
(2006) 04 MAD CK 0270
In the Madras High Court
Case No : Writ Petition No. 26199 of 2005 (T)

S. David

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 20-04-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 04 MAD CK 0270

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : R. Govindaraj, for the Appellant; D. Malarvizhi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to quash G.O.Ms. No. 545, Public Works Department, dated 6.7.1995

issued by the first respondent and the consequential proceedings dated 30.8.1995 issued by the third respondent so far as the petitioner is

concerned in respect of fixation of date of monetary effects and issue direction to the first respondent to re-fix the date of monetary effects as

1.7.1987 instead of 1.6.1992 with all subsequent benefits accrued.

2. The brief facts necessary for disposal of the writ petition are that the petitioner was appointed as Mazdoor by the Executive Engineer, Public

Works Department on 1.10.1976. Initially, the petitioner was appointed on temporary basis and after ten years of petitioner's service, since he

was retrenched, he raised an industrial dispute. Pursuant to the reference made by the Government in G.O.Rt. No. 1270 (Labour) dated

12.9.1979, I.D. No. 270 of 1979 was proceeded with and an award was passed

on 20.4.1982 in favour of the petitioner, reinstating him into service with backwages.

3. The first respondent, thereafter, issued G.O.Ms. No. 193, Public Works (C2) Department, dated 25.1.1990 and ordered provincialisation of service of N.M.Rs, who have put in ten years of service as on 31.12.1986 and directed the services of 614 N.M.Rs, who have completed ten years of service as on the above date be provincialised and brought to regular establishment with effect from 1.1.1987 whether they are qualified or not. The petitioner's name did not find place in the list of 614 candidates.

4. The first respondent, thereafter, issued G.O.Ms. No. 545, Public Works (C2) Department, dated 6.7.1995 and issued orders regularising the services of N.M.Rs. who have completed ten years of service up to 31.12.1986. In the annexure attached to the said Government Order, the petitioner's name was also included, wherein it is stated that the petitioner's service is regularised from 1.7.1987, however monetary benefits would be effected only from 1.6.1992. The non-payment of monetary benefits from 1.7.1987 to 31.5.1992 is challenged in this writ petition on the ground that the petitioner is discriminated while regularising the services along with others.

5. The grievance of the petitioner is that the petitioner is entitled to regularisation along with 614 candidates and non-regularisation of the petitioner's service is the fault of the Department. The respondents having rectified their mistake by giving regularisation to the petitioner from 1.7.1987, ought not to have restricted the monetary benefits from 1.6.1992, and therefore, the impugned order is in violation of Articles 14 and 16 of the Constitution of India.

6. The respondents have filed a counter affidavit and in the counter affidavit it is stated that the petitioner was not given monetary benefits for the earlier period as the petitioner was already given relaxation with respect to his qualification and the petitioner having been given one concession is not entitled to get another concession of b2 getting relaxation with retrospective effect.

7. The learned Counsel for the petitioner states that the non-regularisation of the petitioner from 1.1.1987 along with 614 others is the fault of the respondents for which the petitioner cannot be penalised. In fact, the second

respondent in his letter dated 21.12.1993 brought to the notice of the Government a list of 65 N.M.Rs., who have been omitted to be included in the government orders issued in G.O.Ms. No. 140, Public Works Department, dated 3.2.1981 and G.O.Ms. No. 788, Public Works Department, dated 1.6.1992 and the second respondent requested the Government to pass orders for bringing them under regular establishment.

8. I have considered the rival submissions made by the learned Counsel for the petitioner as well as the learned Government Advocate in the light of the affidavit and counter affidavit.

9. The point in issue is whether the petitioner is entitled to get salary pursuant to the regularisation from 1.7.1987 to 31.5.1992.

10. The petitioner has been granted relaxation of qualification without any condition that the monetary benefits are available from the date of

regularisation. It is not open for the respondents to now contend that the petitioner has been given one concession and not entitled to another

concession. Once relaxation is granted, the benefits following out of the relaxation are also to be given unless it is restricted in the order of

relaxation itself. A perusal of the grant of relaxation of the qualification does not disclose that the Government, while granting relaxation restricted

the regularisation and pay only from the date of relaxation. In the absence of such a clause it has to be treated that the relaxation is granted to the

petitioner from the date of appointment and not from any subsequent date. The submission of the learned Counsel that the second respondent has

already recommended that the petitioner is also similarly placed as that of 614 others has to be accepted in the light of the said facts, particularly

the grant of relaxation without any condition. The action of the respondents in not granting regular pay from 1.7.1987 and giving monetary benefits

only from 1.6.1992 is therefore, unsustainable and is in violation of Articles 14 and 16 of the Constitution of India.

11. It is not in dispute that the petitioner also worked continuously from 1.7.1987 and therefore, there is no justification to deny salary to the

petitioner, which he is entitled to as others similarly placed, who were paid the monetary benefits from 1.7.1987. Hence, the restriction of

monetary benefit from 1.6.1992 instead of 1.7.1987 is set aside and the respondents are directed to pay the monetary benefits payable to the

petitioner from 1.7.1987 and consequential revision of salary and arrears of pay. Necessary orders shall be passed by the first respondent within eight weeks from the date of receipt of copy of this order. This writ petition is allowed. No costs.