

(2009) 04 MAD CK 0063

In the Madras High Court

Case No : Writ Petition No. 1175 of 2005

G. Viswanathan and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 04 MAD CK 0063

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : G. Elanchezhiyan, for the Appellant; N. Senthil Kumar, Additional Government Pleader, for the Respondent

Judgement

V. Dhanapalan, J.—This writ petition has been filed challenging the order dated 24.12.2004 whereby and whereunder the second

respondent rejected the proposal of the third respondent for regularisation of the petitioners services on completion of 480 days.

2. According to the petitioners, they were initially appointed as NMRs (Non-Muster Roll) in the TWAD Board during the year 1983-1984 and

they have been continuously working and are maintaining the distribution of Alandur and Pallavaram combined Water Supply scheme. However,

during the year 1985, the Board took steps to terminate their services since they have been continuously working in the board for more than two

years. Hence, the petitioners moved this Court in W.P. No. 537 and 538 of 1985 with W.M.P.Nos.890 and 891 of 1985 praying for an interim

injunction restraining the respondents from terminating the services of the petitioners. This Court in the injunction petitions, has ordered on

28.1.1985 as follows:

That an injunction issued to the respondents 1 to 3 (W.M.P.890/85) and 1 to 4 (in W.M.P.891/85) herein restraining them from terminating the

services of the petitioner in each of the petitions pending further orders on these petitions"" Subsequent to the above order, the petitioners were

allowed to do their duties and this Court on 25.6.94 in W.P.537 and 538 of 1985 passed the following order:

Under the circumstances, the writ petitions succeed and is allowed by directing the respondents 2 to 3 to regularise the service of the petitioners in

terms of the aforesaid act in case the petitioners have completed 480 days of uninterrupted service within a period of 24 months and they be still in

service of the respondents 2 and 3. There will be, however, no order as to costs.

3. It is the further case of the petitioners that during the year 1986, the Alandur-Pallavaram combined water supply scheme was ordered to be

handed over to the concerned Municipalities and the TWAD Board has written to the Alandur Municipality to engage these workers continuously.

Accordingly, the petitioners services were utilised by the Alandur Municipality on 31.1.1986 after getting concurrence from the Government.

However, the salary was paid only by the TWAD Board. The Secretary to Government, Municipal Administration and Water Supply Department

has issued G.O.Ms. No. 56 dated 16.3.95 regularising the services of the petitioners after completion of ten years of services (counting from the

date of first appointment in the TWAD Board) and brought under time scale of pay from that date.

4. According to the petitioners, the Government order passed in G.O.56 dated 16.3.95 is against the order of this Court in W.P.537 and 538 of

1985 dated 25.6.94. According to them they have become entitled to the permanent status under the Tamil Nadu Industrial Establishment

(conferment of permanent status to workman) Act 1981 since they have completed 480 days of uninterrupted service within a period of 24

months. The respondents have not denied their service but their stand is that they are not governed by the said Act. Further the above matter has

been decided by a Division Bench of this Court in TWAD Board and Anr. v. M.D. Vijayakumar etc in Writ appeal Nos. 917 and 918/87 dated

11.10.90 and followed by this Court in W.P.8700/84 dated 28.7.93 and in W.P.8919/84 dated 21.3.94. This Court in W.P.537 and 538 of

1984 dated 25.6.94 has ordered for the regularisation of service of the petitioners after completion of 480 days of uninterrupted service within a period 24 months. That order has become final as the respondents have not preferred any appeal against the said order.

5. It is further stated by the petitioners that after G.O.56 dated 16.3.95, the 3rd respondent in his proceedings Na.Ka. No. 426/86/E1 dated

31.5.95 has ordered to bring the petitioners under time scale of pay with immediate effect. It is further submitted that those persons working in the

TWAD Board has already been given the benefits as ordered in W.P. No. 537 of 1985 dated 25.6.94 and the persons who have been sent to

Alandur Municipality were alone denied the benefits.

6. The petitioners further submit that they have jointly given a representation to the Chairman, Alandur Municipality and the first respondent on

14.12.98 for giving regularisation benefits as ordered in W.P.537 of 1985. It is further submitted that the third respondent in Na.Ka. No.

