



WP.(MD).No.20305 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.20305 of 2023

and

W.M.P.(MD)Nos.16746 and 16747 of 2023

T.Murugan

... Petitioner

Vs.

1.The Principal Sectary to Government,
Higher Education (B1) Department,
St.Fort George,
Chennai.

2.The Chief Engineer,
Public Works Department,
Technical Education Circle,
Sardar Patel Road, Guindy,
Chennai.

3.The Commissioner,
Directorate of Technical Education,
Sardar Patel Road, Guindy,
Chennai.

4.The Executive Engineer,
Public Works Department,
Technical Education Division,
Tirunelveli.



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5.The Assistant Engineer,
Public Works Department,
Technical Education Section (Electrical),
Government College of Engineering Campus,
Tirunelveli – 7.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in the proceedings in Letter(2D)No.23 dated 25.07.2019, and to quash the same as illegal and consequently directing the first respondent to regularize my service from 20.07.2007, as per the similarly placed person in W.A.No.273 of 2016 dated 16.03.2016.

For Petitioner	: Mr.Xavier Rajini
For Respondents 1,2,4 & 5	: Mr.S.Shaji Bino Special Government Pleader
For 3 rd Respondent	: Mr.N.Ramesh Arumugam Government Advocate

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings in Letter(2D)No.23 dated 25.07.2019 and to direct the first respondent to regularize his service from 20.0.2007, as per the similarly placed person in W.A.No.273 of 2016 dated 16.03.2016.

2.The petitioner has completed Diploma in Technical Education (Electrical) in the year 2007. He also completed ITI in



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the year 1994 and possess 'C' Certificate in Electrical Trade. He entered as an Electrical Helper under the nominal muster roll of the 4th respondent on 21.07.1998 at Nagercoil Government Polytechnic College. He served as an Electrical Helper (NMR) at Nagercoil Government Polytechnic College up to 2010. Thereafter, the fifth respondent orally directed the petitioner to discharge his duty as an Electrical Helper (NMR) at Government Engineering College, Tirunelveli. The petitioner and 6 others filed a case before the learned Tamil Nadu Administrative Tribunal in O.A.D.No.8777 of 1999 for the relief of regularization on the ground that on the completion of 10 years of service as NMR, their services should be regularized. The learned Administrative Tribunal in M.A.No.3476 of 1999 in O.A.D.No.8777 of 1999 by an order dated 06.07.1999, was pleased to direct the fourth respondent to consider his representation dated 12.12.1998 within a period of three months. Following which, the fourth respondent by his proceedings in Se.Mu.No.1697/E1/1999 dated 20.09.2001 allowed the petitioner and 6 others to continue as NMR Electrical Helper.

3.During 2010, the fourth Respondent in his proceedings in Government letter 1697/Ne.Ou dated 22.07.2010 acknowledging



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the completion of 10 years of service by the petitioner recommended his case for regularization in the form of a proposal and forwarded the same to the second respondent for further action. The second respondent in his proceedings in letter No. 1327/A3/2011 dated 21.08.2014 rejected the proposal sent by the fourth respondent stating that the Government has rejected the same. The third respondent had sent a proposal to the Higher Education Department in the proceedings in letter No. 13585/C10/2009 dated 27.01.2012 for the purpose of regularizing 47 nominal muster roll workers, who have completed 10 years of service as on 31.12.2006. However, the petitioner's name was not included in the same. In such circumstances, the petitioner again gave a representation to all the respondents dated 01.09.2016 seeking to regularize his service. The same was not considered. Hence, he made another representation dated 21.05.2018 to regularize his service. Since the same was not considered, the petitioner filed a Writ Petition in W.P.(MD)No.13290 of 2018 and this Court by its order dated 28.03.2019, was pleased to dispose of the said case directing the respondents to consider the petitioner's representation dated 21.05.2018 on merits and in accordance with law and pass appropriate orders after affording due opportunity of



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hearing to the petitioner within a period of 8 weeks from the date of receipt of the aforesaid order.

4.Pursuant to the same, the first respondent vide proceedings in Letter (2D) No.23 dated 25.07.2019 without giving any opportunity of hearing to the petitioner, rejected the petitioner's representation seeking regularization of service dated 21.05.2018. Following which, the petitioner filed yet another Writ Petition in W.P.(MD)No.17846 of 2022 seeking to direct the respondents to regularize his service on the completion of 10 years of service as per G.O.Ms.No.22, Personal and Administrative Department dated 02.08.2006. This Court by its order dated 10.08.2022, was pleased to close the aforesaid Writ Petition giving liberty to the petitioner to challenge the proceedings of the first respondent in Letter (2D)No. 23 dated 25.07.2019. In view of the said order, this Writ Petition came to be filed, challenging the impugned proceedings of the first respondent by letter (2D)No.23 dated 25.07.2019.

