

WEB COPY



THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2025

PRONOUNCED ON : 26.03.2025

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

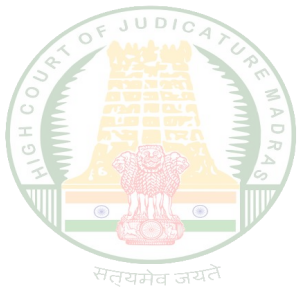
**W.A.No.738 of 2025
and
C.M.P.No.6249 of 2025**

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Public (Maintenance) Department,
Secretariat,
Chennai - 600 009.
 - 2.The Under Secretary to Government,
Public (Maintenance) Department,
Secretariat,
Chennai - 600 009.
- Appellants / Respondents

versus

- 1.A.Balakrishnan
 - 2.B.Sarasu
 - 3.E.Santhi
 - 4.S.Nageswari
 - 5.A.C.Prabudoss
- Respondents / Petitioners

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order passed in W.P.No.18248 of 2020 dated 19.12.2023.



For Appellants : Mr.P.Kumaresan
Additional Advocate General
Assisted by Mr.P.Ananda Kumar
Government Advocate

WEB COPY

For Respondents : Mr.A.R.Suresh
for Mr.K.Arumugam - R1 to R4
Door Locked - R5

JUDGMENT

(Judgment of the Court was made by **G.ARUL MURUGAN, J.**)

This Writ Appeal challenges the order dated 19.12.2023 made in W.P.No.18248 of 2020, wherein the order of the first appellant was set aside and the services of the respondents were directed to be regularised on completion of 10 years of their services with all consequential benefits.

2. The respondents were appointed as Mazdoors on daily wage basis with effect from 1989 to 1990 in the Secretariat. Their respective dates of appointments are as given below:-

<i>Name</i>	<i>Date of Appointment</i>
A.Balakrishnan	05.04.1989
B.Sarasu	31.03.1989
E.Santhi	05.02.1990
S.Nageswari	24.09.1990
A.C.Prabudoss	21.04.1990



WEB COPY

3. In respect of several others who were also working as Mazdoors along with the respondents, their services were regularised through separate Government Orders issued in G.O.(Ms.)No.764 Public (Maintenance) Department dated 08.07.1997, G.O.(Ms.)No.457 Public (Maintenance) Department dated 30.03.2000 and G.O.(Ms.)No.835 Public (Motor Vehicles) Department dated 28.06.2000. But however, when the proposal for regularising the services of the respondents in the available vacant posts was sent in the year 2001 itself, still the services of the respondents were not regularised citing the ban imposed by the Government in G.O.(Ms.)No.212 Personnel & Administrative Reforms (P) Department dated 29.11.2001 [hereinafter referred to as “G.O.(Ms.)No.212 dated 29.11.2001”]. Eventually, the services of the respondents only came to be regularised *vide* two separate Government Orders in G.O.(Ms.)No.1016 Public (Maintenance) Department dated 21.09.2006 and G.O.(Ms.)No.4565 Public (Maintenance) Department dated 29.11.2007.

4. The persons who got regularisation prior to 2003 came under the regular pension scheme. But since the services of the respondents were regularised after 2003, they were only covered under the Contributory Pension Scheme (hereinafter referred to as “CPS”) introduced by the Government with effect from 01.04.2003. In this regard, relying on the



Government Orders issued in G.O.(1D)No.286 School Education (G.E.), Department dated 19.07.2016, wherein services of 26 persons were regularised with effect from 1998 onwards, and another G.O.(Pa)No.72 School Education (G.E) Department dated 28.02.2019 whereby the services of 11 persons were also regularised from 1998 onwards, the respondents have made a representation to regularise their services with effect from the date of submission of the proposal, i.e., 2001 onwards.

