



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 14.02.2017

CORAM:

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THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A. (MD) Nos. 339 to 341 of 2013
and
M.P. (MD) .No.1 of 2013 in W.A. (MD) .No.339 of 2013
and
M.P. (MD) .No.1 of 2013 in W.A. (MD) .No.340 of 2013
and
M.P. (MD) .Nos.1 of 2013 & 1 of 2015 in W.A. (MD) .No.341 of 2013

W.A. (MD) .No.339 of 2013:

The Municipal Commissioner,
Thanjavur Municipality,
Thanjavur.

.. Appellant / 1st respondent
vs.

1.K.Sathyamoorthy

.. 1st respondent/ Petitioner

2.The Commissioner of Municipal
Administration, Elizhagam,
Chepauk,
Chennai -5.

.. 2nd respondent / 2nd respondent

W.A. (MD) .No.340 of 2013:

The Municipal Commissioner,
Thanjavur Municipality,
Thanjavur.

.. Appellant / 1st respondent

Vs.

1.Kumar

.. 1st respondent/ Petitioner

2.The Commissioner of Municipal
Administration, Elizhagam,
Chepauk,
Chennai -5.

.. 2nd respondent / 2nd respondent

**W.A. (MD) .No.341 of 2013:**

The Municipal Commissioner,
Thanjavur Municipality,
Thanjavur.

.. Appellant / 1st respondent

Vs.

1.V.Senthilkumar

.. 1st respondent/ Petitioner

2.The Commissioner of Municipal
Administration, Elizhagam,
Chepauk,
Chennai -5.

.. 2nd Respondent / 3rd Respondent

3.The Additional Director of Municipal
Administration,
Thanjavur.

..3rd respondent / 2nd respondent

Writ Appeals have been filed under Clause 15 of the Letters Patent, against the common order dated 09.01.2013, made in W.P. (MD).Nos.3699 and 3700 of 2007 and 9956 of 2009 by a learned Single Judge of this Court.

Prayer in WP(MD) . 3699/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st respndnet to reinstate the petitioner in service as driver in Thanjavur Municipality with all back wages and benefits with continuity in service

Prayer in WP(MD) . 3700/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st respondent to reinstate the petitioner in service as driver in Thanjavur Municipality with all back wages and benefits with continuity in service

Prayer in WP(MD) . 9956/ 2009 :

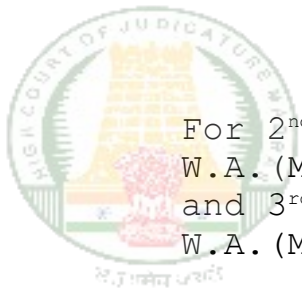
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records connected with the proceedings issued in A.Na.Ka.No.13986/02/H1 dated 30-09-2009 passed by the 3rd Respondent and quash the same and consequently direct the respondents to regularize the petitioners services for the post of Driver with all attendant benefits.

For appellant in all the
appeals

: Mr.V.Raghupathy

For 1st respondent in all
the appeals

: Mr.C.Arul Vadivel @ Sekar



For 2nd respondent in
W.A.(MD).Nos.339 to 341/2013
and 3rd respondent in
W.A.(MD).No.341 of 2013

: Mr.V.R.Shanmuganathan,
Special Government Pleader

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COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

These writ appeals have been filed by the Thanjavur Municipality / 1st respondent in all the writ petitions, as against the common order passed by a learned Single Judge of this Court in W.P.(MD).Nos.3699 and 3700 of 2007 and 9956 of 2009, whereby and whereunder the learned Single Judge has, by common order dated 09.01.2013, allowed the writ petitions filed by the first respondents herein and directed the appellant herein to regularise the service of the first respondents.

2.Since all the writ appeals have arisen out of a common order, all the appeals heard together and disposed of by way of this common judgment.

3.The case of the first respondents in W.A.(MD).Nos.339 and 340 of 2013 is that they joined in service as Driver on N.M.R basis in the Thanjavur Municipality on 07.05.1997. They have been continuously working without any break in service. While so, the appellant terminated them from service without any notice or enquiry on 01.04.2007. Hence, they have filed the writ petitions in W.P.(MD).Nos.3699 and 3700 of 2007 seeking a direction to the appellant to reinstate them in service as driver in Thanjavur Municipality with all back wages and continuity of service.

