

(2014) 01 MAD CK 0194

In the Madras High Court

Case No : Writ Petition No. 19822 of 2012

A. Balasubramaniam Environmental Scientist, Tamil Nadu
Pollution Control Board (TNPCB) AEL, Cuddalore and Others

APPELLANT

Vs

The State of Tamil Nadu and The Tamil Nadu Pollution Control
Board

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14 16

Citation : (2014) LabIC 251 : (2014) 1 LLJ 568

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; Abdul Saleem, SGP (F), for the Respondent

Final Decision : Disposed Off

Judgement

M. Venugopal, J.—The petitioners have preferred the present Writ Petition, challenging the order of the second respondent dated 1.6.2012 and seeking a direction to the respondents to regularise their services in their respective posts with retrospective effect from the date of their initial appointment with all consequential benefits including monetary benefits and to issue revised orders to that effect. According to the petitioners, their services have been regularised by the second respondent Tamil Nadu Pollution Control Board, Chennai with effect from 20.10.1999, instead of regularising their services with effect from the date of their initial appointment in the services of the second respondent Board.

2. It is the grievance of the petitioners that similarly placed individuals were granted the benefit of regularisation of their services with retrospective effect from the date of their initial appointment by way of implementation of the order of this Court rendered in the writ petition in W.P. No. 9969/2010 dated 18.4.2011. As a matter of fact, the second respondent has rejected the representation made by the petitioners through a common order dated 1.6.2012

on the ground that regularisation was granted only for those persons, who have secured the orders from the High Court.

3. It is the case of the petitioners that they were also sponsored by the employment exchange and successfully performed in the interview and they were appointed to the respective posts and the communal roster was scrupulously followed. Therefore, they sought for regularisation of their services with effect from the date of their initial appointment.

4. Furthermore, it is the plea of the petitioners that there is no bar for the second respondent to curtail the date of regularisation of the services of the petitioners from the date of their initial appointment. As such, the petitioners made several representations to the respondents and they came to understand that their case will be considered favourably. In the mean while, they were informed that similarly placed persons already filed a writ petition before this Court in W.P. No. 9969/2010.

5. This Court, on 18.4.2011 in W.P. No. 9969/2010 between S. Arul Doss and the Government of Tamil Nadu and another, in paras 6 to 8 has observed and held as under:

6. From the perusal of the records, it is seen that the impugned order appears to have been passed without application of mind, because the impugned order shows that the appointment of the petitioner was irregular, on the ground that he was not appointed through employment exchange. The stand taken by the respondents in the impugned order per se is not legally maintainable, for the reason that the petitioner was appointed through employment exchange as Electrician under NMR basis at the rate of Rs. 58/- per day and he was also posted to Advanced Environmental Laboratory, Tamil Nadu Pollution control Board, Madras.

7. Secondly, when the 2nd respondent has passed the similar regularisation order regularising 16 other similarly placed persons by order dated 11.4.2001, I do not find any reason to deny the same benefit to the petitioner alone. If the petitioner was not appointed through employment exchange, then it is left open to the respondents to restrict the benefit of regularisation. But, in the case on hand, the petitioner was appointed only through employment exchange, therefore, the respondents cannot restrict the benefit of regularisation, by saying that the petitioner was not appointed through employment exchange.

8. Therefore, in view of the similar orders passed by this court as cited supra as well as the proceedings dated 11.4.2001 passed by the 1st respondent, this Court is constrained to allow the present writ petition and accordingly the present writ petition is allowed as prayed for by setting aside the impugned order passed by the 1st respondent. In view of the above reasons, the respondents are directed to regularise his services from the date of his initial appointment i.e. 12.2.1996 or from 23.12.1996 with all consequential benefits within a period of eight weeks from the date of receipt of a copy of this order. No costs. M.P. No. 1

of 2010 is closed.

6. The contention of the Learned counsel for the petitioner is that the petitioners are the similarly placed like that of the person, who obtained orders from the High Court in WP. 9969/2010 dated 18.4.2011, in and by which, the respondents were directed to regularise the services of the petitioner therein from the date of his initial appointment i.e., 12.2.1996 or from 23.12.1996 with all consequential benefits within 8 weeks from the date of receipt of the copy of the order. Continuing further, it is submitted on behalf of the petitioners that the respondents are duty bound to regularise the services of the petitioners with effect from the date of their initial appointment.

