



W.P.(MD)No.20725 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.10.2024

Delivered On : 27.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.20725 of 2021

and

W.M.P.(MD)Nos.17336 and 16939 of 2021

1.G.Venkatesh

2.S.Shanmuga Sundara Chokkalingam

3.P.Christopher

... Petitioners

Vs.

1.The Additional Chief Secretary to Government,
Municipal Administration &
Water Supply Department,
Secretariat, Chennai – 600 009.

2.The Managing Director,
TWAD Board,
31, Kamarajar Salai,
Chepauk, Chennai – 600 005.

... 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 of the first respondent i.e., the Additional Chief Secretary to Government, Municipal Administration and Water Supply Department, Chennai, in G.O.(D)No.46, Municipal Administration and Water Supply (WS3) Department, dated 10.02.2021 and partially quash the portion in the said G.O. relating to non-entitlement of any other allowance and any



W.P.(MD)No.20725 of 2021

increment to the petitioners and direct the first respondent ie., the Additional Chief Secretary to Government, Municipal Administration and Water Supply Department, Chennai to grant all other allowances as per the time scale of pay to the petitioners and to sanction of all routine increments as per the time scale.

(Prayer amended vide Court order dated 24.08.2023 in W.M.P.(MD)No.16937 of 2023 in W.P.(MD)No.20725 of 2021 by LVGJ)

For Petitioners	: Mr.S.Viswalingam
For 1 st Respondent	: Mr.D.Gandhiraj Special Government Pleader
For 2 nd Respondent	: Mr.P.Veera Kathiravan Additional Advocate General Assisted by Mr.Vijay Karthikeyan

ORDER

This Writ Petition is filed, to partially quash the portion in G.O. (D)No.46, Municipal Administration and Water Supply (WS3) Department, dated 10.02.2021, relating to non-entitlement of any other allowance and any increment to the petitioners and to direct the first respondent ie., the Additional Chief Secretary to Government, Municipal Administration and Water Supply Department, Chennai, to grant all other allowances as per the time scale of pay to the petitioners and to sanction of all routine increments as per the time scale.

2.Heard the learned counsels on either side and carefully perused the materials available on record.



W.P.(MD)No.20725 of 2021

3.Of the petitioners, the first two petitioners were serving as skilled labourers in the post of Electrical Operators and the third petitioner was serving as Chemist. They were all serving in the desalination project for more than 10 years continuously without any break. They are not absorbed in the regular time scale of pay. The Inspector of Factories, Sivagangai, considering their pathetic situation made detailed enquiries, issued specific orders under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981, confirming the petitioners job mentioned above. But the above said orders were not implemented by the TWAD Board. The TWAD Board preferred a Writ Petition in 13038 of 2011 against the orders dated 11.07.2011, of the Inspector of Factories passed in favour of the petitioners. The petitioners also preferred W.P. (MD) No.9549 of 2012 for implementing the orders dated 11.07.2011 of the Inspector of Factories. The writ petition filed by the TWAD Board was dismissed and the writ petitions filed by the petitioners were allowed on 22.05.2014. Against the above said common orders dated 22.05.2014, the TWAD Board preferred writ appeals. The above said two writ appeals filed by the TWAD Board were also dismissed on 12.02.2015. The Hon'ble Division Bench at the time of dismissing both the writ appeals filed by the TWAD Board has specifically directed the Executive Engineer, TWAD Board, Ramanathapuram to implement the orders dated 11.07.2011 of the Inspector of Factories, Sivagangai which was also confirmed by the writ court and the Hon'ble Division Bench



W.P.(MD)No.20725 of 2021

within four weeks from the date of receipt of the order. But the respondents did not execute the orders dated 12.02.2015 of the Hon'ble Division Bench.

4.After sending contempt notice, the Executive Engineer, TWAD Board, Collectorate Campus, Ramanathapuram District filed Review Applications No.133 & 134 of 2015 against the orders dated 12.02.2015 of the Hon'ble Division Bench. The Review petitions were heard on 18.11.2015 and they were also dismissed on 18.11.2015. It was also made clear that it shall be open to the beneficiaries of the impugned order to take coercive steps including filing of contempt petition to get the order implemented without further loss of time. A second contempt notice after dismissal of review applications was also sent to the Executive Engineer, TWAD Board, Ramanathapuram, to obey the orders forthwith. The contempt petition No.257 of 2016 filed before the Hon'ble Division Bench was closed since the TWAD Board obtained Stay orders from the Hon'ble Supreme Court by its orders dated 22.04.2016. The Hon'ble Supreme Court in its orders dated 07.05.2019 dismissed all the Special Leave Petitions. Further Review Application filed before the Hon'ble Supreme Court was also dismissed on 17.09.2019. All these orders have been dealt with in detail in the reopened contempt petition No.257 of 2016 and direction was issued on 18.10.2019 for implementation of the orders within a period of three months from the



