

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P. Nos. 392, 393, 459 & 18792 of 2015 and 17991, 34362 of 2014

& M.P. Nos. 1, 1 of 2015, 1, 1 and 2 of 2014

1. Mrs.Mariammal
2. Ms.Sarojini
3. Minor Ilakiya
4. Minor Dinesh Kumar

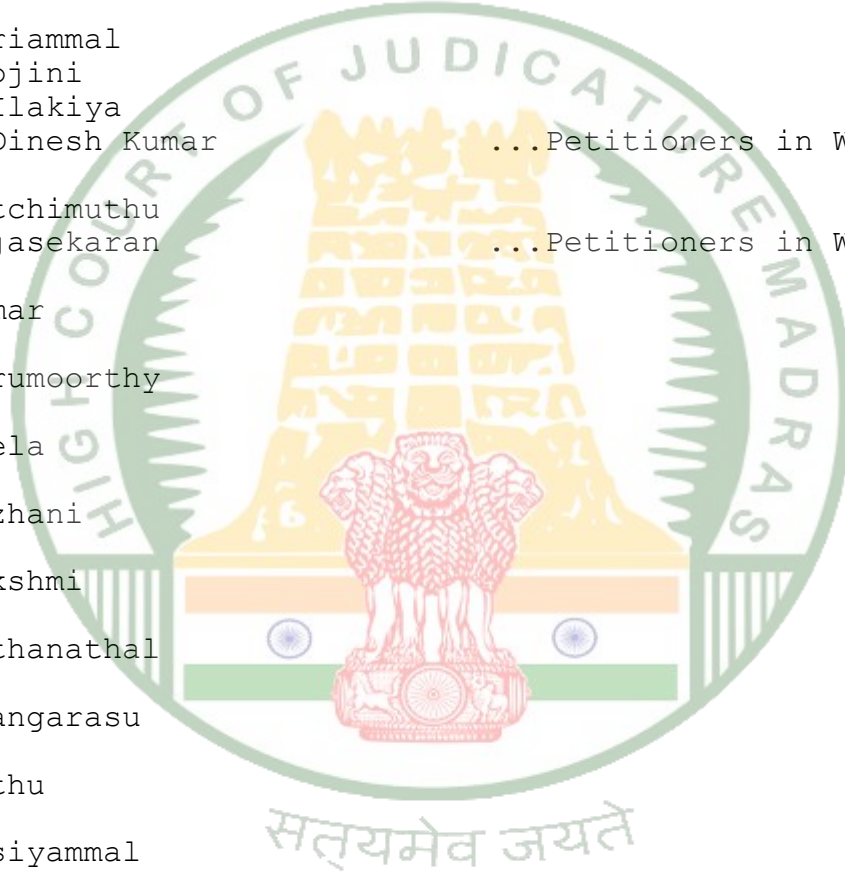
...Petitioners in WP.392/15

- 1 R.Petchimuthu
- 2 R.Rajasekaran

...Petitioners in WP.NO.393/15

- 1 J.Kumar
- 2 R.Gurumoorthy
- 3 Suseela
- 4 K.Pazhani
- 5 R.Lakshmi
- 6 T.Mathanathal
- 7 P.Thangarasu
- 8 D.Muthu
- 9 K.Kasiyammal

- 10 V.Karunanithi
- 11 P.Rajendiran
- 12 Kamala
- 13 R.Kalidoss
- 14 B.Jeevarani
- 15 B.Achiponnu
- 16 N.Maduramuthu



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17 M.Ramasamy
18 V.Velmurugan
19 N.Senthil
20 P.Janaki
21 K.Pakkiyam

