

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Writ Petition No.36748 of 2016
& W.M.P.No.31581 of 2016

D.Arputha Vijayan

... Petitioner

Vs.

1. The Director of Town Panchayat,
Kuralagam, Chennai-600 108.

2. The Assistant Director of
Town Panchayat,
Nagercoil, Kanyakumari District.

3. The Executive Officer,
Kallukottam, Kanyakumari District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents, especially the first respondent relating to his proceedings made in Na.Ka.No.8535/2016/A.3, dated 04.07.2016 and quash the same as null and void, illegal and invalid and consequently direct the respondents, especially the first and third respondents to regularise the petitioner's service as Assistant Electrician along with time scale of pay with effect from 1st of April 2001, the date of shifting the petitioner's service from the daily rate wage basis to consolidated mode of pay either applying G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1998 or applying G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 with all monetary and service benefits with effect from 01.04.2001 apart from disbursing the difference in monetary benefits to the petitioner from 31.07.2006 to up to date.

For Petitioner : Mr.A.Amal Raj

For Respondents : Mr.N.Srinivasan, Addl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to his proceedings made

in Na.Ka.No.8535/2016/A.3, dated 04.07.2016 and quash the same as null and void, illegal and invalid and consequently direct the first and third respondents to regularise the petitioner's service as Assistant Electrician along with time scale of pay with effect from 1st of April 2001, the date of shifting the petitioner's service from the daily rate wage basis to consolidated mode of pay either applying G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1998 or applying G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, with all monetary and service benefits with effect from 01.04.2001, apart from disbursing the difference in monetary benefits to the petitioner from 31.07.2006 to up to date.

2. It is averred by the petitioner in the affidavit filed in support of the Writ Petition that he entered service as Water Supply Attender in the sole approved vacancy attached to the office of the third respondent made in Mu.Mu.No.538/92, dated 09.07.1992 on necessity and also considering the work load followed by Resolution No.1, dated 09.07.1992 passed by the Kallukottam Town Panchayat Board. The petitioner's appointment was made through proper channel, viz., through Employment Exchange. That being so, instead of appointing the petitioner on regular basis with time scale of pay, with a view to save the funds of the Town Panchayat, his salary was paid on daily rate basis at the rate of Rs.20/- per day and the same was paid on monthly rate basis, by calculating the number of working days. Thereafter, his daily rate payment was periodically enhanced by the third respondent from Rs.20/- to lastly at Rs.65/- as per the various periodical revised orders issued by the District Collector, Kanyakumari District and in the said manner, the daily rate payment was enhanced every year.

3. It is further stated by the petitioner that the third respondent, by the end of March 2001, has not only assessed his performance as daily rate employee from 09.07.1992, but also assessed/asserted his continuous service for more than nine years. Apart from assessing/asserting the requirement of his service under him, pursuant to his proceedings made in Aa1.874/97/Aa1, dated 30.04.2001, the third respondent has ordered for his promotion as Street Light Assistant, fixing his salary on consolidated mode at Rs.1,700/- per month with effect from 01.04.2001. The consolidated mode of payment was periodically enhanced upto Rs.2,040/- lastly. The petitioner's appointment was made on necessity considering the work load, vacancy position, financial position, etc. But he was compelled to wait for nearly five years for regularisation by unnecessarily fixing his salary on consolidated mode in an unjust and unconscientious manner. From the date of his entry into service, he had served only as full time employee inasmuch

as the second and third respondents have extracted heavy nature of works from 6 am to 5.45 p.m. either at the inception when he was serving on daily rate basis or subsequently when he had been shifted to consolidated mode of pay. He was treated as regular and permanent servant for all purposes, but the respondents have extracted his service to suit their convenience.

4. It is further stated that his appointment was made in a clear vacancy and when he was appointed, no Rules or Government Orders existed in any manner regulating or restricting the regularisation of his service and therefore, there was no need or necessity to keep his service on daily paid basis for years together, i.e. for more than 9 years and further keeping his service on consolidated mode for another 5 years, inasmuch he is possessing requisite educational qualification, i.e. pass in VIII Std. examination on the very date of his appointment and his appointment was made through employment seniority in the sole approved vacancy and on necessity and considering the work load.