W.P.(MD)No.20725 of 2021

date of receipt of a copy of the orders. On receipt of the above said orders dated 18.10.2019 of the Hon'ble Division Bench and issuance of contempt notice dated 24.01.2020 to the Managing Director, TWAD Board, Chennai and the Executive Engineer, TWAD Board, Collectorate Campus, Ramanathapuram, the Managing Director, TWAD Board, Chennai in his letter dated 14.01.2020, has sent proposals to the Additional Chief Secretary to Government, Municipal Administration and Water Supply Department, Chennai for implementing the orders of the Hon'ble Supreme Court by giving permanent status to the labourers engaged by the Regulations of TWAD Board. The petitioners were also informed that on receipt of the orders from the Government, they will be absorbed on permanent basis. Therefore, at this stage, it became absolutely necessary to issue directions to the Additional Chief Secretary to Government, Municipal Administration and Water Supply Department, Chennai to pass orders for providing permanent status to the petitioners as per the proposals sent by the Managing Director, TWAD Board, Chennai in his letter dated 14.01.2020 based on the final orders of the Hon'ble Supreme Court dated 17.09.2019, within a specified time

5. Therefore the petitioners filed W.P. (MD)No.5653 of 2020 praying to the Government to pass orders for providing permanent status to the petitioners as per the proposals sent by the Managing Director, TWAD Board, Chennai in his letter No.5895/WCE/2019 dated 14.01.2020 based



W.P.(MD)No.20725 of 2021

on the final orders of the Hon'ble Supreme Court dated 17.09.2019. This Court issued specific directions on 18.03.2020 to the Additional Chief Secretary to Government, Municipal Administration and Water Supply Department, Chennai to treat the matter as an exceptional case and to pass appropriate orders within a period of eight weeks from the date of receipt of the order.

6.While so, the Government in G.O.(D)No.46 Municipal Administration and Water Supply (WS3) Department dated 10.02.2021, issued directions to the Managing Director of the TWAD Board to fix the pay of the petitioners at the minimum level and that they are not entitled to any other allowance or any increment since they are not regularized as they have not been recruited following due process.

7.The above said orders of the Government in G.O.(D)No.(D)No.46 Municipal Administration and Water Supply (WS3) Department dated 10.02.2021 is quite against the orders dated 11.07.2011 of the Inspector of Factories conferring permanent status to all the petitioners which was confirmed by the Writ Court, Hon'ble Division Bench and by the Hon'ble Supreme Court. The contempt petition filed in C.P.(MD)No.671 of 2021 was also closed since the Government have issued orders in G.O.Ms.No. (D) No.46 Municipal Administration and Water Supply (WS3) Department dated 10.02.2021. The grievance of the petitioners is that even after



W.P.(MD)No.20725 of 2021

confirming permanent status by the Government in G.O.(D)No. (D)No.46 Municipal Administration and Water Supply (WS3) Department dated 10.02.2021, the petitioners are getting the minimum level of pay of Rs. 20,600/- and they are not getting any other allowance or any increment.

8.In the meanwhile, similarly placed 17 persons including skilled and unskilled labourers who were also conferred with permanent status by the Inspector of Factories and later, confirmed by the Hon'ble Apex Court came to be regularized by the second respondent and they were sanctioned with regular time scale of pay as per board proceedings in B.P.Ms.No.31, TWAD(legal cell) dated 13.06.2013. All of them are getting regular time scale of pay including unskilled labourers. Hence, it is necessary to extend the same benefit to the petitioners as well by not restricting the pay matrix of the petitioners to the minimum level debarring them from any entitlement to other allowances including increment. Under such circumstances, the first respondent vide G.O. (D)No.46, Municipal Administration and Water Supply (WS3) Department, dated 10.02.2021, in paragraph 8 had permitted the Managing Director Tamil Nadu Water Supply Drainage Board to confer permanent status to the contract labourers working in the operation and maintenance of Narippayur Desalination Plant, Ramanathapuram District and to fix the pay subject to three conditions, which are as follows:-

(i)They are assigned to the following level in the Pay Matrix and



W.P.(MD)No.20725 of 2021

will continue to be paid at the minimum of the level only and are not entitled to any other allowance or any increment.

