

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. Nos.5503 and 5504 of 2010

and

M.P. No.1 of 2011

R.Aranganathan ... Petitioner in W.P.No.5503 of 2010

P.Wellington ... Petitioner in W.P.No.5504 of 2010

Vs.

The Executive Officer,
Third Grade Municipality,
Ariyalur. ... Respondent in both W.P.s

Prayer in both W.Ps. Nos.5503 and 5504 of 2010: Writ Petition filed under Article 226 of the Constitution of India to direct the issue of Writ of Mandamus directing the respondent to implement their proceedings in Na.Ka.No.A1/257/2000, dated 28.03.2008 and thereby direct the respondent to pay the arrears of salary including other benefits to the petitioners from 27.05.2000 respectively.

For Petitioner : Mr.G.Baby in both W.P.s

For Respondent : Mr.S.V.Duraisolaimalai in both W.P.s

C O M M O N O R D E R

The prayer in the Writ Petitions are for the issuance of a Writ of Mandamus directing the respondent to implement their proceedings in Na.Ka.No.A1/257/2000, dated 28.03.2008 and thereby direct the respondent to pay the arrears of salary including other benefits to the petitioners from 27.05.2000 respectively.

2. The petitioners in both Writ Petitions were appointed as Water Supply Maintenance Staff on NMR basis at the respondent's Municipality on 24.06.1991. Originally their wages were on daily

basis, subsequently revised to monthly basis. After the scheme of water supply was completed, the petitioners were transferred on 20.02.1992 to the Ariyalur Town Panchayat and thereafter they have been working as daily wage worker.

3. When the respondent Town Panchayat was upgraded as Municipality on 27.10.2004, the Government in G.O. Ms.No.125, (Municipal Administration and Water Supply) Department, dated 27.05.1999 issued orders to regularise the services of all the NMRs appointed prior to 01.10.1996. The petitioners further submit that their service have to be regularised accordingly. However, no such regularisation was made.

4. In the meanwhile, a similar worker by name P.Ramasamy filed a Writ Petition in W.P.No.28903 of 2005 for a direction to the respondent to regularise the services of 480 days of service within a stipulated time. The said Writ petition was allowed on 21.04.2006 and directed the respondent to regularise the services of the said Ramaswamy from 27.05.1999 and to pay him all the salary due to him. Thereafter, as against the said Order an Intra Court Appeal in W.A.No.853 of 2006 was preferred by the respondent and by an Order dated 10.07.2006 the Writ Appeal was dismissed thereby, the issue reached finality.

5. Based on the said situation, since the said orders, as referred to, have been implemented in respect of the said Ramasamy, similar yard stick ought to have been shown to similarly placed employees, including the petitioners. In that scenario, the petitioners have approached the respondent to give effect of regularisation and to give financial benefits there on.

6. Pursuant to the said Orders of this Court, as well as the requests of the petitioners, the respondent, by proceedings in Na.Ka.No.A1/257/2000, dated 28.03.2008, after having traced the the aforesaid facts, has passed the orders regularising the services of the petitioners from 27.05.1999 in the time scale of pay as Rs.4000-100-6000 and the regular increments are granted for various years from 2001-2007 and the services from 27.05.1999 to 27.05.2000 has also been regularised and whatever due pursuant to such regularisation has to be paid to the petitioner.

7. Heard both sides.

8. The learned counsel for the respondent by quoting the counter affidavit filed on behalf of the respondent stated that the case of the Ramasamy was different and based on which benefit should not have been given to the petitioners as the

said G.O.Ms.125, (Municipal Administration and Water Supply) Department, dated 27.05.1999 made applicable in the case of the petitioner above as mentioned at para 6 of the counter affidavit.

9. The learned counsel for the respondent has stated that the Orders passed by the respondent on 28.03.2008 could not be implemented due to the Audit objections held for the year 2007-2008 vide Local Fund Audit, Ariyalur in Na.Ka.No.A1/804/2009, dated 19.11.2009. In view of the said facts, the Order dated 28.03.2008 cannot be implemented and therefore the prayer sought for in the Writ Petitions cannot be sustained. In such view of the matter, the learned counsel for the respondent submits that the Writ petition has to be dismissed.

10. I have considered the rival submissions made by both sides as well as the materials available before this Court.

11. It is not disputed that the Order has been passed on 28.03.2008 by the respondent regularising the service of the petitioners from 27.05.1999 and they were brought into time scale of pay and also necessary increments from 2001 to 2007 already given.

12. Even though, such Order was passed in 2008, the same has not been implemented. The present difficulty, as expressed by the respondent through affidavit, in the opinion of the Court, would not stand in the way of implementing the Orders passed on 28.03.2008 as the said order has been passed, of course based on merits and also based on the propositions of the Order of this Court, which reached the finality. The mere audit objection alone cannot stand in the way for granting service benefits to the employees, who are otherwise legally eligible or entitled to the same. It is also a fact that no further orders have been passed thereafter either cancelling or modifying, the Order of the respondent dated 28.03.2008 which is in force till date.

13. When that being so, this Court is of the view that the respondent cannot take any liberty in not implementing their own order. Accordingly this Court has accepted the merits of the case of the petitioner.

14. Therefore, the prayer for directions sought for by the petitioners to implement the order of the respondent dated 28.03.2008 is worthy to be considered and is well founded.

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15. In the result, the Writ Petitions are allowed. There shall be a direction to the respondent to implement the Orders passed by them in Na.Ka.No.A1/257/2000, dated 28.03.2008 in

full and whatever financial benefits to be given pursuance to the said Order to the petitioners have to be given and the needful to be done within a period of three months from the date of receipt of the copy of this order.

16. With the above directions, the Writ Petitions are allowed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi2

To

The Executive Officer,
Third Grade Municipality,
Ariyalur.

+1cc to Mr.N. Suresh, Advocate, S.R.No.61398

+1cc to Mr.S.V. Duai Solaimalai, Advocate, S.R.No.61423

ca(CO)
md(30/11/2016)

W.P. Nos.5503 and 5504 of 2010

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