5. It is further alleged that G.O.Ms.No.92, Panchayat Administration Department, dated 22.04.1993 was issued subsequent to his appointment, which emphasises the need for obtaining permission from the Government to create new vacancies depending upon the work load. Thereafter, many Government Orders were issued and G.O.Ms.No.84, Panchayat Administration and Water Supply Department, dated 21.05.1998 was issued in respect of the service conditions of sanitary workers for their regularisation and also for fixation of their time scale of pay to those who were in service as on 31.12.1996 completing 5 to 10 years of service or below 5 years of service or more than ten years of service, etc. It is his further grievance that he is entitled for time scale of pay by applying the clause of the said G.O.Ms.No.84 with regard to the employees who are in service for less than five years of service as on 31.12.1996 and he is entitled to be placed on consolidated pay of Rs.1,200/- per month and after one year, he is entitled to time scale of pay after evaluating the performance. It is further stated by the petitioner that he is entitled for regularisation with time scale of pay at least from the year 2002, as he joined the service in July 1992. But, his service has not been regularised by applying the said G.O.

6. It is further stated by the petitioner that the third respondent, pursuant to the proceedings, dated 31.07.2006, regularised his service as Assistant Electrician by fixing the time scale of pay by applying G.O.Ms.No.60, Rural Development and Village Panchayats Department, dated 23.06.2006. At this juncture, the petitioner made representation to the first respondent to regularise his service from the date of his

appointment. The petitioner claimed time scale of pay only with effect from 01.04.2001, the date on which his name was moved for consolidated mode of pay within the meaning of G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1998. The petitioner went on appeal to the first respondent on 25.04.2013, followed by reminder dated 06.07.2013, but no orders have been passed on the same. Hence, he filed W.P.No.783 of 2014 seeking to pass orders on his appeal. By order dated 10.01.2014, the said Writ Petition was disposed of by this Court, directing the first respondent to consider the representation, dated 06.07.2013 filed by the petitioner and pass appropriate orders thereon, on merits and in accordance with law, within a period of six weeks from the date of receipt of the order. It is further stated by the petitioner that according to the second respondent, pursuant to the proceedings in Na.Ka.No.23/2014/Aa1, dated 25.02.2014, his service has been regularised by granting time scale of pay with effect from 23.06.2006 in accordance with G.O.Ms.No.60, dated 23.06.2006. The request of the petitioner seeking his regularisation of service and grant of time scale of pay in terms of G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1998, with effect from April 2001, had been rejected, by the impugned order, dated 04.07.2016 passed by the first respondent, stating that there is no provision for grant of such relief in the Rules. Challenging the same, the present Writ Petition has been filed.

7. The third respondent has filed counter affidavit inter-alia stating that the claim of the petitioner based on G.O.Ms.No.84, dated 21.05.1998, is against law and it has no relevancy to his case. Hence, the third respondent prayed for dismissal of the Writ Petition.

8. When the Writ Petition is taken up for hearing, learned counsel for the petitioner relied on the order passed by this Court in W.P.No.783 of 2014, dated 10.01.2014 and submitted that the issue involved in the present Writ Petition is squarely covered by the said order dated 10.01.2014. Relevant portion of the said order dated 10.01.2014 reads as follows:

"6. When the matter was taken up for hearing, learned counsel appearing for the petitioner submitted that in identical circumstances, this Court in W.P.No.27191/04 vide order dated 11.07.06 granted the said benefit, which order has been confirmed by the Division Bench in W.A.No.1454/07 and the SLP (Civil).No.16217/09 filed against the said order has been dismissed by the Hon'ble Apex Court, vide order dated 2.9.09. However, in view of the nature of relief sought for, though this Court cannot give a

positive direction, without going into the merits of the case, this Court is of the considered view that it would be suffice to direct the respondents to consider the representation of the petitioner dated 6.7.2013 and pass appropriate orders thereon within a stipulated time frame.

