
(2010) 12 MAD CK 0109

In the Madras High Court

Case No : Writ Appeal (MD) No's. 665 and 666 of 2010 and M.P. (MD) No. 2 of 2010 in WA (MD) No. 665 of 2010 and M.P (MD) No's. 2 and 3 of 2010 in WA (MD) No. 666 of 2010

The Managing Director, The Executive Engineer, Maintenance
Division and The Assistant Executive Engineer, Tamil Nadu
Water Supply and Drainage Board

APPELLANT

Vs

The Inspector of Labour and Others

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Citation : (2010) 12 MAD CK 0109

Hon'ble Judges : T. Raja, J;R. Banumathi, J

Bench : Division Bench

Advocate : Sudarsana Sundar, for the Appellant; J. Ashok, for 1 to 7 in WA 665/2010 and Jeyapaul, Associates and RR 2 to 18 in WA 666/2010, for the Respondent

Judgement

R. Banumathi, J.—These two writ appeals arise out of the orders of the learned Single Judge, dated 19.11.2009, made in W.P. (MD)Nos.4205/2005 and 6000/2005, whereby the learned single Judge declined to interfere with the award passed by the 1st respondent herein directing conferment of permanent status upon the contesting respondents/employees.

2. Brief facts are that Tamil nadu Water Supply and Drainage Board (in short "TWAD Board") is to execute water supply schemes in the State at the instance of the Government. After the completion of the scheme, the same will be handed over to the local bodies concerned for maintenance, along with staff. The Government found that the schemes were not properly maintained by the local bodies and hence those schemes were handed over to TWAD Board, pursuant to the Government's Instructions issued in G.O.(O)454, dated 22.08.1995, without workmen attached to the Scheme, for further maintenance by TWAD Board. G.O.Ms.No. 261, Municipal Administration and Water Supply Department, dated 14.10.1996, was issued by the Government for appointment of persons on

consolidated basis, with annual increment at 10% of their pay, for a period of five years, in the category of Electrical Superintendent, Electrician, Fitters, Maintenance Assistants, etc. The persons who had been working with the local bodies and drawing honorarium pay were appointed only for a period of five years.

3. The contesting respondents/employees in both the writ appeals were also appointed, pursuant to the said G.O.Ms.No. 261, dated 14.10.1996, way-back in 1998 and were working in TWAD Board's Water Schemes. The contesting respondents/employees filed petitions before the 1st respondent seeking to confer permanent status on the ground that they have completed 480 days of service. Before the 1st respondent, the official witness, spoken on behalf of TWAD Board, has stated that recommendations were made to the higher authorities concerned for appointing the contesting respondents on permanent basis, on the ground that they have completed 480 days. Based on the said statement of the official witness, the 1st respondent passed awards directing TWAD Board to confer permanent status on the contesting respondents/employees from the date on which they have completed 480 days of continuous service.

4. Challenging the said awards, TWAD Board filed W.P.(MD)Nos.4205 and 6000 of 2005 before this Court. By a common order dated 19.11.2009, the learned Single Judge dismissed the writ petitions holding that the awards passed by the 1st respondent are based on the statement of the official witness that TWAD Board has recommended to the higher authorities concerned for appointment of the contesting respondents/employees on permanent basis on the ground that they have completed 480 days of service and while so, TWAD Board cannot take a different. Challenging the orders of the learned Single Judge, TWAD Board has filed these writ appeals.

5. Learned Counsel for TWAD Board Mrs.Sudarsana Sundar contended that the contesting private respondents were working in panchayats under various Combined Water Supply Schemes (in short "CWSS") and subsequently when the Schemes were taken over by TWAD Board, the contesting private respondents, who were working in local bodies under various CWSS, were appointed in TWAD Board pursuant to the Government Orders in G.O.Ms.No. 261, MA & WS Department, dated 14.10.1996, and they joined in TWAD Board on various dates in between 20.03.1998 and 01.04.1998. It was further submitted that when the contesting private respondents were appointed in TWAD Board only on consolidated pay basis, the 1st respondent Authority erroneously came to the conclusion that the contesting private respondents are entitled for regularization and directed the 2nd appellant to confirm the services of the contesting private respondents from the date on which they completed 480 days of service and such an order is unsustainable in law. It was further submitted that in G.O.Ms.No. 111, MA & WS Department, dated 29.09.2006, the services of 872 employees, working on consolidated pay, were regularized with effect from

01.08.2006 and the contesting private respondents/employees can claim benefit of regularisation only from 01.08.2006 and not earlier than that and therefore the learned Counsel for the appellants would submit that the benefit of G.O.Ms.No. 111, dated 29.09.2006, could be extended to the contesting private respondents/employees.

