



W.P.(MD).No.3342 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.3342 of 2021
and
W.M.P.(MD)No.2692 of 2021

R.Maruthaveeran

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Public Works Department,
Fort St. George,
Chennai.
- 2.The Principal Chief Engineer (W.R.O)
cum Engineer in Chief, (P.W.D),
(Buildings),
Public Work Department,
Chepauk,
Chennai.
- 3.The Chief Engineer, (Buildings),
Public Work Department,
Madurai Region,
Madurai.
- 4.The Superintending Engineer,
Public Work Department,
Tirunelveli Division,
Tirunelveli.
- 5.The Electrical Engineer,
PWD - Electrical Division,
Tirunelveli Division,
Tirunelveli.



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6.The Assistant Executive Engineer,
Electrical Sub Division,
Public Work Department,
PWD Campus,
Thoothukudi.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent bearing letter No. 4(1) 49345 /2015 dated 07.06.2019 and quash the same and consequently direct the respondents to regularize the service of the petitioner in terms of the proposal forwarded to them in the year 2010 along with monetary benefits, continuity of service within a period of time that may be stipulated by this Court.

For Petitioner : Mr.S.Siva Ilayaraja

For Respondents : Mr.D.Gandhi Raj,
Special Government Pleader

ORDER

This writ petition has been filed to call for the records of the 2nd respondent bearing letter No. 4(1) 49345 /2015 dated 07.06.2019 and quash the same and consequently direct the respondents to regularize the service of the petitioner in terms of the proposal forwarded to them in the year 2010 along with monetary benefits, continuity of service within a period of time that may be stipulated by this Court.



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2. The brief facts which are necessary for the disposal of this Writ Petition are as follows:-

The petitioner was appointed in the Nominal Muster Roll of the 5th respondent office on 03.01.2000. Presently, the petitioner is working under the 5th respondent Sub Division under the overall administrative control of the 4th respondent. Even though the work is permanent in nature, the respondents recruited the petitioner who is qualified in D.E.E.E., as a daily wage employee in the Nominal Muster Roll, on the assurance that he will be regularized in due course of time. While so, the 1st respondent issued a Government Order for regularization of service of those who have completed 10 years of service by issuing a G.O.Ms.No.334, Public Works Department, dated 19.10.2007 and G.O.Ms.No.134, Public Works Department, C2, dated 07.05.2010 on the basis of which nearly 2000 employees who were similarly placed like that of the petitioner came to be regularized by the respondents except two employees including the petitioner. Hence, the petitioner made a representation to consider his case for regularization, since he had completed 10 years of service as on 03.01.2010 and had put in 2541 days of service under the 5th respondent. Since the same was not considered, the petitioner filed a writ petition in W.P.(MD)No.18130 of 2015 before this Court and this Court, by an order dated 02.04.2019 directed the



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respondents 1 and 2 to consider his claim as per the proposals forwarded to them in the year 2010. In response to the same, the petitioner's representation was considered and the impugned order of rejection, denying regularization to the petitioner came to be passed by the 2nd respondent in letter No.4(1) 49345/2015 dated 07.06.2019. Challenging the same, this writ petition came to be filed.

3. The learned counsel appearing for the petitioner submitted that, the petitioner's case was continuously recommended by the proceedings of the 6th respondent in the profoma meant for regularization addressed to the 2nd respondent incorporating the complete service details of the petitioner from the date of joining service, that is, from 03.01.2000, including the date of completion of 10 years of service, that is, 02.01.2010 and the date from which he is entitled for regularization including the details of salary and other details vide proceedings dated 28.08.2010. Thereafter, by means of yet another proceedings dated 27.09.2012, the 5th respondent recommended the case of the petitioner, requesting to regularize their service. On 14.05.2013, yet another recommendation made by the 6th respondent required the 3rd respondent to regularize the petitioner's service. On 04.06.2014, the 6th respondent made another recommendation in this regard to the 3rd



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respondent. Even vide proceedings dated 20.02.2015, 28.05.2015 and 16.07.2015 at various point of time, the higher authorities of the petitioner recommended to the 3rd respondent to regularize the petitioner's service. Despite the same, negating all those recommendations, the petitioner's case for regularization was rejected by the impugned order and on that basis, pressed for allowing the writ petition, thereby consequently directing the respondents to consider the case of the petitioner for regularization.

