

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.08.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal Nos.1013 to 1016 of 2012
& M.P.Nos.1 of 2012

W.A.No.1013 of 2012:

1. The Government of Tamil Nadu
rep.by the Secretary to the Government
Rural Development Department
Fort St.George
Chennai 600 009
2. The Director of Rural Development
Panagal buildings, Saidapet
Chennai 15

... Appellants/R1 & R2
in W.P.41207 of 2005

Vs.

1. T.Selvamony
2. The President
Vellancode Panchayat
Melpuram Panchayat Union
Kanniyakumari District

... Respondents/Petitioners 1 & 2
/3rd Respondent in W.P.41207 of 2005

W.A.No.1014 of 2012:

1. The Government of Tamil Nadu
rep.by the Secretary to the Government
Rural Development Department
Fort St.George
Chennai 600 009
2. The Director of Rural Development
Panagal buildings, Saidapet
Chennai 15

... Appellants/R1 & R2
in W.P.41208 of 2005

Vs.

1. C.John
2. The President
Puliyur Salai
Melpuram Panchayat Union
Kanniyakumari District

... Respondents/Petitioners 1 & 2/
3rd Respondent in W.P.41208 of 2005

W.A.No.1015 of 2012:

1. The Government of Tamil Nadu
rep.by the Secretary to the Government
Rural Development Department
Fort St.George
Chennai 600 009
2. The Director of Rural Development
Panagal buildings, Saidapet
Chennai 15

... Appellants/R1 & R2
in W.P.41209 of 2005

Vs.

1. T.Ramesh
2. The President
Vellancode Panchayat
Melpuram Panchayat Union
Kanniyakumari District

... Respondents/Petitioners 1 & 2/
3rd Respondent in W.P.41209 of 2005

W.A.No.1016 of 2012:

1. The Government of Tamil Nadu
rep.by the Secretary to the Government
Rural Development Department
Fort St.George
Chennai 600 009
2. The Director of Rural Development
Panagal buildings, Saidapet
Chennai 15

... Appellants/R1 & R2
in W.P.41210 of 2005

Vs.

1. E.Selvaraj

2. The President
Vellancode Panchayat
Melpuram Panchayat Union
Kanniyakumari District

... Respondents/Petitioners 1 & 2/
3rd Respondent in W.P.41210 of 2005

Prayer in Writ Appeals: WRIT APPEALS filed under Clause 15 of Letters Patent against the common order dated 25.11.2009 passed in W.P.Nos.41207 to 41210 of 2005.

W.P.Nos.41207 to 41210 of 2005 : These Writ Petitions are filed under Article 226 of the Constitution of India for the issue of a Writs of Mandamus, to direct the respondents to absorb the petitioners in regular establishment in a permanent post with effect from the date of their appointment, namely 27.12.1993, 02.02.1994, 26.12.1997 and 11.02.1998 respectively and grant all consequential benefits to the petitioners.

For Appellants in : Mr.N.Srinivasan
all W.Ps Additional Government Pleader

For Respondents in : Mr.P.Rajendran
all W.Ps. for R1 in all W.Ps.
No appearance for R2

COMMON JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J)

These Writ Appeals are directed against the common order dated dated 25.11.2009 passed in W.P.Nos.41207 to 41210 of 2005 by the learned Single Judge of this Court.

2. The first respondent in all writ appeals, as petitioners, have separately filed W.P.Nos.41207 to 4120 of 2015 on the file of this Court under Article 226 of the Constitution of India, praying to give necessary direction to the respondents to absorb them in regular establishment in a permanent post with effect from the date of their appointment, wherein the present appellants have been shown as respondents. In all the writ petitions, it is averred that the petitioners have been appointed as full time Water Supply Assistants, but their services have not been regularized nor absorbed in regular establishment. Under the said circumstances, these writ petitions have been filed for getting the relief sought therein.

3. The learned Single Judge, after considering the divergent contentions put forth on either side, has allowed the Writ Petitions and thereby directed the respondents to absorb the petitioners in permanent post, by way of passing the impugned common order and the same is being challenged in the present writ appeals.

