922 to 8924 of 2022 has ordered that persons as appointed as daily wage employee with breaks in service is not entitled for the relief as such



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sought for in the present writ petitions and they have to participate in the selection process for the purpose of securing the public employment through the open competitive process. However, the petitioner herein was allowed to be paid the daily wages at the minimum of the scale of sweepers and scavengers in Government and High Court service. The petitioner was also informed about this vide Letter No.Ko.29/316/u.Nee. Ma/2023 dated 08.06.2023 in response to his representation dated 06.06.2023 and the petitioner is one such person out of to whom the daily wages at the minimum of the scale of pay of sweepers/scavenger who were allowed the benefit out of 3407 casual labourers as per G.O.233 dated 06.12.2019 and proposals were submitted to Government for bringing 3407 casual labourers into regular establishment which was informed to him by the letter dated 08.06.2023 and the Government alone is competent to pass necessary orders in this regard. Hence, this writ petition is filed in haste and infructuous at this stage. His representation dated 23.05.2023 is just replica of the earlier representations.

8.By the time, the above writ petition was taken up for hearing, the petitioner also retired and therefore, he made a fresh representation dated



02.07.2024 to consider his representation and to regularize his services as per the order passed in the Review Application No.141 of 2009 and the relevant Government Orders. Since this representation also did not evoke any response, the present writ petition has been filed before this Court.

9. In the considered view of this Court, it is quite unfortunate that a person who has put in 41 years of service on daily wage basis has not been regularized and he has been knocking the doors of this Court repeatedly. Engaging the services of a person for such a long time without regularizing his services and paying the attendant benefits, virtually amounts to slavery. A model employer like the Government can never treat a citizen in this manner. Now that the petitioner has retired and he is now aged about 59 years, he is wholly dependent upon the order of regularization and the attendant benefits that he will get by virtue of his retirement. The respondents are not denying the engagement of the petitioner but they are only trying to put the blame on the Government saying that the Government is yet to take decision. Passing on the buck cannot continue any longer. Therefore, this Court has to fix the time limit for the final order to be passed by the competent authority.



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10. In the light of the above discussion, there shall be a direction to the 1st respondent to act upon the representation made by the petitioner on 02.07.2024 and take a decision regarding the regularization of service of the petitioner and also the payment of attendant benefits, within a period of three months from the date of receipt of copy of this order.

11. The petitioner is directed to make a fresh representation to the 1st respondent along with all the relevant documents and also a copy of this order.

12. This writ petition is disposed of with the above directions. No Costs.

12.08.2024

Internet : Yes

Index : Yes

Speaking Order / Non Speaking Order
ssr

(1/2)



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N. ANAND VENKATESH, J.

ssr

To

1. The Secretary,
Public Works Department, Secretariat, Chennai.
2. The Chief Engineer (Buildings),
Public Works Department, Chepauk, Chennai – 05.
3. The Superintending Engineer (Buildings),
Public Works Department, Chennai Circle, Chepauk, Chennai – 05.
4. The Executive Engineer,
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5. The Assistant Executive Engineer,
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Public Sub-Division,
Chepauk, Chennai – 05.
6. The Assistant Executive Engineer,
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