5. The respondents had also relied on G.O.(Ms.)No.524 Personnel & Administrative Reforms (P) Department dated 06.06.1983 [hereinafter referred to as “G.O.(Ms.)No.524 dated 06.06.1983”], wherein the Mazdoors who had put in continuous service of 5 years on daily wage basis were to be regularised. However, the first appellant, by order dated 22.05.2020 rejected the claim of the respondents on the ground that since their services had been regularised only after 01.04.2003 by which the CPS had come into effect, only the new scheme will be applicable to them and they cannot be brought under the old pension scheme. Assailing the rejection, the respondents preferred the writ petition.

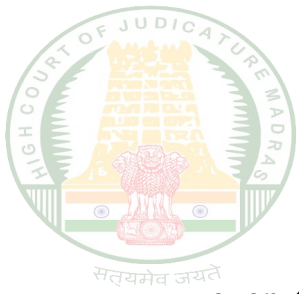
6. The writ court, by considering the fact that similarly placed persons like the respondents have been regularised in view of



G.O.(Ms.)No.524 dated 06.06.1983 on completion of 5 years of service on daily wage basis and also taking into account that the respondents have completed 10 years of service from the years 1998-2000 and further the proposals for their regularisation had already been sent in the year 2001 itself, set aside the impugned order and had directed the appellants to regularise the services of the respondents with effect from the date of completion of 10 years of service. Aggrieved, the State is on appeal.

7. Mr.P.Kumaresan, learned Additional Advocate General, instructed by Mr.P.Ananda Kumar, learned Government Advocate, appearing for the appellants contended that, even as per G.O.(Ms.)No.524 dated 06.06.1983, the service of Mazdoors on completion of 5 years of service is considered for regularisation only on seniority based on the available vacancies.

8. He further contended that 49 Mazdoors were engaged between the years 1983 and 1990 and as per the available vacancies, the services of the eligible persons were regularised periodically. When the respondents became eligible in view of the vacancies, the Government had issued G.O.(Ms.)No.212 dated 29.11.2001 by which a ban was imposed on filling up of the regular vacancies.

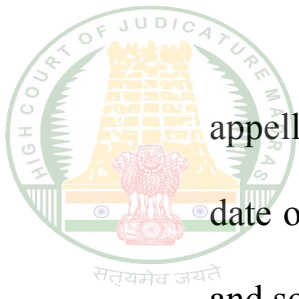


WEB COPY

9. Learned Additional Advocate General further contended that even though by G.O.(Ms.)No.49 Personnel & Administrative Reforms (F) Department dated 14.05.2002, the Government had ordered that the work of all Group “D” categories shall be progressively outsourced, still the respondents were considered for regularisation of their services.

10. It is his further contention that the respondents were irregularly appointed as they have not been sponsored through Employment Exchange and since they did not possess the necessary qualification and crossed the age criteria, the Government had issued orders regularising the services of the respondents after relaxing the required criteria. Admittedly, when the services of the respondents were regularised only on 21.09.2006 and 29.11.2007 respectively, by which dates the CPS had already been introduced with effect from 01.04.2003, the respondents cannot claim for retrospective regularisation as the regularisation can take effect only from the date of issuance of the order.

11. He further submitted that though the learned Judge had found that there was a ban imposed in G.O.(Ms.)No.212 dated 29.11.2001 and only due to which there was a delay in regularisation, still had directed the



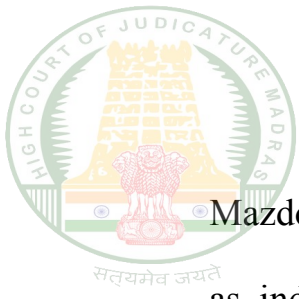
appellants to regularise the services of the respondents with effect from the date of completion of 10 years of service, which is erroneous, he contended and sought for indulgence of this Court.

WEB COPY

12. Mr.A.R.Suresh, learned counsel, instructed by Mr.K.Arumugam appearing for the respondents 1 to 4 by relying on the various orders issued by the Government contended that when the Government had issued orders regularising the services of several persons with effect from 1998 onwards and had extended the benefits of pension, the appellants cannot discriminate the respondents alone.