4. The learned Additional Government Pleader appearing for the appellants/respondents has contended to the effect that G.O.Ms.No.119 dated 10.5.2000 is applicable to part time Government servants and the same has been passed only with regard to enhancement of their pay and the said G.O is not at all applicable to the present case and further, the first respondent/petitioners have been appointed as part time Water Supply Assistants. Under such circumstances, they cannot be absorbed in the regular post and the learned Single Judge, without considering the nature of appointment made in favour of the first respondent/petitioners, has erroneously allowed all the writ petitions and therefore, the order passed by the learned Single Judge is liable to be set aside.

5. Per contra, the learned counsel appearing for the first respondent in all the Writ Appeals has sparingly contended that the first respondent in each appeal/petitioners have been appointed as full time daily wage workers and in fact they are doing service as Water Supply Assistants and the learned Single Judge, after considering the nature of appointment, has rightly allowed all the writ petitions. Therefore, the order passed by the learned Single Judge does not require any interference.

6. The learned Single Judge, in paragraph No.8 of the order, has observed as follows:

"8. A perusal of the decisions of this Court show that the petitioners therein, who are working in Kanyakumari District, were appointed as Water Supply Assistants on full-time daily wages basis at the market rate fixed by the District Collector. On the defence taken by the second respondent with regard to G.O.Ms.No.119, Rural Development Department dated 10.5.2000, this Court held that the applicability of G.O.Ms.No.118, Rural Development Department dated 10.5.2000 would arise only to a case of part-time employees. Going by the fact that the petitioners therein were appointed as Drinking Water Supply Assistants and paid daily wages on the market rate basis. G.O.Ms.No.119, Rural Development Department dated 10.5.2000 will have no application to them whatsoever. In the background of the said fact

which was subsequently confirmed by this Court in the Division Bench decision dated 7.2.2004 in W.A.No.2413 of 2004 (The District Collector, Kanniyakumari District, Nagercoil vs. C.Jebakumar and two others), the facts therein being no different from that of the present petitioners. I have no hesitation in granting the relief to the petitioners."

7. From a mere perusal of the observations made by the learned Single Judge, it is made clear that the first respondent/petitioners have been appointed as Water Supply Assistants on full time daily wages basis.

8. The learned counsel appearing for the first respondent has also relied upon the decision rendered in Writ Appeal (MD) No.147 of 2013 dated 22.2.2013 (C.Jeba Kumar vs. The State rep.by the Secretary to Government, Rural Development and Panchayat Raj Department, Secretariat, Chennai), wherein also a similar question has been considered and ultimately decided to the effect that the service of the appellant/petitioner therein has to be absorbed and consequently necessary direction has been given to the Government of Tamil Nadu.

9. The entire contention put forth on the side of the appellants is based upon G.O.Ms.No.119, dated 10.5.2000. In fact, the said G.O.Ms.No.119 is not applicable to the facts and circumstances of the present case.

10. As per the observations made by the learned Single Judge, this Court is of the view that the first respondent in each appeal/writ petitioners have been appointed as full time Water Supply Assistants on daily wages basis. Since the first respondent/petitioners have been appointed in the said capacity, the Court cannot come to a conclusion that their appointment is purely on part-time basis. Further, as rightly pointed out on the side of the first respondent, the Division Bench of this Court in W.A.(MD) No.147 of 2013 has already decided the present issue and ultimately held in favour of the appellant/petitioner therein.

11. Considering the decision rendered in W.A.(MD) No.147 of 2013 and also considering the fact that the first respondent/petitioners have been appointed as full time Water Supply Assistants on daily wages basis and also working in the same capacity, the order passed by the learned Single Judge is perfectly correct and the same does not call for any interference and therefore, these Writ Appeals are liable to be dismissed.

In fine, these Writ Appeals are dismissed without cost. The common order dated 25.11.2009 passed in Writ Petition Nos.41207 to 41210 of 2005 by the learned Single Judge of this Court is confirmed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ajr

To

1. The President
Vellancode Panchayat
Melpuram Panchayat Union
Kanniyakumari District
2. The President
Puliyur Salai
Melpuram Panchayat Union
Kanniyakumari District
3. The Director of Rural Development
Panagal buildings, Saidapet
Chennai 15
4. The Secretary to the Government
Government of Tamil Nadu
Rural Development Department
Fort St.George
Chennai 600 009.

+1cc to the Government Pleader, S.R.No.46154
+1cc to Mr.P.Rajendran, Advocate, S.R.No.46909(27.09.2016)

W.A. Nos.1013 to 1016 of 2012

PUR(CO)
CA(31/08/2016)