4. The learned Special Government Pleader relying upon the counter affidavit filed by the 5th respondent submitted that, the petitioner was engaged in the nominal muster roll on 03.01.2000 on emergency exigencies for electrical works to be done in hospital, schools etc., purely on temporary basis. None of the criteria, framed by the Government for regularization of service of daily wages employees by issuing a G.O.Ms.No.74 of Personal and Administrative Reforms Department, dated 27.06.2013, would attract the case of the petitioner and his service cannot be covered and the benefit of the said G.O., cannot be extended to the petitioner at any point of time. Though he was engaged in the nominal muster roll, thereafter, he did not complete 10 years prior to 01.01.2010 in the NMR service, further he was engaged on contract basis from 2007, all the wages which he received were



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through contractors who engaged him and the same was not disbursed by the respondent authorities and hence, his case cannot be considered for regularization and pressed for dismissal of the writ petition.

5. Heard the learned counsels on either sides. Carefully perused the materials available on record.

6. The claim of the learned Special Government Pleader cannot be accepted for the reason that the case of the petitioner was continuously recommended one after the other by the respondents 5 and 6 on several occasions to the 3rd respondent. Without going into the merits of all those recommendations, the 3rd respondent has passed the impugned order rejecting the claim of the petitioner to regularize him in the post of Wireman Grade II. Though he was not sponsored by employment exchange, the respondents have exploited his service for the past several years from 03.01.2000, that is, from the date of his appointment. G.O.Ms.No.74, Personal and Administrative Reforms (F) Department, dated 27.06.2003 was issued by the Government to bring those employees working on daily wages in regular establishment on completion of 10 years as on 01.01.2006. The petitioner had completed 10 years of service on 02.01.2010.



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7. Though the learned Special Government Pleader pointed out that since the petitioner claims that he had completed 10 years of service as on 02.01.2010, the benefit of G.O.Ms.No.74 cannot be extended to the petitioner, the learned counsel appearing for the petitioner drew my attention to the judgment passed by the Hon'ble Division Bench of this Court in W.A.Nos.606 and 2830 of 2019, by its judgment dated 16.08.2023, in which the Hon'ble Division Bench of this Court has extended the cut off date from 01.01.2006 to 27.06.2013, that is, the date of issuance of the aforesaid Government order and the relevant portion of the same is extracted as follows:

“13.It is also brought to our notice that the learned Single Judge had also dealt with similar issue in a batch of Writ Petitions before the Madurai Bench of this Court in W.P.(MD).No.10066 of 2014, etc., batch and by order dated 04.11.2020, had taken a similar view. The aforesaid judgment had been challenged by the aggrieved persons therein in W.A.Nos.337 & 338 of 2021. A Division Bench of this Court which had dealt with aforesaid Writ Appeal had set aside the order passed by the learned Single Judge and directed the Government to extend the benefit of regularisation of service to the Appellants. For better appreciation, the



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relevant paragraphs of the aforesaid, Division Bench judgment is extracted hereunder:-

9. The order passed in the writ petitions has referred to several decisions of the Honourable Supreme Court and in particular, the decision of the Constitution Bench of the Honourable Supreme Court in the case of *Umadevi vs. State of Karnataka*, [(2006) 4 SCC (1)]. On a reading of the order passed by the learned Writ Court, we find that the correctness of the stand taken by the petitioners qua that taken by the respondent – Department appears to have not been dealt with. The crucial question would be as to whether the appellants satisfied the requirements to be treated on par with the other similarly placed persons. The appellants were nonsuited or in other words, denied the relief of regularization on the ground that they have not completed ten years of continuous service on the crucial date.