13. It is his further contention that when the vacancy was available in the year 2001 and the respondents were also recommended for regularisation of their services, there was no impediment for the appellants in granting regularisation but the same has been delayed, citing the ban, which will no way be impediment for grant of regularisation.

14. Heard the rival submissions and perused the materials available on record.



15. It is not in dispute that the respondents have been appointed as Mazdoors in the Secretariat in the years 1989-1990 on the respective dates as indicated above. The Government had issued G.O.(Ms.)No.524 dated 06.06.1983 by which the temporary daily wage employees who have been working continuously for more than 5 years in the Public (Maintenance) Department in the Secretariat are to be regularised. The Government Order also provides that the exemptions has to be provided wherever required for grant of regularisation.

16. Later, based on G.O.(Ms.)No.2055 Public Department dated 18.12.1987, around 49 daily wage Mazdoors came to be engaged between the years 1983 and 1990. It is also not in dispute that out of 49 Mazdoors, 3 orders in G.O.(Ms.)No.764 Public (Maintenance) Department dated 08.07.1997, G.O.(Ms.)No.457 Public (Maintenance) Department dated 30.03.2000 and G.O.(Ms.)No.835 Public (Motor Vehicles) Department dated 28.06.2000 came to be issued on the respective dates by which the services of 31 Mazdoors came to be regularised during the period from 1997 to 2000 based on the available vacancies. Since two Mazdoors were on long absence, their services were not considered.



WEB COPY

17. Out of the remaining 16 Mazdoors, it is admitted that the proposals to bring 8 Mazdoors, into the regular establishment by regularising their services were made in the year 2001 in view of the available vacancies. The respondents herein were among the 8 Mazdoors, for whom the proposals were sent for regularisation. However, after a long delay, the services of the respondents came to be regularised only on 21.09.2006 and 28.11.2007, respectively. In the meantime, since the pension rules came to be amended and the Government had introduced the CPS for the employees who had entered into service from 01.04.2003, the pensionary benefits under the old pension scheme were denied. The claim made by the respondents to grant regularisation on par with the similarly placed persons whose services also came to be regularised only in the year 2016, but however, with effect from 1998, came to be rejected.

18. It is the vehement contention of the appellants that only since there was a ban imposed by the Government in G.O.(Ms.)No.212 dated 29.11.2001, the services were not able to be regularised and immediately after the ban was lifted, their services came to be regularised and in such circumstances, the respondents cannot claim for any retrospective regularisation.



19. As referred earlier, it could be seen that there were available vacancies in the year 2001 and the respondents were eligible for regularisation of their services, for which the proposals were also sent in 2001 itself. The G.O.(Ms.)No.212 dated 29.11.2001 only imposes a ban on filling up of all the vacant posts. The said Government Order reads as follows:-

“Public Services-Filling up of vacant posts except certain categories of posts such as Teachers, Doctors and Police Constabulary- Completely banned-orders-Issued.

PERSONNEL & ADMINISTRATIVE REFORMS (P) DEPARTMENT

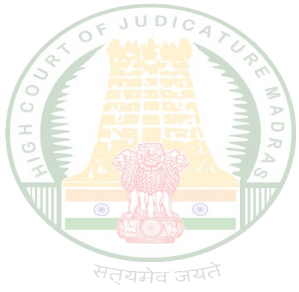
G.O. (Ms) No: 212

Dated: 29.11.2001

ORDER

The Government have decided to effect economy in expenditure and accordingly direct that filling up of vacant posts shall be completely banned except certain categories of posts such as Teachers, Doctors and Police Constabulary which may be identified and declared as essential posts. Proposals for filling vacant posts considered essential by any Department will be placed before a Committee consisting of Chief Secretary, Finance Secretary and Secretary (Personnel & Administrative Reforms)

(By order of the Governor)



P. SHANKAR,

Chief Secretary to Government”

WEB COPY 20. Even though the above Government Order imposes a ban on filling up of vacant posts, it could be applied only for fresh appointments to be made and cannot be extended to regularisation of the services of eligible persons. When admittedly even after the issuance of the above Government Order, the respondents were continued to be in service, the action of the appellants to delay the process of regularisation citing the above Government Order imposing a ban is not justified.