...Petitioners in WP.No.459/15

1 MAYAVAN
2 JAYALAKSHMI
3 MALLIKA
4 SINGARAYAR
5 SENBAGAVALI

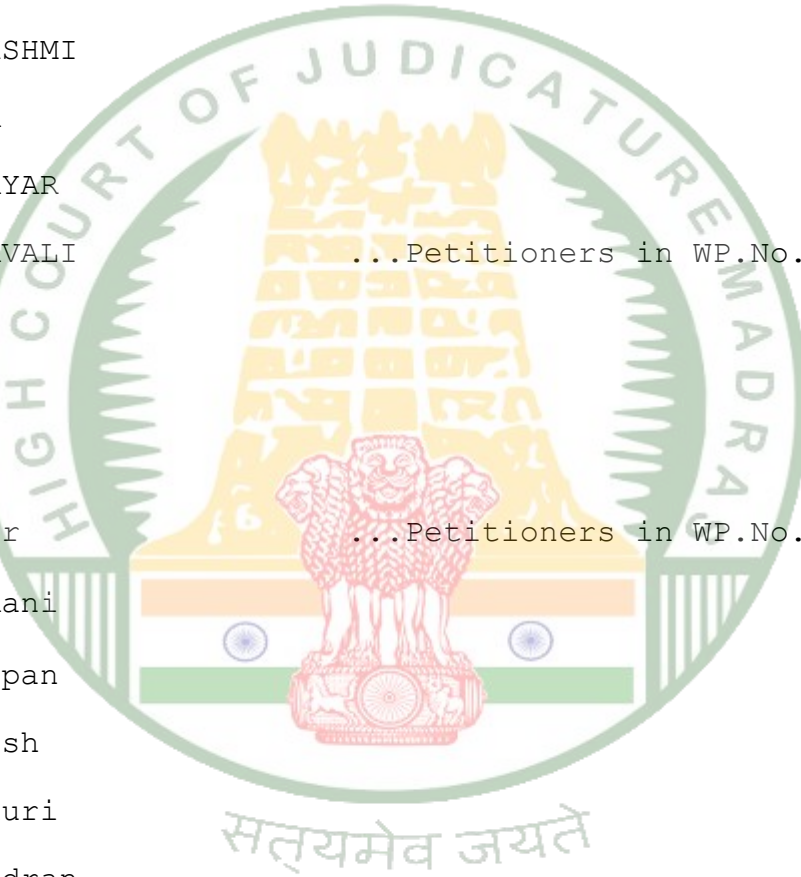
...Petitioners in WP.No.17991/14

1 P.Raji
2 V.Kumar
3 J.Latha
4 D.Baskar

...Petitioners in WP.No.34362/14

1 S.Velumani
2 B.Navappan
3 S.Prakash
4 L.Kasthuri
5 R.Rajendran

6 C.Thavamani
7 S.Valli
8 R.Sekar
9 M.Nagappan
10 S.Valli
11 A.Raji



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12 S.Senthilkumar

13 P.Elumalai

14 K.Lakshmi

15 A.Kumar

16 J.Arokkiyadoss

17 E.Sivagami

18 S.Vijaya

19 D.Prakash

20 K.Rejeswari

21 R.Porselvi

22 R.Arjunan

23 S.Munusamy

24 S.Sundram

25 V.Vijaya

26 V.Elumalai

27 E.Raja

28 S.Rani

29 M.Arumugam

30 L.Ramalingam

31 R.Murugan

32 V.Nagappan

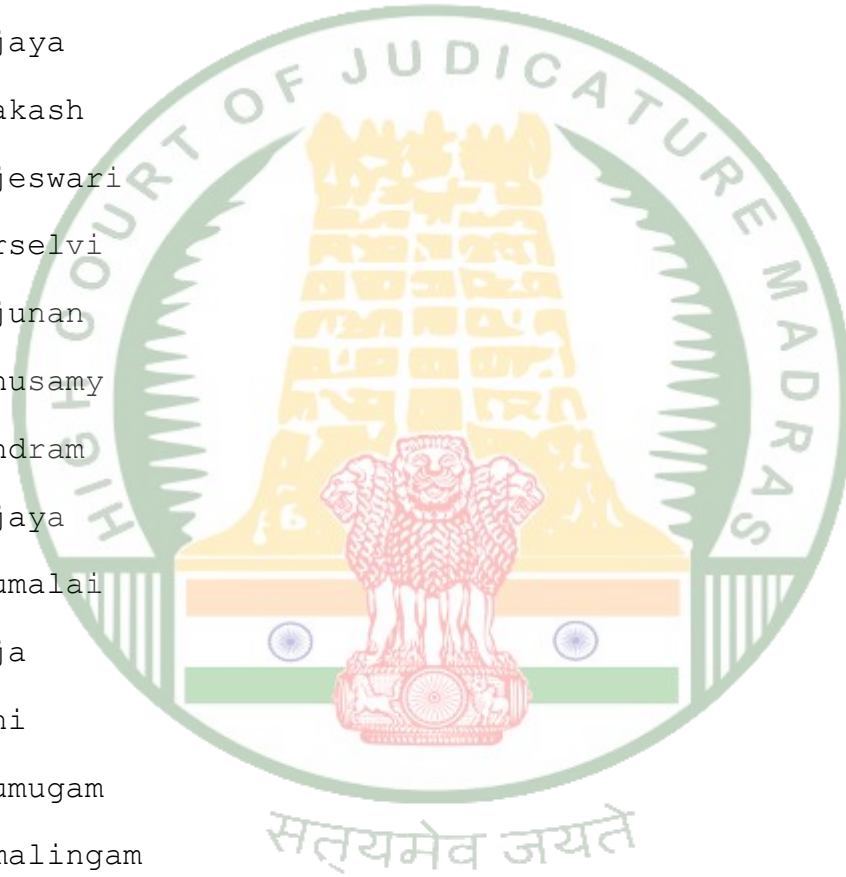
