

M.Durai. Vs. the Superintendent Engineer

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Court : Chennai

Decided On : Jul-04-2012

Judge : Vinod K.Sharma, J.

Acts : [Constitution of India](#) - Articles 14, 16

Appeal No. : W.P.No.9420 of 2007 (O.A.No.2554 of 2002)

Appellant : M.Durai

Respondent : The Superintendent Engineer

Advocate for Def. : Mr.R.Vijayakhumar, Adv.

Advocate for Pet/Ap. : Mr.L.Chandrakumar, Adv

Judgement :

PRAYER:This petition came to be numbered by transfer of O.A.No. 2554 of 2002 from the file of the Tamil Nadu Administrative Tribunal, for issuance of a writ in the nature of mandamus, directing the respondents to consider the claim of the petitioner for regularisation of his services to any one of the suitable posts forthwith as per Government order and to extend all consequential benefits arising thereto.

ORDER

1. The petitioner was appointed as casual labourer on daily wages in the year 1998 and has been continuous service till date without any break except notional break of one day. The petitioner on the date of filing the Original Application before the learned Tamil Nadu Administrative Tribunal had put in five years of continuous service.

2. The petitioner moved an application for regularisation of service, on the plea that the Government was considerate enough to regularise the service of the persons like that of the petitioner immediately on completion of 5/10 years of service.

3. It is the stand of the petitioner, that he is fully eligible for being considered for appointment on regular basis as Technical Assistant Grade II. It is also the stand of the petitioner that as per the Industrial Dispute Act, the person was entitled to regularisation on completion of 240 days. Therefore, non-consideration of the claim of the petitioner for regularisation is violative of Article 14 and 16 of the [Constitution of India](#).

4. The writ petition as framed is not competent as under G.O.Ms.No.22 on which reliance is sought to be placed, 10 years service was stipulated for regularisation whereas the petitioner completed only five years of service on the date of filing the application. Even under Industrial Dispute Act, no person can claim regularisation on completion of 240 days service in a year, except to claim benefit under 25F of the Industrial Dispute Act.

5. Even otherwise also, as per the authoritative pronouncement by the Hon'ble Supreme Court, the State Government cannot regularise the service of the persons appointed through backdoor. Any such instruction giving right of regularisation to persons appointed through backdoor is hit by Article 14 and 16 of the [Constitution of India](#).

6. The contention of the learned counsel for the petitioner that as on date, the petitioner has completed more than 10 years of service, therefore, entitled to regularisation, cannot be accepted, as it is well settled law, that rights of the parties are determined on the date of filing the petition, not on the date when the

matter is heard by the Court.

7. In view of the law laid down by the Hon'ble Supreme Court and especially keeping in view of the fact that as on the date of filing the original application, the petitioner was not covered by the Government instruction on which reliance is placed, there is no merit in the writ petition, which is accordingly ordered to be dismissed. But with no order as to cost.

8. However, it is made clear that in case service of the petitioner had been regularised during pendency of the writ petition, no adverse order be passed in view of the order passed by this Court.

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