10. From the perusal of the records placed before this Court, we find that the respondent – Department themselves have certified and recommended the case of the appellants to have completed ten years of service on contract daily wage basis and contract basis and these recommendations have been made by none other than the Superintending Engineer of the respondent – Department as early as in the year 2017, precisely, on 08.12.2017 and 03.07.2017 respectively. This recommendation has not been disputed by the Department in their counter affidavit filed in the writ petitions. In fact, in the counter affidavit filed in



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W.P.(MD) No.14503 of 2017, filed by the appellant in W.A.(MD) No.338 of 2021, there is a reference to various Judgments of the Honourable Supreme Court and certain paragraphs from the Judgments have extracted. The only averment, which is contained in the counter affidavit, is that the appellant in W.A.(MD) No.338 of 2021, namely, N.Parthasarathy was paid wages through a private contractor. Admittedly, to tide over the exigencies and in order to fulfil certain very important water bodies, the Department had necessarily to engage NMRs / contract labourers. Such NMRs / contract labours continued to work for several years as in the case of the appellant for more than 20 years and the Government realizing the fact that these persons have been working for several years and their services were virtually indispensable thought fit to grant the relief of regularization. The relief of regularization was to be granted based on the fulfillment of certain parameters by fixing a cut off date within which the concerned NMRs/ contract labours should have completed ten years of continuous service. The Superintending Engineer, who is the Head of the Department in the particular region, has recommended and certified that both the appellants have completed ten years of continuous service on the crucial date. Without disputing the said document by merely stating that one of the appellants was paid through a private contractor is to unjustly deny the relief of regularization to the appellants alone, which was extended to several 1000s of people in the State.

11. Identical issue was considered by the Honourable Division of this Court in the case of State of Tamil Nadu, Public Works Department



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and two others vs. P.Subramanian and three others [W.A.No.493 of 2016, dated 25.04.2016] and the appeal filed by the Government was dismissed. Thus, in the light of the fact that the certification done by the Superintending Engineer certifying that the appellants have completed the requisite number of ten years of continuous service having not been disputed, the appellants were entitled to be granted the relief extended to the other similarly placed persons. In this regard, it will be beneficial to refer to the decision of the Honourable Supreme Court in the case of Union of India, rep.by the Chief Postmaster General and another vs. G.Subramani and another [(2013) 7 MLJ 724], wherein, it was held that equal treatment should be accorded to similarly placed persons without any discrimination.

12. Further, the learned counsel has drawn the attention of this Court to the order, dated 22.09.2017 in W.P.No.29346 of 2014 etc. batch [G.Sivaganesan and five others vs. The State of Tamil Nadu, Public Works Department and two others], wherein the learned Single Bench had quashed paragraph No.6 of G.O.Ms.No.74, dated 27.06.2013 and several Judgments of the Honourable Division Bench on the said issue have been referred to and the relief of regularization was granted to the petitioners.

13. Thus, for all the above reasons, we are of the considered view that the appellants are entitled to the relief as prayed for in the writ appeals.

14. In the result, the writ appeals are allowed and the order dated 04.11.2020, passed in W.P.(MD) Nos.10066 of 2014 and 14503 of 2017, is set aside. Consequently, W.P.(MD) Nos.10066 of 2014 and 14503 of



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2017 are allowed and the impugned orders in these writ petitions are quashed and the respondents are directed to extend the benefit of regularization of service of the appellants in terms of the relevant Government Orders and bring them under the time scale of pay, within a period of three months from the date of receipt of a copy of this Judgment. No costs.

14. It has also been brought to our notice that the same was taken on appeal by the Government by filing a Special Leave Petition and the same had been dismissed by the Hon'ble Apex Court in its order dated 06.05.2021. For better appreciation, the said order is extracted hereunder:-

1.In the facts and circumstances of the present case and without this Court expressing any opinion on the wider propositions of law sought to be raised, we see no case for interference under Article 136 of the Constitution. 2.The Special Leave Petitions are accordingly dismissed.

