IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

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THE HON'BLE Mr.JUSTICE V.PARTHIBAN

W.P.Nos.4848 & 4849 of 2014

V.Kuppuraj ... Petitioner in W.P.4848 of 2014

Varnan ... Petitioner in W.P.4849 of 2014

Vs.

1. The Secretary to Government of Tamil Nadu,
   Municipal Administration and
   Water Supply Department,
   Fort St.George, Chennai-9.

2. The Director of Town Panchayat,
   Kuralagam, Chennai-104.

3. The Executive Officer,
   Perur Town Panchayat,
   Coimbatore District. ... Respondents in both W.Ps

Prayer in both W.Ps: Petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to regularize the service of the petitioner herein as Water Tank Operator as per G.O.Ms.No.198, MAWS Department, dated 26.10.1998, and in light of the order passed by this Court in W.P.No.29951 of 2011, dated 05.12.2012.

For Petitioners : Mr.N.Balamuralikrishnan

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

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C O M M O N O R D E R

Heard Mr.N.Balamuralikrishnan, learned counsel appearing for the petitioners and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2. There are two writ petitions, since the issues raised in both the writ petitions are common and the same are taken up together for disposal.

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3. The petitioners have approached this Court for seeking the following relief,

> "To issue a Writ of Mandamus, to direct the respondents to regularize the service of the petitioner herein as Water Tank Operator as per G.O.Ms.No.198, MAWS Department, dated 26.10.1998, and in light of the order passed by this Court in W.P.No.29951 of 2011, dated 05.12.2012."

4. The case of the petitioners is as follows:

The petitioners were appointed as Water Tank Operator in the third respondent Town Panchayat on 10.07.2000, on consolidated pay for three years as per the G.O.Ms.No.198, dated 26.10.1998. The appointments were made through employment exchange against the sanctioned post. As per the above Government Order, their pay will have to be increased by 10% every year for a period of three years and on completion of the same, the petitioners were entitled to brought on regular time scale of pay.

5. On 10.07.2003, the petitioners were admittedly completed three years, however their service could not be regularized in view of the ban imposed by the Government for recruitment in the Government Services. Admittedly, the said ban was lifted during February 2006, even after that the claim of the petitioners was not considered by the first and second respondents. In July 2006, the Town Panchayat, in which the petitioners were employed had also passed a resolution recommending their case for regular time scale of pay. A similar proposal recommending the claim of the petitioners was also sent by the third respondent to the higher official, but however, there was not action forthcoming from the competent authorities in that regard.

6. Therefore, the petitioners along with three others were constrained to approach this Court in W.P.No.29951 of 2011. While so, the said writ petition was disposed of as regards the petitioners herein are concerned, by granting liberty to them to adjudicate the grievances separately. This order was issued by this Court in view of the fact that the petitioners were not in service for the period, while granting the order of regularization for other two employees in the above said writ petition. As far as the present writ petitioners are concerned, they are given liberty to voice their grievances in separate proceedings.

7. The learned counsel appearing for the petitioners would submit that but for the ban which was imposed between 2003-06, the petitioners service would have been regularized on completion of three years of service on consolidated pay in 2003 itself. According to the learned counsel, all similarly placed persons like the petitioners herein, whose services

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were initially appointed on consolidated pay, subsequently brought on regular time scale of pay on completion of three years of service. The said benefit has not been conferred on the petitioners alone for no valid reasons and therefore, the inaction on the part of the authorities for not regularizing the services of the petitioners on completion of three years of service in 2003 is per se discriminatory, arbitrary and unreasonable and violative of article 14 of the Constitution of India.

8. Upon notice, the learned Special Government Pleader appearing for the respondents entered appearance and filed a detailed counter affidavit. The learned counsel would submit that these petitioners were not entitled to the relief at that point of time when they completed three years of service in 2003, in view of the ban which was imposed between 2003-06. However, the learned counsel would not dispute the fact that the claim of the petitioners is fully covered by the benefit contemplated in G.O.Ms.No.198, dated 26.10.1998 and he would also not dispute that the similarly placed employees had been brought on regular time scale of pay by applying the benefit of the aforesaid Government Order. However, he would submit that in case this Court passed any order of granting relief to the petitioners, they are not entitled to back wages for the period when the ban was imposed between 2003-06.

9. Upon consideration of the rival submissions of the learned counsels for the parties and on perusal of the pleadings and materials placed on record, this Court is of the considered view that the petitioners who were originally appointed under G.O.Ms.No.198 dated 26.10.1998, are entitled to the benefit contemplated in the said Government Order as granted to other similarly placed persons. Although they were entitled to be brought on regular time scale of pay in 2003 itself, in view of the ban imposed by the Government, they could not be brought to regular time scale of pay in 2003, that does not mean that the regularization of their services can be indefinitely postponed and their service benefits can be denied forever, when such benefits are being granted to other similarly placed persons.

10. In the said circumstances, this Court is of the considered view that the benefit as contemplated in G.O.Ms.No.198, dated 26.10.1998, shall be extended to the petitioners and they shall be brought to the regular time scale of pay as granted to other similarly placed persons on completion of three years of service from the date of initial appointment with all attendant and other benefits except the back wages for the period from 2003 till the order is implemented by the competent authority. The said direction shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order.

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11. with these directions, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Secretary to Government of Tamil Nadu,
   Municipal Administration and
      Water Supply Department,
   Fort St.George, Chennai-9.

2. The Director of Town Panchayat,
   Kuralagam, Chennai-104.

3. The Executive Officer,
   Perur Town Panchayat,
   Coimbatore District.

+2cc's to Mr.V.Vijay Shankar, Advocate, S.R.No.66501
+1cc to the Government Pleader, S.R.No.66638

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