5.The learned counsel appearing for the petitioner submitted that the Adhoc Rules of PWD Department for temporary post as existing in PWD department is equally applicable to the Technical



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Education Department as per G.O.Ms.No.385 Education Department dated 04.04.1989. He further submitted that based on G.O.Ms.No.385, School Education Department dated 04.04.1989, various posts of Technical Education Department was regularized as per G.O.Ms.No.122, Higher Education (B1) Department dated 26.03.1998 and G.O.Ms.No.440, Higher Education (B1) Department dated 31.10.2008 for various posts. He submitted that earlier similarly placed persons approached this Court in W.P.No.11975 of 2012 dated 25.04.2012, seeking regularization in the post of Electrical Helper in the Higher Education Department under the supervision of the fifth respondent and this Court was pleased to allow those Writ Petitions. Hence, denying the same relief to the petitioner is *per se* illegal, arbitrary and violative of Article 14 of the Constitution of India.

6.He further submitted that the Writ Appeal, which was preferred as against the said order of the Single Judge in W.A.No. 273 of 2016 dated 16.03.2016 was also dismissed. Having regularized similarly placed persons, denial of regularization to the petitioner is *per se* illegal. The Special Leave Petition, which was preferred as against the judgment in W.A.No.273 of 2016 dated



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16.03.2016 was also dismissed by the Hon'ble Apex Court confirming the judgment in W.A.No.273 of 2016. Hence, emphatically contending that the issue in this case is no more *res integra* and the petitioner is entitled for regularization on par with similarly placed persons and pressed for allowing the Writ Petition.

7.Per contra the fourth respondent has filed a counter affidavit and the learned Government Advocate appearing for the third respondent and the Special Government Pleader appearing for the respondents 1, 2, 4 and 5 submitted that the petitioner Mr.T. Murugan has been working as a daily wage employee in the Technical Education Division, Government College of Engineering Campus, Tirunelveli from the year 1998. He was never appointed to the post of Electrical Helper as contended by the petitioner. Since the nature of the petitioner's work is seasonal, he was engaged only whenever work warrants till the completion of the work. That apart the petitioner never completed 10 years of continuous service as on 01.01.2006 on daily wage basis. Hence, they contended that the petitioner has not satisfied the mandates of G.O.Ms.No.22, Personal and Administrative Reforms Department dated 28.02.2006 and also G.O.Ms.No.74, Personal and Administrative Reforms Department



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dated 27.06.2013. He further contended that the proposal seeking regularization of the petitioner's service, which was sent to the second respondent vide proceedings dated 22.07.2010 was also rejected by the second respondent in his proceedings dated 21.08.2014. He insisted that the prayer of the petitioner that his services from 27.07.2007 has to be regularized in the light of the judgment delivered in W.A.No.273 of 2016 dated 16.03.2016 is untenable. As far as G.O.Ms.No.385, School Education Department dated 04.04.1989 is concerned, it has been stated that the General and the Special Rules applicable to the holder of certain permanent posts in the Tamil Nadu Engineering Subordinate Service in the Public Work Department shall apply to the holders of the identical temporary posts in the construction wing of the Technical Education Department, subject to the modification specified in the Rules. Though the petitioner has stated in para 11 of his affidavit that G.O.Ms.No.122, Higher Education (B1) Department dated 26.03.1998 and G.O.Ms.No.440, Higher Education (B1) Department dated 31.10.2008, by which the NMRs who have completed 10 years of service on the particular dates mentioned in the aforesaid G.O.s were brought into a regular establishment, the same would not cover the case of the petitioner. Further contending that the



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regularization of service is as per Service Rule Position and there cannot be any enforceable legal right for the petitioner to seek for regularization as a matter of right. The Hon'ble Apex Court has time and again held that sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of legal right. The petitioner who has not put up 10 years of service as on 01.01.2006 and the one who was not actually sponsored through District Employment Exchange cannot claim the right to be regularized on completion of 10 years of service and on that basis, prayed for dismissal of the Writ Petition.

8. Heard the learned counsel for the petitioner, the learned Special Government Pleader for the respondents 1, 2, 4 and 5, the learned Government Advocate for the third respondent and carefully perused the materials available on record.

9. The first respondent by his impugned proceedings in letter (2D)No.23 dated 25.07.2019, rejected the petitioner's representation dated 21.05.2018 seeking to regularize his service and the operative portion of the same is extracted as follows:-

"4. A personal hearing was conducted in the Chamber of Principal Secretary on 18.06.2019 at 12.30



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Noon and you have appeared in person and attended the personal hearing and requested to consider your request sympathetically taking into account of your services by relaxing relevant rules.

