

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.8.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.556 of 2016
and
C.M.P.No.7473 of 2016

The Commissioner,
Nagercoil Municipality,
Nagercoil, Kanyakumari District. Appellant/3rd Respondent

Versus

1. A.Subbulakshmi
2. The State of Tamil Nadu,
rep. by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai.
3. The Commissioner,
Municipal Administration,
Ezhilagam, Chennai-5. Respondents/petitioner,
Respondents 1 & 2

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 2.11.2012 passed in W.P.No.2897 of 2004 on the file of this court.

Prayer in WP. No.2897 of 2004:-

Writ Petitions under Article 226 of the Constitution of India praying that in this court for insurance of writ of certiorarified mandamus to call for the record from his proceedings in ROC No.57275/2002/k2/4881/2001, dated 4.10.2002, quash the same and to direct the second respondent commissioner, Municipal Administration to regularize the service of the petitioner as permanent typist in the permanent post of Typist available under the third respondent Nagercoil Municipality.

For appellant : Mr.Ma.P.Thangavel
For R1 : Mr.K.Sridhar
For RR2 and 3 : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

The writ appeal is filed challenging the order passed by the learned Single Judge granting the regularisation and monetary benefits with effect from an earlier date rather than the actual date of regularisation.

2. Heard the learned counsel appearing for the parties for some time and perused the records.

3. The case of the first respondent herein viz., the writ petitioner is that she was appointed as Muster Roll Typist in the appellant Municipality on 28.3.1990 on the basis of daily wages and thereafter, it appears that she had made several attempts to get regularised her services by way of submitting representations and filing writ petitions and finally, the present writ petition seeking to quash the order impugned which contends that her case would be considered after the ban imposed by the Government in filling up the entry level post is lifted. Pending the writ petition, it appears that the writ petitioner's services were regularised on 13.7.2009, however, she claimed monetary benefits for the period prior to 13.7.2009 and the same was granted by the learned Single Judge.

4. Relying upon the judgment of the Apex Court in STATE OF TAMIL NADU v. A.SINGAMUTHU ((2017) 4 SCC 113), the learned Special Government Pleader would submit that the writ petitioner was appointed only on the basis of daily wages and there was a ban by the Government to fill up the entry level posts which was lifted only on 7.2.2006 and thereafter, she was considered for regularisation and accordingly, her services were regularised on 13.7.2009 and therefore, she is not entitled to get monetary benefits prior to actual regularisation.

5. In the decision cited supra, a Division Bench of the Apex Court has held that part time or casual employment is meant to serve exigencies of administration and continuance in such service for long period confers no right to regularisation especially when scheme of regularisation is missing from rule-book and regularisation casts huge financial implications on public exchequer.

6. In view of the principle laid down by the Apex Court, the authorities cannot be directed to regularise the services of the writ petitioner with effect from an earlier date rather than the actual date of regularisation. The order of the learned Single Judge granting the relief of regularisation with effect from 17.5.2001 and the consequent monetary benefit is set aside. The writ appeal is allowed.

7. At this juncture, it is submitted that the first respondent is to retire from service in the near future. Therefore, the authorities are directed to decide the issue and give monetary effects to which the writ petitioner is otherwise, eligible. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

/TRUE COPY/

Sub Assistant Registrar

ssk.

To:

1. The Commissioner,
Nagercoil Municipality,
Nagercoil, Kanyakumari District.
2. The Secretary,
The State of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai.
3. The Commissioner,
Municipal Administration,
Ezhilagam, Chennai-5.

+1 C.C. to M/S.K.SRIDHAR ASSO Advocate SR.NO. 62165

W.A.No.556 of 2016

NMI (CO)
T.R (09/10/2017)