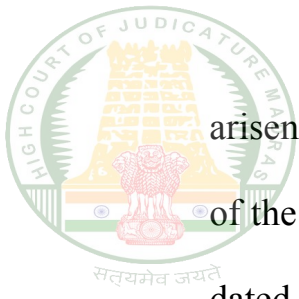
21. When the respondents have been engaged in services from the years 1989-1990 and as per G.O.(Ms.)No.524 dated 06.06.1983, the services of Mazdoors, who have completed 5 years of continuous service on daily wages, are to be regularised and out of the 49 Mazdoors who had been engaged during this period, nearly the services of 31 persons have been regularised as per the available vacancies, the services of the respondents also ought to have been regularised in the available vacancies, for which the proposals were submitted in the year 2001 itself.



22. The ban imposed in G.O.(Ms.)No.212 dated 29.11.2001 cannot be a bar or a valid ground to delay the regularisation of the services which they were lawfully entitled to. Even though the orders regularising their services came to be issued in the years 2006-2007 respectively, still the date of regularisation ought to have been granted from the date of the available sanctioned vacancies and proposal that was submitted in the year 2001.

23. Further, the Government had issued G.O.(Ms.)No.22 Personnel & Administrative Reforms (F) Department dated 28.02.2006, by which the services of daily wage employees who had rendered 10 years of service as on 01.01.2006 be regularised. The writ court by observing that when a welfare measure is implemented by giving benefits to the similarly placed persons, the same must be extended to the rest of the persons in the same category. Considering the fact that the respondents, having been appointed in the years 1989-1990 have completed their 10 years of service in the years 1999-2000, the learned Judge had directed for regularisation of their services from the date of completion of 10 years of their services.

24. In view of the fact that the Mazdoors, who have been appointed during the above period, have been periodically regularised based on the available vacancies and the vacancies in respect of these respondents had



arisen in the year 2001, for which the proposals for regularising the services of the respondents were sent and since the ban imposed in G.O.(Ms.)No.212 dated 29.11.2001 cannot be put against the respondents to delay their regularisation. In our considered opinion it would only be appropriate that the services of the respondents are regularised with effect from the vacancies that arose and the proposal for regularisation that was submitted in the year 2001.

25. In view of the above, the Writ Appeal is disposed of, by partially modifying the order of the writ court, directing the appellants to regularise the services of the respondents with effect from the date of proposals submitted in the year 2001 for regularisation based on the available vacancies and grant all consequential benefits as directed by the writ court. The time granted by the writ court is extended by a period of eight (8) weeks from the date of receipt of a copy of this order.

26. With these modification and directions, this Writ Appeal stands *disposed of*. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(R.S.M., J.) (G.A.M., J.)



WEB COPY

Speaking order

Index : Yes

Neutral Citation : Yes

sri

W.A.No.738 of

26.03.2025





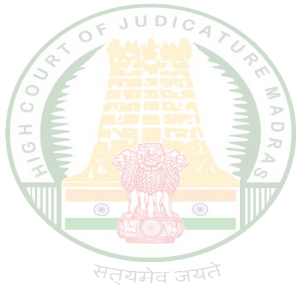
To

W.A.No.738 of '20



WEB COPY

1. The Principal Secretary,
Government of Tamil Nadu,
Public (Maintenance) Department,
Secretariat, Chennai - 600 009.
2. The Under Secretary to Government,
Public (Maintenance) Department,
Secretariat, Chennai - 600 009.



WEB COPY

W.A.No.738 of '25



R.SUBRAMANIAN, v.
and
G.ARUL MURUGAN, J.

sri

Pre-Delivery Judgment made in
W.A.No.738 of 2025
and
C.M.P.No.6249 of 2025

26.03.2025