

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.28272 of 2014

1.K.Jayabal
2.S.Marimuthu
3.C.Selvakumar
4.K.Murugavel
5.A.Sundararajan
6.A.Ramarajan
7.M.MaharajanPetitioners

Versus

1.The Secretary to Government of Tamilnadu,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai.
2. The Commissioner for Municipal Administration,
Chepauk, Chennai -5.
3. The Commissioner,
Coimbatore, Corporation, Coimbatore. ... Respondents

Prayers: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the respondents to either absorb/appoint or promote the petitioners as Drivers and consequently necessary directions will have to be issued to the respondents to grant pay and allowances attached to the post of Driver with effect from the date petitioners have been asked to perform the duties of Drivers.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.T.M.Pappiah,

Spl.G.P. (for RR1 & 2)

Mr.R.Sivakumar (for R3)

O R D E R

The present writ petition has been filed, seeking for the following relief:

"Issue Writ of Mandamus directing the respondents to either absorb/appoint or promote the petitioners as Drivers and consequently necessary directions will have to be issued to the respondents to grant pay and allowances attached to

the post of Driver with effect from the date petitioners have been asked to perform the duties of Drivers."

2. All the petitioners have a common grievance in respect of the outcome of the writ petition and therefore, they have joined together and filed the writ petition.

3. The case of the petitioners is as follows:

i) The petitioners were appointed as Sanitary Workers on NMR basis in the year 1997, except the 3rd petitioner, who was appointed in the year 2001. They were brought on to the regular time scale by regularising their services in the year 2007 as sanitary workers. Grievance of the petitioners is that though they were initially appointed as Sanitary Workers, they have been directed to discharge the duties of Driver all along. The post of Driver carries higher pay than that of the Sanitary Workers.

ii) Even after their services were regularised as Sanitary Workers, the petitioners were continuing the duties of the Driver, even as on date. In the said circumstances, the petitioners, through their Association, submitted a representation to regularise them as Drivers or promote them, as the case may be. As they have been working as Driver, in fact, discharging the duties of Driver, some of the petitioners approached this Court in W.P.No.31604 of 2007 for direction to regularise their service as Drivers from the date of first appointment. The said writ petition was disposed of by this Court on 01.10.2007 directing the petitioners therein to make a representation to the respondents and the respondents were directed to consider the same. Pursuant to the order passed by this Court, the 3rd respondent, by proceedings dated 22.02.2008, directed the petitioners in the above said writ petition to submit the proof of their passing of the 8th standard and possession of valid driving license, for considering their name for appointment as Drivers. It appears that the petitioners, as per the said direction, submitted the documents sought for. However, in spite of the response of the petitioners, there was no action from the respondents till date. In the said circumstance, the petitioners approached before this Court seeking the relief as stated supra.

4. Mr.V.Vijay Shankar, learned counsel appearing for the petitioners would submit that this Court, in similar circumstances, has passed a direction to appoint the petitioners therein as Drivers by relaxing the rules, age and educational qualifications in writ petition No.19317 of 1998, which was disposed of with the above direction on 30.07.2008. It appears that the direction issued by this Court is also implemented by the respondents concerned. He further submitted that the Government has also passed an order, particularly G.O.MS.NO.140 (MAWS Department), dated 27.05.1997 relaxing the

education qualification for appointment of Drivers as 8th standard.

5. The learned counsel appearing for the petitioner would further draw the attention to this Court to the Tamil Nadu Municipal Corporation Service Rules, in which qualification for appointment to the post of Driver by promotion is only 8th standard. Moreover, in respect of several similarly placed persons, the educational qualification was relaxed and it was prescribed as 8th standard. In the said circumstances, the non-regularisation of the petitioner as Drivers is discriminatory and arbitrary and it does not satisfy Article 14 of the Constitution of India.

6. Upon notice, Mr.R.Sivakumar, learned counsel entered appearance for the 3rd respondent and filed counter. At the outset, the learned counsel would submit that these writ petitioners are not similarly placed as others. Since they were employed as Badli Sanitary Workers and therefore, cannot compare themselves with others. He would further submit that the relaxation granted by the Government was in respect of a particular situation and the same cannot be applied for all years to come. He has also further submitted that the Government is disinclined to grant any further relaxation to any Drivers whose qualification is less than 10th standard.

7. This Court has given anxious consideration to the rival submissions of the Counsel and to the pleadings and the relevant materials placed on record.

8. This Court after taking note of the fact that the employment of the petitioners as Drivers is not in dispute and they have been appointed as Sanitary Workers, they were actually engaged in the work of driving the motor vehicles. This Court also taken note of the fact that similarly engaged Sanitary Workers as Drivers have been given relaxation of age, educational qualification etc., for appointment to the post of Drivers and regularising their service as such. It is also to be noted that the rules which notifies the service condition of the employees stipulated is only 8th standard as qualification for appointment to the post of drivers. As similarly placed employees have been given the appointment of Drivers on regularisation of their services, in such an identical circumstance, there cannot be any justification in denying the same to the petitioners alone, who are otherwise eligible to hold the post of Drivers. Even otherwise, it does not lie in the mouth of the respondents to argue against the petitioners, when admittedly the petitioners' service has been utilised all along as Drivers.

9. In the light of the above discussion, this Court has no hesitation to give the following direction. Accordingly, there shall be a direction to the first respondent to promote the petitioners as Drivers with effect from the date when

their services were regularised in 2007 or in case of any difficulty in complying with the rules as per the Tamil Nadu Municipal Corporation Service Rules, direction is issued to the first respondent to grant necessary relaxation, and regularise the service of the petitioners as Drivers with effect from the date they were regularised as sanitary workers with all attendant and consequential benefits as admissible to the post of drivers. The said exercise shall be initiated and completed by the competent authority or by the Government as mentioned above and the same shall be implemented not beyond the period of three months from the date of receipt of a copy of this order.

10. With the above directions, this writ petition stands disposed of. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

pvs

To

1. The Secretary to Government of Tamilnadu, Municipal Administration and Water Supply Department, Fort St. George, Chennai.
2. The Commissioner for Municipal Administration, Chepauk, Chennai -5.
3. The Commissioner, Coimbatore, Corporation, Coimbatore.

+1 CC to Mr.V. Vijayshankar, advocate sr 55540.

+1 CC to Mr.R. Sivakumar, Advocate sr 54631

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SS (CO)
sp(23/08/2017)