

In the High Court of Judicature at Madras

Dated: 16.11.2015

Coram:

The Hon'ble Mr.Justice K.KALYANASUNDARAM

Writ Petition No.10705 of 2015 &
M.P.No.1 of 2015

1. A.Raja
2. M.Rajasekaran
3. G.Ezhumalai
4. J.Rajeswari

.. Petitioners

vs.

1. The Secretary to Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai-09.
2. The Director of Town Panchayat,
Kuralagam Buildings, Chennai-108.
3. The Executive Officer,
Kizhpenmathur First Grade Town Panchayat,
Kizhpenmathur, Tiruvannamalai District. ... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the second respondent dated 26.07.2006 issued in Na.Ka.No.3051/2006/A3 and the proceedings of the 3rd respondent dated 31.07.2006 issued in Na.Ka.No.81/2006, quash the same restricting the date of bringing the petitioners into time scale of with effect from 23.06.2006 onwards alone and to issue consequential direction to the respondents to bring the petitioners into the regular time scale from the date on which they completed three years consolidated pay services in the light of the judgment of the Division Bench dated 23.06.2010 passed in W.A.No.385 of 2010 and 47 of 2010 with all consequential service and monetary benefits.

For petitioner : Mr.P.I.Thirumoorthy

For respondents : Mr.M.E.Raniselvam, AGP
for RR1 & 2
Mr.P.Chinnurai for R3

O R D E R

The petitioners, being aggrieved over the orders dated 26.7.2006 and 31.7.2006 passed by the second and third respondents respectively, in and by which, the services of the petitioners as Sweepers came to be regularised on and from 23.06.2006, have come forward with the present writ petition, seeking to quash the same and for a consequential direction to the respondents to bring them into the regular time scale from the date on which they have completed three years consolidated pay services in the light of the judgment of the Division Bench dated 23.06.2010 passed in W.A.No.385 of 2010 and 47 of 2010 with all consequential service and monetary benefits.

2. The learned counsel appearing for the petitioners would submit that the petitioners were appointed as consolidated pay Sweepers by the third respondent on 30.4.1998 and they have completed three years of service on 29.04.2001 and in view of G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.08.1997 and in the light of judgment of the Division Bench, dated 12.08.1997 in W.A.Nos.47 and 385 of 2010, they are entitled to be brought into regular time scale of pay on completion of three years of service from the date of appointment on consolidated pay. In support of his submission, the learned counsel relied upon orders passed by this Court in similar circumstances, in W.P.No.17613 of 2013, dated 24.7.2013 and W.P.No.337 of 2014, dated 08.01.2014 and prayed this Court to pass similar orders.

3. Per contra, the learned Additional Government Pleader, appearing for the respondents would submit that the petitioners are not entitled to regularization on completion of three years automatically, but subject to proper assessment/verification of their three years performance.

4. In this regard, it is worthwhile to refer the judgment of a Division Bench of this Court rendered in a batch of writ appeals in W.A.Nos.1289 of 2015, etc., wherein, while considering the issue regarding the regularization of the services of the consolidated employees who were appointed under G.O.Ms.Nos.199 and 84 of the Municipal Administration and Water Supply Department, dated 12.08.1997 and 21.05.1998, after completion of three years of their service, the Division Bench has categorically held that employees/respondents therein, are not entitled to regularization on completion of three years without proper assessment/verification of their three years performance. While holding so, the Division Bench has set aside the orders of the learned single Judge to the extent of granting regularization on the heels of completion of three years. It is relevant to extract paragraphs 20 and 27 to 29 of the said judgment, which read as under:

"20. It is a trite law that an employee cannot claim regularization without proper assessment on completion of a particular period of time, as is the scenario in the present cases. As held above, the respondents are not entitled to regularization on completion of three years without proper assessment/ verification of their 3 years' performance. The impugned orders of the learned single judge to the extent of granting regularization on the heels of completion of three years with consequential benefits is unsustainable in the eye of law and as such, to that extent, the orders impugned in the instant appeals are liable to be set aside. Accordingly, the orders impugned are modified to the extent that if proper assessment/review after three years has not been done by the concerned Town Panchayats, the concerned Town Panchayats are directed to assess/review the performance of the respondents on completion of three years and consider and pass appropriate order accordingly. In the event, the assessment/review has been made and a list has been prepared on that basis, which, according to the respondents, has been forwarded to the Government, the same has to be considered for approval without further assessment."

.....

27. As we have observed in the preceding paragraphs, the respondents were informed at the time of their appointment that their appointment was on consolidated pay, subjected to pay enhancement by 10% every year initially for a period of one year at a time, subject to renewal on assessment/review after a period of three years. It was also indicated to the respondents that their cases may be considered for regularization on assessment of their performance. Thus, it is not a case of appointment on consolidated pay or daily wages simplicitor. Albeit appointment was of temporary nature, however, that was subject to regular assessment and probable regularization on completion of three years. Thus, the respondents are not entitled to regularization on completion of three years

automatically, without consideration of their performance. On assessment/review, if it is found that their performance is satisfactory, they are entitled to be granted time scale on regular basis.

28. We are not delving into other questions, viz., res judicata and also regularization of ad hoc/daily wage employees, as the same are not relevant and necessary in the contextual background of the facts involved in these cases. Thus, we are not referring to and discussing all the decisions cited by the learned counsel appearing for the parties on different issues, which are not germane for adjudication of the issue involved herein.

29. Resultantly, for the reasoning and analysis made hereinabove, the appeals are partly allowed to the extent that the respondents are entitled to consideration for grant of time scale on regular basis on the basis of performance assessment to be done on completion of three years and in the event, the performance of the respondents, is found satisfactory, they are entitled to regularization on completion of three years, with all consequential monetary benefits. Costs made easy. Connected Miscellaneous Petitions are closed."

5. In the light of the above, the impugned orders, dated 26.07.2006 and 31.07.2006 passed by the second and third respondents respectively, are hereby set aside and the respondents are directed to consider the claim of the petitioners for grant of time scale on regular basis on the basis of performance assessment to be done by them on completion of three years and in the event, the performance of the petitioners, is found satisfactory, regularize their services from the date of completion of three years and accord all consequential monetary benefits thereof. The respondents shall carry out the above exercise within a period of eight weeks from the date of receipt of a copy of this order.

The Writ Petition is disposed of accordingly. No costs.
Consequently, connected MP is closed.

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s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai-09.
 2. The Director of Town Panchayat,
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 3. The Executive Officer,
Kizhpennathur First Grade Town Panchayat,
Kizhpennathur, Tiruvannamalai District.
- + 1 cc to Mr.P.I.Thirumoorthy, Advocate SR 62400
+ 1 cc to Mr.P.Chinnadurai, Advocate SR 61961
+ 1 cc to Govt.Pleader SR 62002

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