6. Learned Counsel appearing for the contesting private respondents would submit that though the contesting private respondents joined in TWAD Board pursuant to the Government Order in G.O.Ms.No. 261, dated 14.10.1996, and continuing in the services of TWAD Board till date, their initial appointment was in the years 1988 and 1999 under various Combined Water Supply Schemes executed by TWAD Board and thereafter only they were transferred to the local bodies along with the Schemes and therefore they are entitled to be regularised from the date of their initial appointment at the time when the Schemes were executed by the Board. Therefore, according to the learned Counsel for the contesting private respondents, the 1st respondent Authority was right in directing the appellants to confer permanent status on the contesting private respondents from the date on which they have completed 480 days of service and therefore the order of the Authority does not warrant any interference.

7. The main function of the Appellant TWAD Board is to execute Water Supply Schemes at the instance of the Government. After the schemes were completed, the Schemes would be handed over to the concerned local bodies for maintenances, along with staff. Combined Water Supply Schemes were under the control of panchayats. The Government found that such Schemes were not properly maintained by the local bodies and hence the Schemes were handed over to TWAD Board pursuant to the Government's instructions in G.O.Ms.No. 454, dated 22.08.1995, without workmen attached to the Schemes. For further maintenance of such CWSS by TWAD Board, the Government issued G.O.Ms.No. 261, MA & WS Department, dated 14.10.1996, permitting the Managing Director of the Board to appoint 2037 persons, on consolidated pay, to maintain 383 CWSS with annual increment of 10% of their pay for five years in respect of the following categories.

1.Electrical Superintendents Rs.2,500/- p.m.

2.Electricians Rs.2,000/- p.m.

3.Fitters Rs.1,500/- p.m.

4.Maintenance Assistants Rs.1,000/- p.m.

The contesting private respondents were appointed pursuant to the said G.O.Ms.No. 261, dated 14.10.1996 and they joined the Board on various dates in between 20.03.1998 and 01.04.1998.

8. By the proceedings dated 22.10.1999 and 08.02.2000, the Executive Engineer, Maintenance Division, Madurai, has sent proposals for regularizing the services of the contesting private respondents stating that they have completed 480 days of

continuous service in TWAD Board within a period of 24 calendar months. At that juncture, the proceedings of the Managing Director, TWAD Board in B.P.Ms.No. 108, TWAD (WCE.Sec.) Wing, dated 29.05.2000, came to be passed appointing honorarium paid employees on consolidated pay with effect from 01.06.2000 against the posts sanctioned in G.O.Ms.No. 261, MA & WS Department, dated 14.10.1996. In the said proceedings, the Managing Director has referred to the engagement of part-time workers by the local bodies, which were taken over the Schemes and the appointment of persons in the Board on consolidated pay with effect from 01.06.;2000. The relevant portion of the said proceedings reads as under:

At the time of taking over of the C.W.S.S. from the local bodies for further maintenance, the maintenance staff engaged as part-time workers by the local bodies, were also taken over with the schemes. They were receiving honorarium ranging from about Rs.85/- to Rs.114/- per month, in the local bodies and the same amount was being paid in TWAD Board also....