33 D.Selvi

34 M.Sathiyadevi

35 M.Umasankari

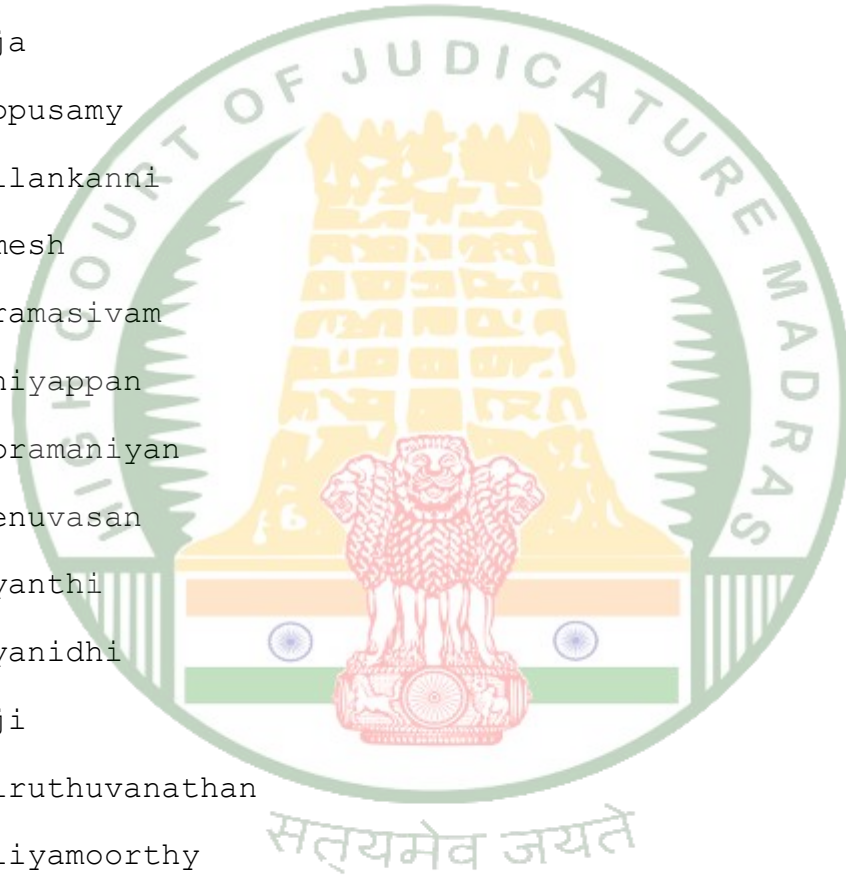
36 V.Rajendran

37 M.Radhakrishnan



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38 C.Selvi
39 P.Dhakshnamoorthy
40 K.Kalaiyarasi
41 M.Boss
42 S.Muniyappan
43 K.Murugadoss
44 P.Raja
45 S.Kuppusamy
46 R.Vellankanni
47 N.Ramesh
48 S.Paramasivam
49 N.Muniyappan
50 K.Subramaniam
51 M.Seenuvasan
52 K.Jayanthi
53 S.Dayanidhi
54 L.Raji
55 J.Thiruthuvanathan
56 A.Kaliyamoorthy
57 V.Velu
58 K.Arul
59 S.Angalammal
60 S.Elango



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..Petitioners in WP.NO.18792/15

Vs

1. The State of Tamil Nadu
Rep by the Secretary to Government,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.

..Respondents 1 & 2 in all WPs.