5. The Government in Public Works Department had issued orders in G.O.(2D) No.29, Public Works (C2) Department, dated 09.02.2016 under the teeth of Contempt Proceedings for the non-compliance of the Court order dated 20.06.2012 in W.P.No.37024 of 2006 for regularizing the service of 5 petitioners (Thiru.T.Subash and 4 others Daily Wage Employees), subject to the outcome of the Writ Appeal filed in WA.SR.No.91954 of 2014 by the Public Works Department. The above said WASR.No.91954 of 2014 was dismissed by the Hon'ble High Court of Madras only for the inordinate delay as SR stage itself.

6. The following orders of Hon'ble Supreme Court of India in Civil Appeal Nos.2726-2729 of 2014 (arising of SLP @ Nos.5681-5684/2024 @ CC 19326/19329/2013) (School Education Department Vs R.Govindasamy) is relevant to this case.

"8(ii)

Even temporary, adhoc or daily base services for a long number of years, let alone service for one or two years will not entitle such employee to claim regularization, if he is not working against the sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a



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legal right.

7. Further, the Hon'ble Supreme Court of India in State of Karnataka a Ors. Vs. Umadevi & Ors., AIR 2006 SC 1805, has observed as follows:-

"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. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules"

8. The Government have examined your representations dated 21.05.2018 and 18.06.2019 carefully, based on the remarks of the Director of Technical Education, various similar judgements regarding the issue and in light of the orders of the Hon'ble Madurai Bench of Madras High Court, dated 28.03.2019 in W.P. (MD) No. 13290 of 2018 and has decided to reject your claim for regularizing yours



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services, since you were not appointed through Employment Exchange and not against a sanctioned post."

10.The petitioner himself has admitted in his affidavit in para 4 that he entered as an Electrical Helper in the nominal muster roll of the fourth respondent on 21.07.1998 at Nagercoil, Government Polytechnic College. Even before the completion of one year of service, he along with six others filed a case before the learned Tamil Nadu Administrative Tribunal in O.A.D.No.8777 of 1999 for the relief of regularization on the ground that, on the completion of 10 years of service as NMR, their services should be regularized. In a miscellaneous application bearing M.A.No.3476 of 1999 in O.A.D.No.8777 of 1999, the learned Tamil Nadu Administrative Tribunal at Chennai on 06.07.1999 passed an order directing the fourth respondent to consider their representation dated 12.12.1998 within a period of three months. The said O.A.D.No. 8777 of 1999 on the file of the learned Tamil Nadu Administrative Tribunal Chennai was absolutely a premature application. In so far as the writ petitioner is concerned, since he was engaged as NMR in the fourth respondent unit only from 21.07.1998 even before the completion of one year service, he sought the prayer that his



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service should be regularized after completion of 10 years of service as NMR that is after 21.07.2008, in the said original application, which was filed in the year 1999 itself.

11.The fate of the said O.A.D.No.8777 of 1999, which was pending before the learned Tamil Nadu Administrative Tribunal Chennai is not placed before this Court for proper appreciation either by the writ petitioner or by the respondents. However, on the basis of the interim order passed in the M.A.No.3476 of 1999 in O.A.D.No.8777 of 1999 the fourth respondent by his proceedings in Se.Mu.No.1697/E1/1999 dated 20.09.2001 allowed the petitioner and others to continue as NMR Electrical Helper in the fourth respondent Unit. Only on the strength of the aforesaid proceedings of the fourth respondent dated 20.09.2001, the petitioner and the six others were allowed to continue. During the year 2010, the fourth respondent in his proceedings in Government letter 1697/Ne.Ou dated 22.07.2010 recommended the case of the petitioner by a proposal for regularization to the second respondent. However, the second respondent in his proceedings in letter No.1327/A3/2011 dated 21.08.2014 rejected the said proposal sent by the fourth respondent recommending the case of



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the petitioner for regularization. The said rejection order issued by the second respondent has never been challenged by the petitioner so far. The year wise service details of the petitioner as a daily wage employee as given by the respondents in their counter affidavit is extracted as follows:-

	NMR	
S.No	Year	Days Worked
1.	From July 1998	92
2.	1999	From 21.10.1998 to 17.05.2001 he is not working
3.	2000	
4.	2001	194
5.	2002	325
6.	2003	331
7.	2004	348
8.	2005	353
9.	2006	321
10.	2007	354
11.	2008	355
12.	2009	353
13.	2010	352
14.	2011	312
15.	2012	324
16.	2013	351
17.	2014	344
18.	2015	348
19.	2016	352
20.	2017	118 From 01.06.2017 to 31.12.2017 he is not working
21.	2018	315



