



W.A.No.3768 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.A.No.3768 of 2024

1. The State of Tamil Nadu
Rep. By its Secretary to Government
Higher Education Department
Fort St. George, Chennai – 9.

2. The Principal Secretary
Public Works Department
Fort St. George, Chennai – 9.

3. The Director of Technical Education
Guindy, Chennai – 600 032.

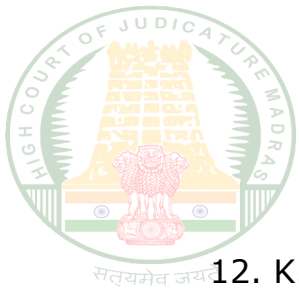
4. The Executive Engineer
Technical Education Division
Coimbatore.

5. The Executive Engineer
Technical Education Division
Guindy, Chennai – 25.

.. Appellants

Vs.

1. S.Shanmugam
2. K.Parthiban
3. Mary Victoria Fathima
4. A.Sundaram
5. C.Gajendrababu
6. M.Srinivasan
7. D.Chandran
8. P.Ulaganathan
9. R.Radhakrishnan
10. P.Chinnathambi
11. V.Velan



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12. K.Vadivelu
13. P.Velu
14. A.Anandaraj
15. M.Sundarraaj

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent, against the order dated 26.08.2021 in W.P.No.4788 of 2009.

For the Appellants : Mr.C.Jayaprakash
Government Advocate

For the Respondents : Mr.L.Chandrakumar
for R2 to R10, R12 & R15

JUDGMENT

(Judgment of the Court was authored by R.SURESH KUMAR, J.)

This intra-Court appeal has been directed against the order passed by the Writ Court dated 26.08.2021 in W.P.No.4788 of 2009.

2. These private respondents were the writ petitioners who were initially appointed as Casual Workers/NMRs by the fifth appellant, i.e. the Executive Engineer, Technical Education Division, Guindy, Chennai – 25. On completion of ten years of service, the services of the respondents have been regularized by issuance of G.O.No.122, Higher Education (B1) Department dated 26.03.1998. The regularization, in fact, has been given effect to on completion of the ten years' period by each of the respondents ranging from 01.01.1986 to 01.01.1990.



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3. For regularizing their services, the Government issued the said Government Order, under which, they are not entitled to get the actual difference of pay by way of regular appointment with effect from the date of regularization and also they are not entitled to get notional fixation of pay with effect from the date of regularization, but only from the date of issuance of G.O.No.122, Higher Education (B1) Department, that is from 26.03.1998.

4. Aggrieved over the said prescription made in the said Government Order, especially in Clause 5 of the Government Order, the respondents approached this Court by filing a writ petition in W.P.No.4788 of 2009, seeking a certiorarified mandamus, to call for the records relating to G.O.No.122, Higher Education (B1) Department dated 26.03.1998 and the second appellant's letter dated 05.09.2008 and to quash paragraph 5 of the G.O.No.122.

5. The said writ petition was heard and disposed through the impugned order, where the learned Single Judge has taken note of an earlier decision of a Division Bench of this Court made in the matter of ***A.Babysabeena and Ors. vs. The State of Tamil Nadu***



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and Ors.¹. The judgment of the Division Bench of this Court had subsequently been upheld by the Hon'ble Supreme Court of India in a Special Leave Petition filed by the State in S.L.P.Nos.9122 and 9123 of 2016, which was dismissed by the Hon'ble Supreme Court of India on 29.04.2016.

6. The learned Single Judge has taken note of the said legal position where the Division Bench has allowed the appeal, which has been subsequently upheld by the Hon'ble Supreme Court of India by dismissing the SLP. The relevant portion of the impugned order reads thus:

"4. Heard learned counsel and perused the materials available on record including the decision of the Division Bench of this Court in W.A. Nos.168 and 169 of 2012 dated 08.08.2014 in the case of A.Babysabeena and others Vs. The State of Tamil Nadu and others, which appears to clinch the issue arising in this case. The challenge in that matter was to Government Order in G.O. No.334 Public Works Department dated 19.10.2007, whereunder the services of the appellants therein had been regularized upon completion of ten years of casual service and their pay revised and refixed, however only with effect from the date of that Government Order. The argument of the petitioner in that case was similar to the one before me, that the notional fixation of pay be with retrospective effect from date of regularization with monetary benefits and this prayer came to be accepted by the Bench. Thus, the Bench granted notional fixation of pay

¹ W.A.Nos.168 & 169 of 2012; dated: 08.08.2014.



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retrospectively upon completion of a decade of service with fixation of notional monetary benefits for the express purpose that the entire service period be counted for the purpose of service benefits including monetary benefits.