3. The Commissioner
Mayiladuthurai Municipality,
Nagapattinam District.

...3rd Respondent in
WP.Nos.392,393,459/15,17991 & 34362/14

4.The Commissioner,
Villupuram Municipality,
Villupuram District

...3rd Respondent in WP.No.18792/15

Prayer in WPs 392,393/2015:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the relevant records pertaining to the orders issued by the Commissioner, Myladuthurai Municipality, the 3rd respondent herein vide his proceedings Na.Ka.8855/97/H1 dated 10.03.2006 and quash them in so far as regularisation is given w.e.f. From 01.03.2006 only is concerned as illegal, arbitrary, unreasonable, being violative of principles of natural justice and thereby direct the respondents herein to regularise the services of the petitioners' mother late R.Jaya with retrospective effect from date of completion of 3 years of service as per G.O.Ms. No.71 (Municipal Administration and Water Supply (MC.3) Department) dated 05.05.1998 with all consequential monetary and service benefits and disburse accumulated arrears of the same to the petitioners within a time frame.

Prayer in WP.No.34362/2014:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for all relevant records pertaining to the orders issued by the Commissioner Mayiladuthurai Municipality the 3rd Respondent herein vide his Proceedings Na.Ka.No.8855/97/H1 dt. 10.03.2006 and quash the same in so far as regularisation is given w.e.f. from 01.03.2006 only is concerned as illegal arbitrary unreasonable being violative of principles of natural justice and thereby direct the Respondents herein to regularise the services of the Petitioners retrospectively w.e.f. respective

dates of completion of 3 years of services as per G.O.Ms.No.71 (Municipal Administration and Waster Supply (MC3) Dept.) dt.05.05.1998 with all consequential monetary and service benetis.

Prayer in WP.459/15:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for all relevant records pertaining to the orders issued by the Commissioner Mayiladuthurai Municipality the 3rd respondent herein vide his proceedings Na. Ka. 8855/97/H1 dt 10.3.2006 to each of the petitioners except petitioners 13 and 19 and the proceedings No. Na. Ka. No.8855/97/H1 dt 6.4.2006 issued to the 13th and 19th petitioners and quash them in so far as regularisation is given w.e.f. 1.3.2006 only is concerned as illegal arbitrary unreasonable being violative of principles of natural Justice and thereby direct the respondents herein to regularise the services of the petitioners restrospectively with effect from respective dates of completion of 3 years of service as per G.O.Ms.NO.71 (Municipal Administration and water Supply (MC3) Department) dated 5.5.1998 with all consequential monetary and service benefits.

Prayer in WP.18792/15:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for all relevant records pertaining to the orders passed by the Commissioner Villupuram Municipality the 3rd respondent herein vide his proceedings No. Na.Ka.No. 7139/2006/H1 dated 28.02.2006 and quash them in so far as regularizing the services of the petitioners from 01.03.2006 only as illegal arbitrary unreasonable being violative of principles of natural justice and thereby direct the respondents herein to regularise the services of the petitioners with effect from respective dates of completion of one year of service as per G.O.Ms.No.71 (Municipal Administration and Water Supply (MC.3) Department) dated 05.05.1998 with all consequential monetary and service benefits

Prayer in WP.18792/15:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, Calliing for all the relevant records pertaining to the Order passed by the third respondent vide Proceedings Na.Ka. No.8855/ 97/H1 dated 10.3.2006 and quash the same as illegal arbitrary violative of principles of natural justice and direct the respondents herein to regularize the services of the petitioners and bring them into the regular time Scale of pay with effect from the date of completion of 3 years service as per G.O.Ms.No.71 (Municipal Administration and Water Supply Department) dated 5.5.1998 with all consequential monetary and service benefits

For Petitioners in WP.18792/15 : Mr.A.R.Suresh
For Petitioners in WP.17991/14 : Mr.S.Balaji

(In Wps 392, 393 & 459 of 2015 :
and 34362 of 2014) : Mr.V.Thirupathi

(In WP 18792 of 2015) : Mr.A.R.Suresh
For Respondents : Mr.K.Dhananjeyan
(For R1 & R2)
Special Government
Pleader
Mr.P.Srinivas (For R3)

COMMON ORDER

All these batch of writ petitions are filed seeking a relief of regularisation of services with retrospective effect. In this regard, the writ petitioner placed reliance on the orders passed by the Government in G.O.Ms.No.71 (Municipal Administration and Water Supply (MC.3) Department) dated 5th May 1998.

2. The learned counsel appearing for the writ petitioners submitted that all the issues raised in these batch of writ petitions were adjudicated elaborately by the Hon'ble Full Bench of this Court in the case of Secretary to Government Municipal Administration and Water Supply Department Versus V.Marisamy and Others reported in 2017 (3) CTC 673.