7. Accordingly, the writ petition is disposed of and the first respondent* is directed to consider the representation, dated 6.7.13 filed by the petitioner and pass orders thereon, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

*(corrected as per clarification order dated 01.04.2015 by replacing the words 'the 1st respondent is')"

9. The observations made by this Court in the above said order dated 10.01.2014 are squarely applicable to the facts of the present case, as the petitioner has completed the required number of years of service as per G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006.

10. Accordingly, the Writ Petition is allowed and the impugned order dated 04.07.2016 is quashed. The respondents are directed to regularise the service of the petitioner as Assistant Electrician in the time scale of pay with effect from 01.04.2001, which is the date of shifting the petitioner's service from the daily rate wage basis to the consolidated mode of pay and by applying G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1998 and provide him all monetary and service benefits with effect from 01.04.2001, apart from disbursing the difference in monetary benefits to the petitioner from 31.07.2006 to up to date. No costs. W.M.P. is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

CS

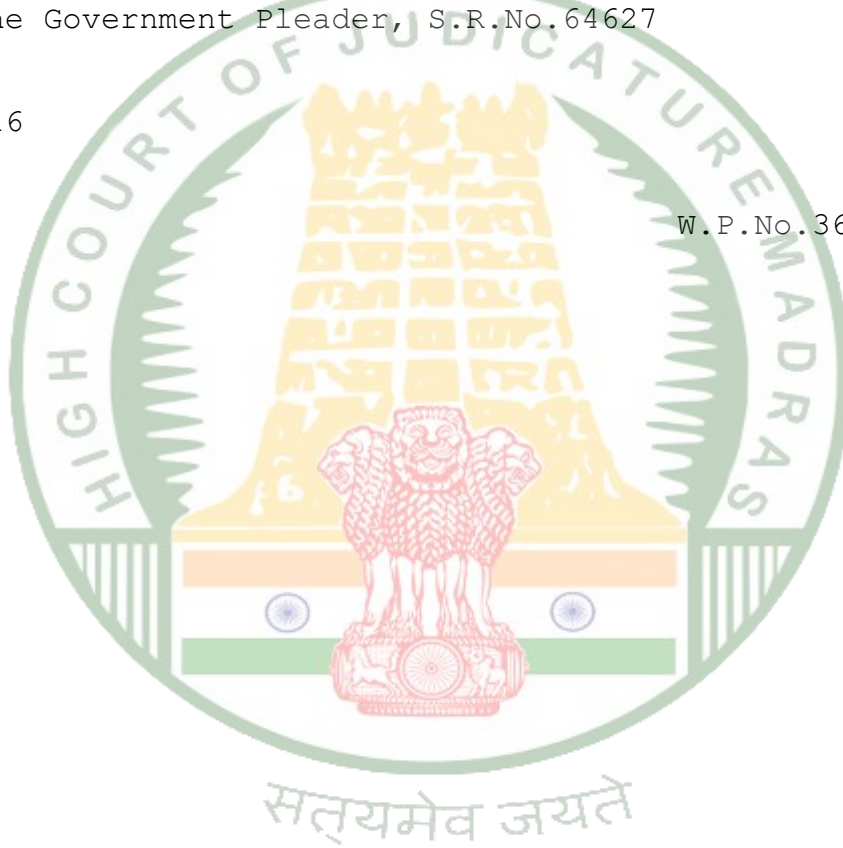
Copy to

1. The Director of Town Panchayat,
Kuralagam, Chennai-600 108.
2. The Assistant Director of Town Panchayat,
Nagercoil, Kanyakumari District.
3. The Executive Officer,
Kallukottam, Kanyakumari District.

+lcc to M/s. A. Amalraj, Advocate, S.R.No.64727
+lcc to M/s. N. Srinivasan, Advocate, S.R.No.64476
+lcc to the Government Pleader, S.R.No.64627

RSK(CO)
EU 10.12.16

W.P.No.36748 of 2016



WEB COPY