



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2017

CORAM:

WEB COPY

THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.A.(MD) No.826 of 2017
and
C.M.P.(MD) No.5690 of 2017

1.The Secretary to Government,
Government of Tamil Nadu,
Municipal Admn. & Water Supply
(TPI) Department,
Fort St. George, Chennai - 600 009.

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

3.The Commissioner,
Cumbum Municipality,
Cumbum, Theni District.

... Appellants

-vs-

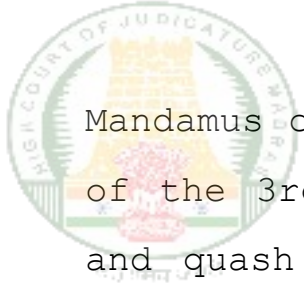
1.G.Anandhan
2.M.Pandi
3.S.Velmurugan
4.S.Jeyalakshmi
5.R.Nagarathinam
6.A.Paraman
7.K.Jothimurugan

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 26.04.2013 in W.P.(MD) No.7151 of 2013, on the file of this Court.

Prayer in WP(MD)No.7151/2013:-

Writ Petition is filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorarified



Mandamus calling for the records relating to the impugned order of the 3rd respondent in Na.Ka.No. 4280/97/H1 dated 27.2.2006 and quash the same in so far as it failed to regularize the services of the petitioners on completion of three years of service on par with similarly placed Sanitary workers and consequently direct the respondents herein to regularize the services of the petitioners in the post of Sanitary Worker on completion of three years on par with other similarly placed employees, make necessary entries in their service register and pay all the monetary benefits accrued to their service on par with the persons similarly placed in G.O. Ms. No.570 dated 15.11.2010 and G.O.Ms.No.312 dated 9/8/2011 of the 1st respondent.

For Appellants : Mr.V.Muruganantham, A.G.P.

For Respondents : Mr.B.Vinoth Kumar for R1 to R3, R5 & R6

J U D G M E N T

(Judgment of the Court by T.S.SIVAGNANAM, J)

This writ appeal by the State is directed against the order, dated 26.04.2013 in W.P.(MD) No.7151 of 2013.

2. The matter pertains to regularization of the respondents / writ petitioners, who are working as Sanitary Workers in Cumbum Municipality.

3. The question as to whether such employees are entitled for regularization of service was subject matter of litigation for quite some time and ultimately, the issue has been settled by the Honourable Full Bench of this Court in the case of *the Secretary to Government, Municipal Administration and Water Supply Department vs. V.Marisamy (FB)*, reported in 2017 (3) CTC 673. The operative portion of the said Judgment reads as follows:

"24. Considering the above ratio laid down by the Supreme Court, differential treatment of Employees in the Town Panchayats and Municipalities and among different employees in the Municipalities itself, would amount to defeating the rights guaranteed



under Article 14 & 16 of the Constitution of India. Therefore, the above errors have affected the outcome of the Reference to Full Bench.

.....
.....

27. Another contention by the learned Additional Advocate General was that by virtue of G.O.Ms.No.166, dated 31.12.2014, the Regularization 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 regularized as per the terms of G.O.Ms.No.71, dated 05.05.1998 from the date of their initial appointment. Paragraph-29 of the decision of the Supreme Court reported in CIT v. Vatika Township (P) Ltd., 2015 (1) SCC 1, is relevant and the same is extracted hereunder:

"The obvious basis of the principle against retrospectively is the Principle of "fairness", which must be the basis of every legal rule as was observed in L'Officer Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd., 1994 (2) WLR 39. Thus, legislations which modified accrued rights of 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 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 Judgements containing this dicta, a little later.

28. In the present case, by virtue of G.O.Ms.No.1-1, dated 30.04.1997 & G.O.Ms.No.71, dated 5.5.1998, the right to be considered for regularization 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 in the subsequent Government Order cannot take away the fundamental right of the Petitioners to be considered for appointment.



29. In the result, Rev.Aplc. 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.No.71, dated 5.5.98 are entitled to be regularized 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 regularizing the service based on G.O.Ms.No.21, dated 23.2.2006, Full Bench Judgement dated 29.11.2013 & G.O.Ms. No.166, dated 31.12.2104 shall be recalled and appropriate Orders shall be passed as held above."

4. This writ appeal was filed during 2014 much prior to the Judgment of the Honourable Full Bench, dated 30.05.2017. Since the issue stands covered by the decision of the Honourable Full Bench and as a Division Bench, we are bound by the decision of the Honourable Full Bench of this Court, the appeal stands disposed of with a direction to the appellants to extend the benefit, which shall accrue to the respondents by virtue of the said Full Bench decision, within a period of three months from the date of receipt of a copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

TO

1.The Secretary to Government,

Government of Tamil Nadu, Municipal Admn. & Water Supply
(TPI) Department, Fort St. George, Chennai - 600 009.

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

3.The Commissioner, Cumbum Municipality, Cumbum, Theni District.
+One cc to Mr.B.Vinoth Kumar, Advocate, SR.No.61849

krk/sj

RL/5C/4P/MR/KKR/SAR3/5/7/2017

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