Accordingly, the Board directs to appoint 368 Nos. of honorarium paid employees (vide Annexure) on consolidated pay with effect from 01.06.2000 against the posts sanctioned in G.O.Ms.No. 261, MA & WS (W8.5) Department, dated 14.10.96 as follows:

1. Fitter .. 1 No. at Rs.1500/- per month

2. Maintenance .. 367 Nos. at Assistants Rs.1000/- per month.

9. Even though 368 persons were appointed in TWAD Board on consolidated pay with effect from 01.06.2000, either the proposals for regularizing the services were not considered or the benefits of the said proceedings were not extended to the contesting private respondents. It was thereafter the contesting private respondents filed petitions before the 1st respondent Authority for confirmation of permanent status. The 1st respondent Authority directed TWAD Board to confer permanent status mainly on the basis of the statement of M.W.1 (Executive Engineer) who has admitted in his evidence that proposals were sent for regularizing their services. Based on the said statement, even though the 1st respondent Authority directed the TWAD Board to regularize the services, the 1st respondent did not keep in view the date of actual joining of the contesting private respondents in TWAD Board i.e. 01.04.1998 nor the dates of sending the proposal for regularization i.e. 29.10.1999 and 08.02.2000.

10. As pointed out earlier, the contesting private respondents joined TWAD Board only on 01.04.1998 and continued to work in TWAD Board. Their previous services were rendered in the respective panchayats. The contesting private respondents were appointed in TWAD Board pursuant to G.O.Ms.No. 261 and joined the Board only on 01.04.1998. Without keeping in view the purport of G.O.Ms.No. 261 and the fact that the contesting private respondents joined TWAD Board only on 01.04.1998, the 1st respondent authority was not right in directing regularization of the services of the contesting private respondents from

the date of their joining at the time of execution of water supply schemes i.e. in 1987, 1988, 1990, etc. Since the contesting private respondents were previously working under the panchayats under various CWSS and subsequently appointed on consolidated pay basis in TWAD Board only on 01.04.1998 pursuant to G.O.Ms.No. 261, dated 14.10.1996, the 1st respondent Authority was not right in directing TWAD Board to regularise the services of the contesting private respondents from the date of their joining. It is also pertinent to note that in the impugned order the 1st respondent authority has not indicated the details of the services rendered by the contesting respondents and the place of their working.

11. The learned Single Judge mainly proceeded under the footing that the Management witness himself has admitted that recommendations have been made to the higher authorities concerned for appointment of the employees on permanent basis on the ground that they have completed 480 days of service. As pointed out earlier, M.W.1, the Executive Engineer, has sent the proposals on 22.10.1999 and 08.02.2000 recommending regularisation on completion of 480 days service commencing from 01.04.1998. The 1st respondent did not keep in view that previously the contesting respondents were working in local bodies under CWSS on honorarium/daily wages and joined in the Board only on 01.04.1998. The regularisation in TWAD Board could only be from 01.04.1998 i.e. the date of their joining in TWAD and not earlier than that.

12. The next point to be considered is as to the monetary benefit to be given to the contesting private respondents. The learned Counsel for TWAD Board has drawn our attention to G.O.Ms.No. 111, Municipal Administration and Water Supply (WSS) Department, dated 29.09.2006, whereby the Government has accepted the proposal of the Managing Director, TWAD Board, and permitted the Managing Director to regularise the services of 872 consolidated pay employees of TWAD Board in the category of Electricians, Fitters and Maintenance Assistants who were appointed prior to 02.03.2001 and bring them into regular time scale of pay with effect from 01.08.2006. When similarly placed employees have been given benefit of regularisation with effect from 01.08.2006, the contesting private respondents are entitled for the same monetary benefit only from 01.08.2006, as per the said G.O.Ms.No. 111, dated 29.09.2006. It was submitted that some of the contesting private respondents are not having the requisite qualification or age relaxation as required and TWAD Board has written to the Government for obtaining necessary relaxation from the Government. After obtaining necessary relaxation from the Government, the appellant shall regularise the services of the contesting respondents from 01.04.1998 by giving them monetary benefit from 01.08.2006.

13. In view of the above, the order of the learned Single Judge in W.P. (M)Nos.4205 and 6000 of 2005, dated 19.11.2009 and also the order of the 1st respondent Authority are modified and these writ appeals are partly allowed. The appellants are directed to regularise the services of the contesting private respondents with effect from 01.04.1998, the date on which they joined in TWAD

Board in the time scale of pay, with monetary benefit from 01.08.2006 as per G.O.Ms.No. 111, Municipal Administration and Water Supply (WSS) Department, dated 29.09.2006. No order as to costs. Connected miscellaneous petitions are closed.