



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A. [MD].No.734 of 2017

and

CMP[MD].No.5506 of 2017

The Municipal Commissioner,
Municipal Office,
Subramania Swami Sannathi,
South Street, Puliangudi,
Tirunelveli District.

... Appellant/3rd Respondent

Vs.

1.The Commissioner /
The Director of Municipal Administration,
Ezhilagam, Chepauk,
Chennai - 5.

2.The Regional Director,
Municipal Administration and
Water Supply Department,
Tirunelveli, Tirunelveli District. ...1 &2nd Respondents/
Respondents 1&2

3.Baskar ...3rd Respondent/Writ Petitioner

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order passed by this Court in WP.(MD) No.2943 of 2010 dated 19.12.2013.

Prayer in WP(MD). 2943/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, to call upon the documents pertaining to the order passed by the 1st Respondent in O.Mu.No.15805/04/J3, dated 01-10-2009 and the consequentially order passed by the 3rd Respondent vide No.Na.Ka.No.2991/09/H1, dated 25-01-2010 and quash the same in so far as petitioner concerned and may consequential direct the Respondents to regularize the service of the petitioner from the date of appointment.



For Appellants : Mr.N.Dilip Kumar
For Respondents : Mr.K.P.Narayanakumar

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JUDGMENT

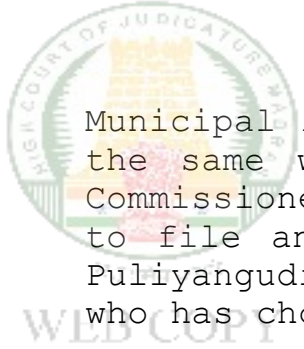
[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

This writ appeal has been filed by the Municipal Commissioner, Puliyangudi Municipality, questioning the order dated 19 December 2013 made in W.P.(MD) No.2943 of 2010.

2.The third respondent herein viz., M.Baskar belongs to Scheduled Caste. He registered himself with the local employment exchange on 13 September 1995. He was called for interview and appointed as Sanitary Worker on consolidated pay on 27 November 1998 by the appellant herein vide proceedings in Na.Ka.No.2511/98/01. The petitioner had served the appellant Municipality as Sanitary Worker till 2004 without any break in service. Applying G.O.Ms.No.71 dated 05 May 1998, other Sanitary Workers, who were appointed along with the writ petitioner were regularised. Therefore, the writ petitioner herein submitted a representation to the appellant Municipality. The appellant Municipality also supported the claim of the writ petitioner as could be seen from the communication bearing Na.Ka.No.5622/2-000/H1 dated 01 May 2007 addressed by the appellant to the Commissioner of Municipal Administration. Though it is mentioned that the writ petitioner had not been reporting for duty with effect from 12 October 2003, a proposal was made for treating the said period as one of leave on loss of pay and regularising his services. By virtue of G.O.Ms.No.71 dated 05 May 1998, the benefit of such regularisation was available on completion of three years service. But, the first respondent did not accept the said proposal and passed an order of rejection dated 07 October 2009 and the same was also communicated by the third respondent. The appellant also passed the consequential order dated 25 January 2010. Both these proceedings were impugned in W.P.(MD) No.2943 of 2010 filed by the third respondent herein. The said writ petition was heard along with two other writ petitions filed at the instance of similarly placed sanitary workers.

3.The learned Judge by order dated 19 December 2013 took note of the nature of the job performed by the writ petitioner viz., scavenging and considering the number of vacancies available, directed the first respondent herein to regularise the service of the writ petitioner by extending the benefit of G.O.Ms.No.21 Municipal Administration and Water Supply (MC3) Department, dated 23 February 2006 from the fourth year date of their original appointment with continuity of service, but, without backwages.

4.Even though the order of the Commissioner/Director of



Municipal Administration dated 01 October 2009 was questioned and the same was set aside and a direction was issued to him, the Commissioner/Director of Municipal Administration did not choose to file any writ appeal. It is only the Municipal Commissioner, Puliyangudi Municipality, who passed only the consequential order, who has chosen to file the instant intra court appeal.

5. It is relevant to point out here that the appellant himself had supported the claim of the writ petitioner. A copy of communication issued in that regard is enclosed the typed set of papers. When the Commissioner of Municipal Administration whose order was quashed and was directed to regularise the writ petitioner's service has not chosen to challenge the same, we find it difficult to understand how the Municipal Commissioner, Puliyangudi can maintain this intra Court appeal. Even on merits the learned Judge was right in issuing the direction for regularisation.

6. In this regard, the Full Bench decision of this Court reported in **2017(3) CTC 673 - The Secretary to Government, Municipal Administration and Water Supply Department Vs. Marisamy** can be noted. The Full Bench in its order dated 30 May 2017 specifically held that persons employed as Sanitary Workers and covered by G.O.Ms.No.101 dated 30 April 1997 and G.O.Ms.No.71 dated 05 May 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. But, in the present case, the learned single Judge has directed the regularisation only from the fourth year from the date of the original appointment of the writ petitioner. Backwages has also been declined.

7. In these circumstances, we find no reason to interfere with the order passed by the learned Judge. The writ appeal is accordingly dismissed. Consequently, connected miscellaneous appeal is closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Commissioner /
The Director of Municipal Administration,
Ezhilagam,
Chepauk,
Chennai - 5



2. The Regional Director,
Municipal Administration and Water Supply Department,
Tirunelveli, Tirunelveli District.

+1cc to Mr.N.Dilip Kumar, Advocate in SR.No.64060

Arul/skm

AE/JC/SAR1/24.07.2017/4P/4C

W.A. (MD) .No.734 of 2017
and
CMP (MD) .No.5506 of 2017
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