4.The case of the first respondent in W.A.(MD).No.341 of 2013 is that he has joined as NMR worker on 01.11.1996 and he was appointed as Driver in the month of January, 2000. While continuing so, he has filed O.A.No.1030 of 2011 before the Tamil Nadu Administrative Tribunal seeking a direction to the appellant to regularise his service. Due to abolition of Administrative Tribunal, the same has been transferred to this Court and renumbered as W.P.No.2330 of 2017. A learned Single Judge of this Court, vide order dated 04.08.2009, directed the appellant herein to consider the representation to be submitted by the first respondent, in the light of G.O.Ms.No.21, Municipal Administration and Water Supply (MC.3) Department, dated 23.02.2006 and G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. Accordingly, the first respondent has sent his representation on 02.09.2009 to the appellant. However, the appellant, vide proceedings dated 30.09.2009, rejected the request of the first respondent on the ground that the said G.Os. are not applicable to his case. Aggrieved by the said order, he has filed the writ petition in W.P.(MD).No.9956 of 2009.



5.The learned Single Judge, after hearing both sides, has allowed all the writ petitions holding that G.O.Ms.No.22 would apply to the first respondents and directed the appellant herein to regularise their service with all benefits. Aggrieved by the said common order, the appellant here has come up with these appeals.

6.When the matter was taken up for consideration, the learned counsel for the appellant submitted that as per G.O.Ms.No.22, the persons, who have completed 10 years of service as on 01.01.2006, alone are entitled for regularisation. But, the first respondents herein have not completed 10 years of service as on 01.01.2006. Though the appellants in W.A.(MD).Nos.339 and 340 of 2013 were appointed in the year 1997, there is a shortage of four months service for completion of 10 years as on 01.01.2006. In respect of the first respondent in W.A.(MD).No.341 of 2013 is concerned, there is a shortage of six months to complete the ten years of service. More over, G.O.Ms.No.22 is only a one time measure. But, the learned Single Judge has erroneously directed the appellant herein to regularise the service of the first respondents herein holding that G.O.Ms.No.22 does not stipulate or intend that it has to be applied as a one time measure. Thus, he prayed to set aside the order passed by the learned Single Judge.

7.Per contra, the learned counsel appearing for the first respondents submitted that the first respondents herein were joined as N.M.R. in the year 1997 and they have been continuously working without any break. In fact, the Government of Tamil Nadu vide G.O.Ms.No.138, dated 30.07.2009 regularised the service of 17 sanitary workers, who were appointed in the year 1998 in the same Thanajvur Municipality, based on the order passed by the Tamil Nadu Administrative Tribunal in O.S.No.324 of 2004. Therefore, the first respondents herein cannot be discriminated. Thus, he prayed for dismissal of the appeals.

8.Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

9.Admittedly, the first respondents herein were joined in the service on NMR basis in the year 1997 and there was only four months and six months shortage of service. When the Government has chosen to regularise the service of 17 sanitary workers, who were appointed in the year 1998, in the Thanjavur Municipality, vide G.O.Ms.No.138, dated 30.07.2009, the first respondents herein cannot be discriminated and the appellant cannot apply different yardstick against the first respondents herein.

10.In view of the above and also considering the peculiar instances of the cases, this Court is not inclined to interfere with the order passed by the learned Single Judge. Hence, all the writ appeals are dismissed and the appellant is



directed to comply with the order passed by the learned Single Judge forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

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Assistant Registrar (CS-II)

Sub Assistant Registrar

To

1. The Commissioner of Municipal Administration, Elizhagam, Chepauk, Chennai -5.
2. The Additional Director of Municipal Administration, Thanjavur.
3. The Municipal Commissioner, Thanjavur Municipality, Thanjavur.

+1cc to Special Government Pleader in SR.No. 8356

+3cc to Mr.C.Arul Vadivel @ Sekar, Advocate, in SR Nos.8224 to 8226

+1cc to M/s.D.Malaichamy, Advocate, in SR No.8267

Writ Appeal (MD) Nos.339 to 341 of 2013
14.02.2017

gcg

MS-MR/12.5.2017/5P-9C