7. The Learned counsel for the petitioners strenuously contends that when this court has allowed the writ petition in W.P. No. 9969/2010 on 18.4.2011 filed by one S. Arul Doss against the respondents therein and directed to regularise his services from the date of his initial appointment i.e., 12.2.1996 or 23.12.1996 etc. and when the petitioners herein are the similarly placed/situated, for regularisation of their services with effect from the date of their initial appointment, it is the duty of the respondents to implement the same in letters and spirit.

8. Lastly, it is the contention of the Learned counsel for the petitioners that the petitioners were duly qualified and eligible for selection and were appointed. Even at the time of initial appointment, they were sponsored through employment exchange and were successfully performed in the interview and were appointed to the respective posts and the communal roster has also been duly and scrupulously followed. Therefore, the petitioners are eligible for regularisation of their services with effect from the date of their initial appointment.

9. It transpires from the representation of the petitioners dated 1.5.2012 addressed to the second respondent that a request was made to regularise their services from the date of their initial appointment. A cursory perusal of the contents of the said representation shows that the second respondent Board in its Proceedings No. TNPCB/Law/LA1/18942/2010 dated 18.2.2012 has directed to regularise the services of S. Arul Doss, Electrician from the date of creation of the post of Electrician and further directed that he was entitled to all consequential benefits including monetary benefits for the period of retrospective regularisation. That apart, the representation of the petitioner dated 1.5.2012 addressed to the second respondent also refers to other persons, whose services were regularised from the date of their first engagement, by the second respondent in its proceedings No. TNPCB/P7/002970/2011 dated 28.1.2012 and TNPCB/LAW/LA/019638/11 dated 17.2.2012 (relating to A.J. Balakumar and 5 others and Manivannan respectively).

10. It cannot be gainsaid that in respect of the similarly placed persons, if an earlier order has been passed (based on the same set of facts and circumstances

of the case), then the same yardstick/bar/measures will have to be applied in administrative action by the authorities concerned. In fact, the authorities concerned cannot apply a different yardstick or show any kind of discrimination, thereby challenging Articles 14 and 16 of the Constitution of India. To put it differently, similarly placed persons are to be treated alike whether they have approached this Court to secure orders in their favour or not. However, on going through the impugned order of the second respondent in (***)7-6426-12 (***)1/6/2012 (in respect of 23 persons mentioned therein) indicates latently and patently that a specific mention was made to the effect that for the persons, who have obtained orders from the High Court in their favour as regards the regularisation of their services with retrospective effect alone, appointment orders have been issued with retrospective date.

11. In the instant case on hand, although the petitioners have sought for a Writ of Mandamus praying for issuance of an order in directing the respondents to regularise their services in their respective posts with retrospective effect from the date of their initial appointment and to provide them with all consequential benefits including monetary benefits, this Court is of the considered view that the second respondent ought to have considered the representation of the petitioners dated 1.5.2012 by taking into account the order of this Court in W.P. No. 9969/2010 dated 18.4.2011 in the case of S. Arul Doss v. Government of Tamil Nadu and another. However, the second respondent through the impugned order dated 1.6.2012 has stated that only those employees, who secured orders from the High Court in their favour, with regard to regularisation of their services with retrospective effect from the date of their initial appointment, were given appointment orders. This kind of observation in the impugned order of the second respondent dated 1.6.2012 does not fit within the parameters of law in the considered opinion of this Court. As such, this Court is left with no option, but to interfere with the said impugned order of the second respondent dated 1.6.2012 and to set aside the same in the interest of substantial cause of justice.

12. In the result, this Court directs the second respondent/Tamil Nadu Pollution Control Board, Chennai to consider the representation of the petitioners dated 1.5.2012 addressed to the second respondent afresh based on merits and also after taking into account the order of this Court dated 18.4.2011 made in W.P. No. 9969/2010 between S. Arul Doss and the Government of Tamil Nadu and another, and to pass a reasoned speaking order within a period of six weeks from the date of receipt of the copy of this order (of-course after providing necessary opportunity to the petitioners, if the situation warrants). With the above directions, the writ petition is disposed of. No costs.

(***) vernacular language/ local language.