



W.P.(MD)No.1088 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2025

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THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.1088 of 2019

E.Nagoor Meera

... Petitioner

Vs.

1.The Managing Director,
TWAD Board,
Kamarajar Salai,
Chepauk, Chennai.

2.The Executive Engineer,
TWAD Board,
Maintenance Division,
25, Chidambara Nagar 2nd Street,
Tuticorin-3.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent in his proceedings No.19954/Ve.Nee.Oo/2018 dated 10.12.2018 and quash the same and directed the respondents to post the petitioner as Helper from the date on which the petitioner's juniors were given Helper Post with all consequential benefits including monetary benefits.

For Petitioner : Mr.V.Panneerselvam

For Respondents : Mr.Satheesh,
Standing Counsel for TWAD.



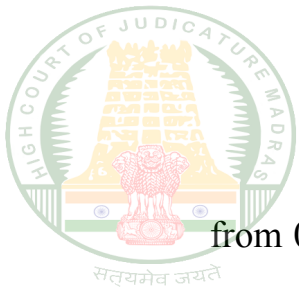
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ORDER

Under assail is the rejection order dated 10.12.2018 passed by the second respondent herein Executive Engineer TWAD Board.

2.It is the case of the petitioner that he was appointed as NMR in the respondent Board through employment exchange on 11.12.1984. His service was regularized as Cleaner cum Gardner. While he was working, he passed ITI in June 1994. Thereafter, his post was re-designated as Maintenance Assistant on 18.09.1995. After his date of appointment nearly 4 persons namely Thiru.R.Mariappan, Thiru.M.Alagesan, Thiru.S.Arunachalam and Thiru.V.Ramar joined in the respondent Board as Watchman under NMR basis by an order dated 29.12.1987. Thereafter, their services were regularized. As per service regularization for the post of Helper, one must have a qualification of 8th standard pass with ITI pass. But the aforesaid persons are not having such requirement qualification. However, they were posted as Helper by an order dated 25.10.1996. As on the date of order, he was fully qualified for the post on Helper ie., 25.10.1996. He sent representation to the respondent to regularize his service as Helper. While so, in December 2017, the above said four persons given monetary benefits as per pay revision with effect



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from 01.04.1992. The persons having 8th failed joined in the respondent Board as Watchman on NMR basis, after his date of appointment were regularized as Helper in the higher pay. The petitioner had preferred a writ petition in W.P.(MD)No.19934 of 2018 seeking a direction to consider the case of the petitioner as juniors were given to the post of Helper with all consequential benefits. This Court by an order dated 08.09.2018 directed the respondent to consider and pass orders on his representation. Thereafter, the first respondent passed an order rejecting his request on the ground that at the time of appointment as NMR in the Department whatever the post they are holding, they were regularized in the very same post. Hence, this writ petition.

3.The learned counsel appearing for the petitioner would submit that the order impugned passed by stating that the daily wages who joined in any post shall be regularized in the same post, since the four persons mentioned in the representation of the petitioner who joined as Helpers and were regularized as Helpers. He would submit that it is totally false because four persons mentioned in the order impugned were joined as Watchman under NMR. Therefore, the impugned order is liable to be set aside on the sole ground of falsehood. He would submit that getting regularization and getting monetary benefits from the



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authority concerned is continuous cause of action and therefore, there is no delay on the part of the petitioner in approaching this Court. To strengthen his contention, he has relied upon the decision of this Court in ***W.P.No.33852 of 2013 dated 18.04.2022*** to show that when the claim itself is a continuous and such claim would not affect the rights of the third parties, the delay and laches may not be entitled for the purpose of favorable consideration. He would also relied on the decision of the Hon'ble Supreme Court reported in ***(2008) 8 SCC 648*** in a case of ***Union of India and Ors Vs. Tarsem Singh*** to show that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.

4.Per contra, the learned counsel appearing for the respondent would submit that the petitioner was appointed in the post of Filter Bed Cleaner on 17.09.1992 and subsequently NMR service was regularized based on 12(3) settlement. He would submit that based on the order issued by TWAD Board dated 18.09.1995, for the employees working as Watchman, Cleaner and Gardener were redesignated as Maintenance Assistant with effect from 01.09.1995 for utilisation of employees based



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on work requirements. He would submit that the petitioner have 33 years service and allowed Selection Grade, Special Grade and one bonus increment on completion of 30 years of service and superannuation on 30.09.2020 in the post of Maintenance Assistant. He would submit that the petitioner's service was regularized on 17.09.1992 and he was allowed retrospective regularization with effect from 04.05.1986 based on the provisions made for eligible NMRs as per 12(3) settlement. He would submit that the petitioner was sanctioned the benefit of retrospective regularization on completion of 480 days of NMR w.e.f 04.05.1986, whereas, four employees, who were mentioned in the representation submitted by the petitioner, were regularized based on the BP.Ms.No.264 dated 19.09.1996 and they were allowed regularization with effect from 1987 and 1989 on completion of 480 days, they were regularized in the post of Helper whereas the petitioner and four employees are not similarly placed persons. He would submit that there is a delay in approaching this Court and on that ground, this writ petition is liable to be dismissed.

5.This Court has considered the rival submission made on either side and perused the materials on record.



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6.It is seen from the records that the petitioner was appointed as NMR vide order dated 11.12.1984 as Gardener, wherein it has been stated that the appointment is purely temporary and under daily wages only. The main contention of the learned counsel for the petitioner is that four persons mentioned in the representation submitted by the petitioner were not appointed as Helper at the time of joining. Their service as NMR whereas they have not appointed as Watchman under NMR basis. It is pertinent to mention that it is for the appointing authority concerned to consider the eligibility, educational qualification, other criteria and also by sanctioned post available at that time. It is mentioned that the writ petitioner attained age of superannuation, after rendering service more than 30 years of service, he had availed selection grade, Special grade and now he cannot seek for regularization, as if the petitioner was having requisite qualification and he has to be appointed in the post of Maintenance Assistant.

7.It is pertinent to mention that it has not been pleaded by the petitioner that he was unable to approach the Court of law on time on account of any reason. In this connection it is relevant to cite the decisions of the Hon'ble Supreme Court reported in,



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i) **2009 (2) SCC 479, S.S. Balu And Anr vs State Of Kerala And**

Ors wherein it is held that “it is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment”.

ii) **2012 (7) SCC 610, Vijay Kumar Kaul & Ors vs Union of India**

& Ors, wherein it is held that “From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy”.

8.It is seen from typed-set of papers that the four persons mentioned in the representation submitted by the petitioner, who had been appointed as Watchman under NMR. However, the same is not a ground to allow the writ petition. The petitioner approached the Court after a lapse of more than 30 years. There is no merit in this writ petition and the same is liable to be dismissed.



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WEB COPY 9. In the result, this writ petition is dismissed. No costs.

NCC : Yes / No
Index : Yes / No
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