2259/99/E1 dated 25.2.2002 and again on 11.10.2002 has sent proposal to the first respondent and second respondent for implementing the

order of this Court in W.P.537/1985 since some of the few personnel of Alandur Municipality are retiring very shortly. However, the second

respondent in his proceedings in Na.Ka. No. 225/2003/F2 dated 18.3.2003 has rejected the proposal against the order of this Court in

W.P.537/1985 dated 25.6.94 and that order is challenged in this writ petition.

7. The third respondent has filed counter and the first respondent adopted the same and submitted that petitioners were previously engaged as

NMRs by TWAD Board and they have come under the control of Alandur Municipality on 31.1.1986. For the previous period, the wages were

paid to the workers by the TWAD Board. As ordered in G.O.Ms. No. 56 dated 16.3.1995, their services have been regularized by the Alandur

Municipality and there are no provisions in the rules to regularize the services rendered in other than Municipality.

8. It is further stated in the counter that the petitioners cannot claim the permanent status for services rendered in TWAD Board. The Tamil Nadu

Industrial Establishemnt (Conferment of Permanent Status to Workman) Act 1981 shall not be applicable to the Municipalities. The petitioners

completed 480 days in TWAD Board before their regularization by the

Municipality.

9. According to the counter, the petitioners can approach their employer i.e. TWAD Board for their remedy. The second respondent has passed

orders in Roc.225/03/F2 dated 18.3.2003 that the service rendered in the contingency post cannot be considered for the purpose of pensionary

benefits under Rule 12 of the Tamil Nadu Municipal Pension Rules 1978. Therefore, they pray for the dismissal of the writ petition.

10. Heard Mr. G. Elanchezhiyan, learned Counsel for the petitioner, Mr. N. Senthil Kumar, Additional Government Pleader for the respondents 1

and 2 and Mr. M.R. Jothimanian, learned Counsel for the third respondent.

11. Learned Counsel for the petitioners would contend that the impugned order passed by the second respondent is against the order dated

25.6.94 in W.P.Nos.537 and 538 of 1985 which says that the petitioners service should be regularised on completion of 480 days within the

period of 24 months. He further contended that granting retrospective regularisation benefits to the similarly placed persons and denying the same

to the petitioners without any basis is discriminatory and thus violates Article 14 of the Constitution of India.

12. Per contra, learned Counsel for the third respondent contended that petitioners cannot claim the permanent status for services rendered in

TWAD Board as they are not governed by the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act 1981 and

hence they can approach TWAD Board for their remedy.

13. I have considered the rival submissions and perused the material documents.

14. It is seen that the petitioners were initially appointed as NMRs (Non-Muster Roll) in the TWAD Board during the year 1983-1984 and they

have been continuously working and are maintaining the distribution of Alandur and Pallavaram combined Water Supply scheme. When the

TWAD Board took steps to terminate the services of the petitioners, immediately the petitioners moved this Court in W.P.Nos.537 and 538 of

1985 and this Court in the above injunction petition restrained respondents 1 to 3 from terminating the services of the petitioner pending further

orders. However by final order dated 25.6.94 in the above main writ petition, this Court allowed the writ petition directing the respondents 2 and 3

to regularise the service of the petitioners in terms of the aforesaid Act (Tamil

Nadu Industrial Establishment(Conferment of Permanent Status to workman) in case the petitioners have completed 480 days of uninterrupted service within a period of 24 months and that order has become final and the applicability of the Act in question has already been decided by this Court. It is also seen that the petitioners were previously employed by the TWAD Board and later on they were brought under the control of Alandur Municipality on 31.1.1986 and their services are governed by Municipal Rules. Since the order dated 25.6.94 in W.P. No. 537 and 538 of 1985 is applicable to the petitioners, the order has to be necessarily implemented. Hence, the third respondent has the duty to implement the above order. The order passed by the second respondent rejecting the proposal of the third respondent is contrary not only to the order of this Court passed in W.P.Nos.537 and 538 of 1985 dated 25.6.1994 but also contrary to the established rules. Further more, the services rendered by the petitioners cannot be denied at this stage as the issues in questions have reached finality in the earlier order of this Court.

15. For the foregoing reasons, the rejection order passed by the second respondent is set aside and the third respondent is directed to take appropriate steps to implement the order passed in W.P.Nos.537 and 538 of 1985 dated 25.6.1994 and extend the benefits to the petitioners which has already been granted to the persons working in the TWAD Board.

16. The writ petitions stands allowed with the above direction. No costs.