3. On perusal of the judgment of the Full Bench, this Court is inclined to consider the relief sought for in all these writ petitions. The relevant portion of the order of Full Bench is extracted hereunder :-

"25. It has been further contended by the Learned Counsel for the individual Applicants that the Full Bench has travelled beyond the scope of Reference and went to give a third view, contrary to the facts, when all the particulars were not placed before it. For the sake of convenience, the reference before the Full Bench is reproduced as under:

"Whether the view taken by the Division Bench in W.P.(MD) Nos.4170 & 4171 of 2011 & 9296 of 2012 is the correct view or that of the other Division Bench in W.A.(MD) No.729 of 2013 is the correct view?".

26. Though, as pointed out by the Counsel, after answering the Reference in the negative, the Full Bench had held that the Regularisation can be given effect only from 23.02.2006 in Para 28(iii) of the Judgment sought to be reviewed, we do not agree the same to be excess as it was necessary for the Court to discuss the issue in detail to answer the point of Reference. However, the findings in Para 28 (iii) are incorrect and liable to be recalled in view of our findings in the earlier Paragraphs.

27. Another contention by the learned Additional Advocate General was that by virtue of G.O.Ms.No.166, dated 31.12.2014, the Regularisation can be given effect only from 23.02.2006. We do not agree with the said contention as we have already held that the Sanitary Workers are entitled to be regularised as per the terms of G.O.Ms.No.71, dated 5.5.1998 from the date of their initial appointment. Paragraphs-29 of the decision of the Supreme Court reported in CID v. Vatika Township (P) Ltd., 2015 (1) SCC 1, is relevant and the same is extracted hereunder:

"The obvious basis of the principle against retrospectivity is the Principle of "fairness", which much be the basis of every legal rule as was observed in L 'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd., 1994 (2) WLR 39. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for the purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the

subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the Counsel for the parties. In any case, we shall refer to few Judgments containing this dicta, a little later."

28. In the present case, by virtue of G.O. Ms. No.101, dated 30.04.1997 & G.O.Ms.No.71, dated 5.5.1998, the right to be considered for regularisation on completion of the mandatory period had already accrued to the Petitioners on the date of their appointment. The only condition is to be satisfied is the required number of days, of course take away the fundamental right of the Petitioners to be considered for appointment.

29. In the result, Rev. Appl. No.87 of 2014 is dismissed and Rev.Appl.Nos.223 & 254 of 2015 are allowed on the following terms:

a) Persons employed as Sanitary Workers and covered by G.O.Ms.No.101, dated 30.04.1997 & G.O.Ms.71, dated 5.5.1998 are entitled to be regularised after the completion of the respective period under Consolidated Pay as specified in the Government Orders from the date of their initial appointment.

b) Any orders passed by any Municipality regularising the service based on G.O.Ms. No.21, dated 23.2.2006, Full Bench Judgment dated 29.11.2013 & G.O.Ms.No.166, dated 31.12.2014 shall be recalled and appropriate Orders shall be passed as held above.

30. Consequently, the connected Miscellaneous Petitions are closed. No costs."

4. Based on the ratio laid down by the Full Bench of this Court, the writ petitioners are entitled to get the benefit on par with other employees similarly placed. It is needless to state that the eligibility criteria and other qualifications as per the Rules regarding the regularisation have to be followed by the respondents before taking decision and passing orders extending the benefit of the judgment of the Full Bench of this Court.

5. Accordingly all the writ petitions stand disposed of.
However, there is no order as to costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The State of Tamil Nadu
Rep by the Secretary to Government,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai - 600 009.
 2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
 3. The Commissioner
Mayiladuthurai Municipality,
Nagapattinam District.
 4. The Commissioner,
Villupuram Municipality,
Villupuram District
- +1cc to Mr.S.Balaji, Advocate sr.48397
+3ccs to Mr.P.Srinivas, Advocate sr.49288 to 49290
+4ccs to Mr.V.Thirupathi, Advocate sr.48611, 48613, 48614,
48614, 48615
+1cc to Government Pleader sr.49090
+1cc to Mr.A.K.Suresh, Advocate sr.48613

W.P. Nos. 392, 393, 459 &
18792 of 2015 and
17991, 34362 of 2014

kgk(co)
ss(1/8/2017)

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