5. This issue appears to have engaged the attention of the Courts for some time now. Learned counsel for the petitioners would submit that initially the relief sought for by similarly placed petitioners was wide insofar as a payout of monetary benefits for the period for which service has been regularised was also sought. However, this plea had been negated with the Court and the petitioners thereafter acquiesced to the position that the benefits could be notionally fixed in order that the service period be counted for subsequent benefits including monetary benefits. This, in effect, is the ratio of the decision of the Division Bench in the case of A. Babysabeena (Supra). In conclusion, the Bench allows the Writ Appeals directing the respondents -to notionally fix the pay of the appellants/petitioners retrospectively with effect from the date of completion of 10 years of service as NMRs, with monetary benefits from the date of the Government Order, dated 19.10.2007, as it has been extended to others in G.O. Ms.No.124, Public Works Department, dated 15.05.2008.- The exercise was directed to be commenced and completed within a period of eight weeks from date of receipt of a copy of that order. This decision has been confirmed and the Special Leave Petitions filed by the State in SLP. Nos.9122 & 9123 of 2016 dismissed by the Hon-ble Court on 29.06.2016, both on the ground of delay as well as on merits. Subsequent to the Judgment of the Supreme Court, G.O. Ms No.235 dated 30.11.2017 has been passed by the State giving effect to the decision.

6. The above decision applies on all fours to the present case insofar as there appears to be



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perfect identity between the facts as well as legal submissions advanced. In fact, the counter affidavit filed by the State is dated 2010, prior to the decision of the Division Bench which has been affirmed by the Hon'ble Supreme Court."

7. Now, by virtue of the order that has been passed by the Division Bench, which has been upheld by the Hon'ble Supreme Court of India, the legal position would be that insofar as the regularization after completion of ten years of service of the Casual Labourers or NMRs are concerned, they are entitled to get fixation of pay on notional basis with effect from the date of regularization, but would be entitled to get the monetary benefit only from the date of issuance of the Government Order.

8. This position since has been upheld by the Hon'ble Supreme Court of India and has been concluded and it is also informed by the learned counsel appearing on behalf of the respondents that this decision has been implemented insofar as the employees concerned in this case, we do not feel that there could be any deviation on the part of the employer appellant to take a different view in respect of the case of the respondents alone.

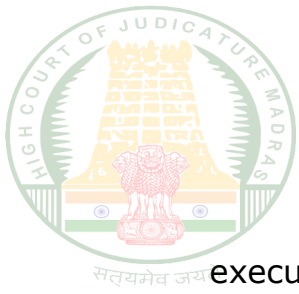


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9. It is urged by the learned Government Advocate appearing for the appellants that these respondents were not employed through a proper selection method and they have not been sponsored through employment exchange and at the time of regularization, the Government, by invoking the power for relaxation, has relaxed the educational qualifications as well as the age. Therefore, the very relaxation itself is a concession made to these employees. Accordingly, they are not entitled for further benefits of fixation of pay even on notional basis from the date of regularization. Hence, the order passed by the Writ Court, which is impugned herein, is to be interfered with, he contended.

10. We are not impressed with the said submission made by the learned Government Advocate for the simple reason that these grounds urged by them could have been urged by them if the plea of regularization has come to the Court. However, this plea has already been considered by the Government and regularization has been made by issuance of G.O.No.122, Higher Education (B1) Department dated 26.03.1998, whereby, the import of how regularization is to be made with what benefits had already been given by the Government by taking a policy decision by issuing an



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executive order under Article 162 of the Constitution of India.

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11. Therefore, now, the employer cannot turnaround and say that these respondents have not been sponsored by the employment exchange and since relaxation of age has been given by the Government, they are not eligible for even fixation of pay on notional basis. These arguments would not have any legs to stand for the simple reason that these regularization episode had already been over and the Government Order has been issued and they have been regularized and have been working from the date of regularization, that is ranging from 1986-1990.

12. The only issue is whether they are entitled to get fixation of pay on notional basis with effect from the date of regularization or from the date of issuance of the Government Order. That issue since has been concluded by the Division Bench, which has been upheld by the Hon'ble Supreme Court of India as stated *supra*, which in fact has been followed by the learned Single Judge through the impugned order, we do not find any merits in the arguments advanced by the learned Government Advocate appearing for the appellant.



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13. Hence, the appeal fails and is liable to be dismissed. The writ appeal, accordingly, stands dismissed. However, there shall be no order as to costs. Consequently, C.M.P.No.29658 of 2024 is closed.

(R.S.K., J.) (C.S.N, J)
03.01.2025

Neutral Citation:Yes/No

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R. SURESH KUMAR, J.
AND
C. SARAVANAN, J.
(drm)

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