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22.	2019	300
23.	2020	302
24.	2021	328
25.	May 2022	115
	From June 2022 to till date he is working through contract service	

12.A careful perusal of the tabular column extracted supra would reveal that the petitioner has not completed 10 years of continuous service as on 01.01.2006 on daily wage basis. Even assuming he continuously worked as a NMR under the fourth respondent unit for a period of 10 years without break in service, the period of 10 years would be completed only on 21.07.2008. Though relying upon G.O.Ms.No.385, School Education Department dated 04.04.1989, the learned counsel for the petitioner contended that his services ought to have been regularized on the completion of 5 to 10 years of service and that the Government in that G.O. had accepted the proposal of the Director of Technical Education to include the post mentioned in the notification appended to the said G.O. as temporary addition to the respective categories in the Tamil Nadu Engineering Subordinate Service and that he would be covered under the Category 9 - Wireman Grade I and Category 10 - Wireman Grade II and Category 11 - Wireman Grade III, the benefit



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of the said G.O. cannot be extended to the petitioner for the sole reason that he was permitted to continue as a NMR Electrical Helper only on the strength of the proceedings of the fourth respondent based on the interim order passed by the learned Tamil Nadu Administrative Tribunal in M.A.No.3476 of 1999 in O.A.D.No. 8777 of 1999 dated 06.07.1999. Having not preferred to challenge the rejection order of the second respondent dated 21.08.2014, the petitioner had made further representation on 01.09.2016 and 21.05.2018 seeking regularization of his service and on non consideration of the same, he filed W.P.(MD)No.13290 of 2018 and this Court by its order dated 28.03.2019 directed the respondents to consider his representation and pass appropriate orders in accordance with law.

13.Pursuant to the same, the impugned proceedings in letter (2D)No.23 dated 25.07.2019 came to be issued by the first respondent. Even thereafter without challenging the impugned proceedings of the first respondent dated 25.07.2019, he filed yet another Writ Petition in W.P.(MD)No.17846 of 2022 before this Court and this Court was pleased to close the said Writ Petition giving liberty to the petitioner to challenge the rejection order of



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the first respondent dated 25.07.2019. Though the petitioner has resorted to claim in his reply to the counter affidavit that he was sponsored through the employment exchange while he was appointed as Electrical Helper NMR under the fourth respondent on 21.07.1998, no supporting materials to substantiate the said argument has been placed before this Court.

14.This Court has no hesitation to observe that the petitioner has not approached this Court with clean hands for the sole reason that the petitioner has never disclosed the fate of O.A.D.No.8777 of 1999, which was filed by him along with six other NMRs before the learned Tamil Nadu Administrative Tribunal, at Chennai. However, his entire employment has been a litigious employment, since he filed O.A.D.No.8777 of 1999 within a period of one year from the date of his engagement as NMR under the fourth respondent unit. Referring to the interim order passed by the learned Tamil Nadu Administrative Tribunal at Chennai, in M.A.No.3476 of 1999 in O.A.D.No.8777 of 1999 dated 06.07.1999, the fourth respondent vide proceedings dated 20.09.2001 had permitted the petitioner along with six others to continue as NMRs under the fourth respondent unit. The proceedings of the fourth respondent dated



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20.09.2001 itself would be a conclusive proof that the petitioner's employment has been a litigious employment. The Constitutional Bench of the Honourable Supreme Court in the case of ***Secretary, State of Karnataka v. Uma Devi and others*** reported in ***2006 (4) SCC 1***, held that the litigious employment would not provide any ground for the persons to claim regularization or permanent absorption. Hence, regularization cannot be certainly claimed by the petitioner merely based on his employment which can be definitely construed as litigious employment for the sole reason that he was permitted to continue as NMR under fourth respondent unit after 20.09.2001 only by the proceedings of the fourth respondent dated 20.09.2001. Having failed to challenge the earlier rejection order dated 21.08.2014 passed by the second respondent, the petitioner's initiative to challenge the first respondent's impugned letter by his proceedings dated 25.07.2019 will not serve any purpose.

15. With the efflux of time that is at least after a passage of more than 9 years from the date of rejection of the petitioner's request for regularization by the second respondent, which came to be passed on 21.08.2014, now the petitioner's claim is hit by delay



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and latches as well.

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16.In view of the same, the petitioner's case fails and the Writ Petition is accordingly dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes / No

Index : Yes / No

Internet : Yes

Mrn

To

- 1.The Principal Sectary to Government,
Higher Education (B1) Department,
St.Fort George,
Chennai.
- 2.The Chief Engineer,
Public Works Department,
Technical Education Circle,
Sardar Patel Road, Guindy,
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