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W.P.Nos.35951 of 2023 & 90 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2024

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.35951 of 2023 & 90 of 2024

WP.No.35951 of 2023

- 1.Balakrishnan
- 2.Senthilkumar
- 3.Saravanan
- 4.Varadharaj
- 5.Pushparani
- 6.Bhuvaneshwaran
- 7.Annapurani
- 8.Parameshwaran
- 9.Parvathi
- 10.Malarkodi
- 11.Thangavel
- 12.Chandrasekaran
- 13.Senthilkumar
- 14.Gobalakrishnan
- 15.Thangamani

..Petitioners

Vs.

- 1.The State of Tamilnadu,
Rep. by its Secretary to Government,
Highways Department, Chennai-9
- 2.The Director General,
Highways Department, No.76, Sardar Vallabaipatel Road,
Guindy, Chennai-25
- 3.The Divisional Engineer,
Highways Department,
Erode District 638 002



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4.The Divisional Engineer,
Highways Department, Gopichettipalayam,
Erode District 638 476

5.The Assistant Divisional Engineer,
Highways Department,
Bhavani, Erode District 638 301

...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents to consider the petitioners representation dated on 10.03.2023 in the light of the letter in Memo No.2/07/A1 Dated 28.01.2008 issued by the 5th respondent and direct the respondents to appoint the petitioners herein in the existing or future vacancies as Gang Mazdoors in regular time scale of pay in consonance with the orders passed by this Court in WP.nos. 911 to 937/2009 dated 18.06.2009 which was upheld by the Division Bench of this court in Review Application Nos.30/2012 to 37/2012 and 116/2012 to 134/2012 Order dated 21.06.2012 06.08.2012 and confirmed by the Supreme Court in SLP in CC Nos.22523/2012 to 22530/2012 dated 29.07.2013.

For Petitioners : Mr.S.Packiaraj

For Respondents : Mr.V.Veluchamy
Additional Government Pleader

WP.No.90 of 2024

- 1.Ganesan
- 2.Arumugam
- 3.Saravanan
- 4.Palani
- 5.Maran



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6.Rajavelu
7.Sakthi
8.Murugesan
9.Suresh
10.Chandira
11.Sandha
12.Miniyan
13.Sivakumar

..Petitioners

Vs.

1.The State of Tamilnadu,
Rep. by its Secretary to Government,
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2.The Director General,
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Erode District 638 476
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...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents to consider the representation dated on 10.03.2023 in the light of the letter in Memo No.2/07/A1 Dated 28.01.2008 issued by the 5th respondent and direct the respondents to appoint the petitioners herein in the existing or future vacancies as Gang Mazdoors in regular time scale of pay.

For Petitioners

: Mr.S.Packiaraj



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For Respondents

: Mr.V.Veluchamy

Additional Government Pleader

COMMON ORDER

These writ petitions have been filed for direction to the respondents to consider the representations dated 10.03.2023 in the light of the memo dated 28.01.2008 on the file of the fifth respondent and to appoint the petitioners in the existing or future vacancies as Gang Mazdoor in the regular time scale of pay.

2. The petitioners were engaged as Nominal Muster Roll in the third respondent office from the year 1987 onwards. However, their services were stopped and they were not engaged for any job. The petitioners contended that the Gang Mazdoor post is equal to Office Assistant post which appointment does not have statutory rules. While so, the Government passed the Order in GO.Ms.No.702 Transport Department dated 18.06.1981 waiving appointment of Gang Mazdoor through employment exchange. Another order in GO.Ms.No.95 Highways and Rural Works Department dated 04.02.1998 was passed, thereby Government has waived age and qualification for appointing as Gang Mazdoor. Therefore, they are qualifying to be appointed in the regular time



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scale. Hence, similarly placed persons already approached this Court in

WP.No.36623 of 2004 for absorbing as Gang Mazdoor, wherein this Court directed to engage them and till their services are regularised in a phased manner, no new recruitment of NMR's. Aggrieved by the same, appeal was filed and the same was also dismissed. The Hon'ble Supreme Court of India also dismissed the appeal and confirmed the order passed by the learned Single Judge of this Court. Thereafter, other similarly placed persons who are also entitled to get the same relief, filed writ petitions before this Court and the same were allowed and directed the respondents to appoint the petitioners and others as Gang Mazdoor. It was challenged before the Hon'ble Supreme Court of India, and the appeal was also dismissed. Therefore, the petitioners also submitted representation to consider their case and appoint them as Gang Mazdoor.

3. On perusal of the counter filed by the third respondent revealed that the petitioners were engaged only as daily wage employee / NMR's without reference to employment exchange. They were engaged occasionally as and when work existed and they have been paid daily wages at the rates approved in the Schedule of Rates then and there. In fact, they have not worked continuously for 365 days per year and they were not



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allowed to be paid on holidays as per the Government orders in force.

Therefore, the question of regularisation of their services does not arise.

Further, they were stopped from being engaged as and when work ceased.

As per GO.Ms.No.74 Personnel and Administrative Reforms Department dated 27.06.2013, only those full time daily wage employees / NMR's who were initially appointed on full time basis in consultation with the employment exchange to discharge the functions of the post on the Tamilnadu Basic Service and who had completed 10 years of service as on 01.01.2006 shall be regularised against regular vacancies within the sanctioned cadre strength.

4. Further, the Hon'ble Supreme Court of India repeatedly held that any daily wage employee, if not working against a sanctioned post, cannot be regularised and that part time employees are not entitled to seek regularisation. Further, the Hon'ble Supreme Court of India also held that even temporary, ad hoc or daily wage service for a long number of years, let alone services for one or two years, will not entitle such employee to claim regularisation and that there cannot be a direction for absorption, regularisation or permanent continuance of part time temporary employees.

There is no fundamental right in those who have been employed on daily



wages or temporarily or on contractual basis to claim that they have a right to be absorbed in service, since they cannot be said to be holders of a post.

5. Further, Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief / benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. In the case mentioned by the petitioners, the directions of the court were complied with only in order to avoid the contempt proceedings in the contempt petitions. That apart, the petitioners have approached this Court after period of 34 years. They are nothing but fence sitters and they cannot claim equal remedy quoting similarly placed persons those who approached in the year 2004. Further, the petitioners failed to satisfy as to how they are eligible for regularisation as claimed by them, at this distance of time, without providing any particulars and without making any case with appropriate acceptable evidences. They also failed to produce any material on their own to substantiate their claim.



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6. Therefore, the directions sought for in these writ petitions cannot be considered. As such, both the writ petitions are devoid of merits and liable to be dismissed. Accordingly, both the writ petitions are dismissed. There shall be no order as to costs.

20.02.2024
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To

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G.K.ILANTHIRAIYAN, J.

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