(ii) They are not regularized as they have not been recruited following due process; and

(iii) that this case shall not be cited as a precedent for other contract employees:-

The Table

Post	Level	Pay
i.Helper / Watchman	Level 1	Rs.15,700/-
ii.Fitter / Electrician	Level 5	Rs.18,200/-
iii.Electrical Operator / Chemist	Level 10	Rs.20,6000/-

9.Challenging the aforesaid portion of the said G.O. relating to non-entitlement of any other allowance and any increment to the petitioners, this Writ Petition is filed, seeking further to direct the first respondent to grant all allowances as per the regular time scale of pay to the petitioners and to sanction all routine increments as per the regular time scale within a period of specific period of time.

10.The categorical finding of the Inspector of Factories in his order dated 11.07.2011, is that the petitioners can be considered only as the employees of the second respondent Board and since they were not employed under any contractor, but directly employed by the Board and



W.P.(MD)No.20725 of 2021

the fact that the petitioners continuously served in the second respondent board despite the change in hands, who contributed as contractors, has been pointed out by the Inspector of Factories in the order dated 11.07.2011. It was that order which was challenged by the second respondent before this Court, which was dismissed by the order of this Court dated 22.05.2014. That was further confirmed by this Court by the learned Single Judge by categorically observing that from the nomenclature used by the second respondent Board, it cannot be construed that the petitioners are contract labourers. Having observed so, the learned Single Judge proceeded to direct the employer to confer permanent status to the workmen making a specific mention that depriving permanent status to the workmen would result in the workers receiving far below occupational wages without benefits of dearness allowances that are paid to the permanent employees. Accordingly, the learned Single Judge directed to confer permanent status to the concerned workmen in accordance with law and the said order of the learned Single Judge was tested later by the Hon'ble Division Bench of this Court and then by the Hon'ble Apex Court and was confirmed. Even after various multiple litigations decided in favour of the petitioners herein when it was taken to the level of the Hon'ble Apex Court and the same had reached finality in respect of the question of the facts, which are concerned directing the second respondent to implement the order passed by the Inspector of Factories as early as on 11.07.2011. In the



W.P.(MD)No.20725 of 2021

name of conferring permanent status to the petitioners, it is too unfortunate that the first respondent has permitted the Managing Director of the Tamil Nadu Water Supply Drainage Board to confer permanent status on certain conditions, which are unwarranted and which are unsustainable in the eye of law. I have no hesitation to hold that the conferment of permanent status subject to the conditions which would disentitle the petitioners from regular time scale of pay and regular increments along with other allowances would not stand the scrutiny of law.

11.In a similar matter, 17 employees were conferred with permanent status by the order of the Inspector of Labour dated 29.11.2002, which was duly acknowledged by the second respondent board by B.P.Ms.No.31 dated 13.06.2013, thereby conferring permanent status on the similarly placed workmen providing them with regular time scale of pay. Only scrutinizing the unfair labour practices of the second respondent Board for having engaged the petitioners as contract labourers directly, the second respondent Board is directed to implement the order passed by the Inspector of Factories dated 11.07.2011. When an employer has regularized similarly situated workmen either in the same scheme or otherwise, it would be open to the workmen who have been deprived of the same benefit at par with the workmen who have been regularized to seek the extension of the same benefits to them since



W.P.(MD)No.20725 of 2021

deprivation of such benefit which had been extended to similarly placed persons would amount to a violation of rights guaranteed under Article 14 of the Constitution.

12.In view of the same, the decision of the first respondent by issuance of G.O.(D).No.46 dated 10.02.2021, directing the Managing Director, Tamil Nadu Water Supply Drainage Board to confer permanent status to the petitioners working in the operation and maintenance of Narippayur Desalination Plant, Ramanathapuram district, but to fix the pay on certain conditions disentitling them from regular time scale of pay, incentives as well as other allowances would amount to depriving them with the benefits payable to permanent workmen. Hence, necessarily the same has to be revisited by the first respondent. The decision of the first respondent more particularly, in the matter of conferring permanent status to the petitioners, but subject to the condition that they are disentitled to regular time scale of pay, incentive and other allowances require re-consideration. Accordingly, the conditional portion in para 8 of the aforesaid G.O. is hereby quashed and the same is remanded back to the first respondent for reconsideration and implementation of order passed by this Court in this case, by sanctioning all routine increments from the date of fixation of regular time scale of pay within a period of 16 weeks from the date of receipt of copy of this order.



W.P.(MD)No.20725 of 2021

WEB COPY

13. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The Additional Chief Secretary to Government,
Municipal Administration &
Water Supply Department,
Secretariat, Chennai – 600 009.
2. The Managing Director,
TWAD Board,
31, Kamarajar Salai,
Chepauk, Chennai – 600 005.



WEB COPY



W.P.(MD)No.20725 of 2021

L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)No.20725 of 2021

27.01.2025