

W.P.(MD)No.20355 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2025

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THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.20355 of 2019

C.Ganesan

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep.by its Secretary to Government,
Public Works Department,
Fort.St.George,
Chennai-600 009.
- 2.The Engineer in Chief (General),
Public Works Department,
Chepauk, Chennai-600 005.
- 3.The Chief Engineer,
Public Works Department,
Building Construction and Maintenance,
Chepauk,
Chennai-600 005.
- 4.The Superintending Engineer,
Public Works Department,
Building Construction and Maintenance,
Trichy,
Trichy District-620 001.
- 5.The Executive Engineer,
Public Works Department,
Building Construction and Maintenance,
Thanjavur, Thanjavur District-613 001.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 5 to regularize the service of the petitioner with effect from his date of appointment and to grant all monetary benefits in service within the time frame stipulated by this Court.

For Petitioner : Mr.S.Bharathy

For R1 to R5 : Mr.K.R.Badurus Zaman,
Government Advocate.

ORDER

This writ petition has been filed seeking a direction to the respondents to regularize the service of the petitioner with effect from his date of appointment and to grant all monetary benefits in service within a time frame.

2.It is the case of the petitioner that he was appointed as nominal muster roll (NMR) Grade-I on daily wages on 01.01.1998 by the fifth respondent. He had passed 12th Std. and Diploma in Civil Engineering. He should be regularized after 10 years of service and also be promoted to next higher post of Work Inspector in the same department. The



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Government of Tamil Nadu received service details of 976 daily wages workers from the Chief Engineer in the Public Works Department in all over Tamil Nadu region. The Government of Tamil Nadu to regularize encardred 985 post for that daily wages workers in the Public Works Department in Water Division. The State Government relaxed the Rule 10(A) of the Tamil Nadu State and Subordinate Service Rules and Tamil Nadu Engineering Subordinate Rule 3(1) to all the daily wages workers. He sent a detailed representation dated 03.04.2019 to the respondents to consider regularization of service, based on the Government Orders. However, no action was taken by the respondents till date. Hence, this writ petition.

3.The learned counsel appearing for the petitioner would submit that the petitioner was appointed as NMR-Grade-I on daily wages on 01.01.1998 and he had completed more than 10 years of service and service has to be regularized. To strengthen his contention, he has relied upon the judgment of this Court in W.P.(MD)No.12389 of 2014 dated 15.06.2016 to show that the service of the daily wages employees was directed to regularize based on the Government Orders.

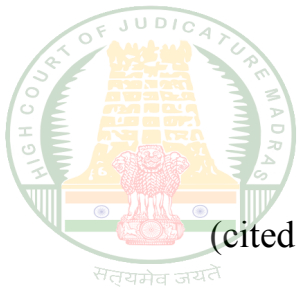


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4.Per contra, the learned Government Advocate appearing for the respondents would submit that the Government has issued an order in G.O.Ms.No.134, wherein the Government has considered those, who entered 10 years of service as on 01.01.2006, whereas, the petitioner was appointed only in the year 1998, as such, he was not completed 10 years of service and thereby, the petitioner has no locus-standi to seek regularization of his service.

5.This Court has considered the submission made on either side and perused the available records.

6.According to the petitioner, he has joined as NMR in the office of the fifth respondent and still he is working as NMR alone. It is pertinent to mention that the irregular, illegal and backdoor appointments would not provide any right to secure permanent absorption or regularization in view of the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in **(2006) 4 SCC 1, State of Karnataka Vs. Umadevi**. The Hon'ble Supreme Court of India in the case of **State of Rajasthan and others Vs. Dayalal and others**, reported in **(2011) 2 SCC 429**, the judgment delivered after **Uma Devi's** case



(cited supra) summarises the principles regarding permanent absorption and regularisation as under:

“12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or dailywage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be



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“litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular



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salary against the State must arise under a contract or under a statute.”

[See State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , M. Raja v. CEERI Educational Society [(2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334] , S.C. Chandra v. State of Jharkhand [(2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897], Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [(2007) 15 SCC 680 : (2010) 1 SCC (L&S) 742] and Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .]

7.The government order in G.O.Ms.No.134, Public Works (C2) Department dated 07.05.2010 in paragraph No.6 wherein it is stated that the minimum NMR engagement days for a year is above 60 days and below 90 days is to be needed to regularize the NMR service, however he should have completed 10 years of NMR service before 01.01.2006 as per G.O.Ms.No.22 P & AR (P) Department dated 28.02.2006. But the petitioner completed his 10 years of NMR service only in the year 2012 and he is not fulfilling eligibility criteria for regularisation in the above said Government Orders.

8.Keeping in mind the above principles, in the instant case, the petitioner has completed only eight years, since he has been appointed



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only in the year 1998 and the principles set out by the Hon'ble Supreme Court that the State has to follow the recruitment Rules in force for the purpose of granting regularization and permanent absorption. There cannot be conferred any back door entry or from the length of service will not confer any right of candidate to give regularization or permanent absorption. There is no merits in this writ petition and the same is liable to be dismissed.

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

NCC : Yes / No
Index : Yes / No
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