3.Pending applications, if any, stand disposed of.

15. In view of the above, that the order of the learned Single Judge taking up an identical view had been dealt with by the Division Bench of this Court and had set aside the said order which had been also affirmed by the dismissal of the Special Leave Petition. Therefore, we are constrained to hold that the view taken by the learned Single Judge impugned in these Writ Appeals will also have to be necessarily set aside.



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16. That apart, the learned Single Judge had heavily relied upon by the judgment of the Hon'ble Apex Court in the case of Uma Devi's case which had been reported in (2006) 4 SCC 1. The Government even after the judgment, had been appointing the casual labourers/NMRs. The Government had taken a conscious policy decision to regularise the services of such casual labourers/NMRs not only considering the length of service. Such a policy decision had not been questioned by any one. When such a policy decision had been taken and not been questioned by any one, the Court cannot supplement its views on such a policy decision taken by the Government, the Court will have to only look that if such policy decision is arbitrary and discriminatory.

17. It is also not the case of the Government that they had not regularised any such casual labourers/NMRs subsequent to the decision made in **Uma Devi's** case. It is true that similarly placed persons cannot seek equality by relying upon a decision which is illegal. In the present case, the Government Orders regularising similarly placed persons was on a conscious policy decision taken by the Government, which the Government had decided to be not disturbed in G.O.Ms.No.74 dated 27.06.2013. The said Government Orders have also not been put to challenge before this Court. A policy decision taken by the Government cannot be interfered with by the Court unless or until, it is challenged on the ground of lack of jurisdiction, arbitrariness or colourable exercise of power. It is not the case that such Government Orders, had been issued on any of the afore-stated grounds and infact the Government itself



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*stands by such Government Orders. Therefore, we are of the considered view that the private individuals in these Writ Appeals cannot be non-suited by relying upon the Hon'ble Apex Court judgment in **Uma Devi's** case (supra) and they have to be suited on par with the similarly placed persons, who have been regularised by the Government in their policy decision taken in G.O. Ms.No.334 Public Works (C2)Dept., dated 19.10.2007, G.O.Ms.No.134 Public Works (C2) Dept., dated 07.05.2010 and G.O.Ms.No.202 Public Works (C2) Dept., dated 01.08.2012.*

18.In the light of the above reasoning and findings, we are of the considered view that the order passed by the learned Single Judge which had been impugned in all these Writ Appeals would have to be interfered with and accordingly they are set aside and as a sequel, the Government is directed to consider the claim of the appellants herein and shall be regularised their services in accordance with G.O.Ms.No.74 dated 27.06.2013 by taking the date of notification, dated 27.06.2013, as to be the cut off date for fixing the period of completion of 10 years of service.”

8. Fully fortified by the elaborate discussion made by the Hon'ble Division Bench of this Court, in the case of regularizing those working on daily wages and bringing them into regular establishment on completion of 10 years of service, this Court is of the considered of the view that the petitioner in the instant case is also similarly placed as that of the beneficiaries in the aforesaid batch writ appeals extracted supra. It is now



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confirmed by the various judgments passed by the various Courts that several batches of employees who have completed 10 years of service after 2006 have been regularized. It is also admitted before this Court that the original order of Government regularising a few hundred of employees indicate that a Nominal Mustor Roll employee who were regularized as similarly placed persons like the petitioner were also not selected through employment exchange. Accordingly, the petitioner's case is entitled for regularization and this Court hereby quash the impugned order dated 07.06.2019 and the respondents are directed to regularize the service of the petitioner in terms of the proposal forwarded to them as early as in the year 2010 with all service benefits and continuity of service within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. Accordingly, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1.The Principal Secretary to Government,
Public Works Department,



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Fort St. George,
Chennai.

- 2.The Principal Chief Engineer (W.R.O)
cum Engineer in Chief, (P.W.D),
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- 3.The Chief Engineer, (Buildings),
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L.VICTORIA GOWRI, J.

Sml

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