

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.3.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.750 OF 2017

- 1 THE DIRECTOR OF TOWN PANCHAYATS
KURALAGAM CHENNAI-108.
 - 2 THE ASSISTANT DIRECTOR OF TOWN
PANCHAYATS NAGERCOIL
KANYAKUMARI DIST.
 - 3 THE EXECUTIVE OFFICER
KALLUKOTTAM KANYAKUMARI DIST.
- Appellants/Petitioners

versus

D.ARUPTHA VIJAYAN ... Respondent /Respondent

Appeal filed to set aside the order dated 09/11/2016 in
W.P.No.36748/2016.

Prayer in W.P.No.36748 of 2016: Writ Petition filed Under Article 226 of the constitution of India praying for issuance of a Writ of Certiorarified Mandamus to Call for the records of the respondents especially the 1st respondent relating to his proceedings made in Na.Ka.No.8535/2016/A3 dated 04.07.2016 and quash the same as null and void illegal and invalid and consequently direct the respondents especially the 1st & 3rd respondents to regularize the petitioners service as Assistant Electrician along with time scale of pay with effect from 1st of April 2001 the date of shifting the petitioners service from the daily rate wage basis to consolidated mode of pay either applying G.O.Ms.No.84 Municipal Administration and Water Supply Department dated 21.05.1998 or applying G.O.Ms.No.22 Personnel & Administrative Reforms(F) Department dated 28.02.2006 with all monetary and service benefits with effect from 01.04.2001 apart from disbursing the difference in monetary benefits to the Petitioner from 31.07.2006 to up to date.

For appellant : Mr.V.Jayaprakash Narayanan, Spl.G.P.

For Respondents : Mr.A.Amalraj

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

Introductory:-

The appellant regularized the services of an employee who was appointed in a similar post after the appointment of the respondent on 9 July 1992. The services of the employee who was subsequently appointed was regularized. The order directing regularization of the respondent is challenged on the ground that there was no sanctioned post as on the date on which he was appointed, notwithstanding the fact that the services of the employee who was subsequently appointed was regularized.

2. This intra court appeal is directed against the order dated 9 November 2016 in W.P.No.36748 of 2016 whereby and whereunder, the learned Single Judge after quashing the order dated 4 July 2016 on the file of the Director of Town Panchayat, Chennai, directed the appellants to regularize th services of the respondent in the post of Assistant Electrician with effect from 1 April 2001.

3. We have heard the learned Special Government Pleader on behalf of the appellants and the learned counsel for the respondent.

4. The petitioner was appointed as Water Supply Attender by the Executive Officer, Kallukottam Town Panchayat Board. Since the Panchayat was the appointing authority, it was a valid appointment. In fact, the appointment was made only through the employment exchange. Even though it was a regular appointment, the respondent was paid salary on daily rate basis. Later, it was paid on a monthly rate basis.

5. The Panchayat by order dated 30 April 2001, granted promotion to the respondent as "street light assistant" and fixed his salary on consolidated basis with effect from 1 April 2001. The salary was enhanced on multiple occasions by the village panchayat. However, his services were not regularized in spite of the continuous work extracted from him.

6. The Government issued an Order in G.O.Ms.No.199, Panchayat Administration, Water Supply Department dated 12 August 1997, for regulating the services of panchayat employees. The Government thereafter issued an order in G.O.Ms.No.84 dated 21 May 1998, dealing with the service conditions of sanitary workers, including regularization the fixation of time scale, and other incidental matters.

7. The panchayat, pursuant to the proceedings dated 31 July 2006, regularized the services of the respondent by granting him scale of pay. The regularization was made in accordance with the Government Order in G.O.Ms.No.63, Rural Department and Village Panchayat, dated 23 June 2006. However, the respondent was not given regularization with effect from 1 April 2001, the date on which he was appointed on consolidated basis.

8. The claim made by the respondent was rejected by the Director of Town Panchayat by order dated 4 July 2016. The Director, in the said order, observed that the respondent is not entitled for regularization from 1 April 2001 on the strength of the Government Order in G.O.Ms.No.84 dated 21 May 1998.

9. The respondent challenged the order dated 4 July 2016 before the writ court in W.P.No.36748 of 2016.

10. The learned Single Judge referred to all the earlier Government Orders relating to regularization and the orders applicable to the village panchayats. The learned Single Judge also referred to a decision of the learned single Judge in W.P.No.783 of 2014 and the judgment in the writ appeal in W.A.No.1454 of 2007, which was confirmed by the Hon'ble Supreme Court by order dated 16 March 2012 in SLP No.16217 of 2009. The learned Single Judge directed the appellants to regularize the services of the respondent with effect from 1 April 2001.

11. The appellants have taken up a contention before us that there was no sanctioned post as on the date on which the appellant was appointed. There is absolutely no merit in the said contention in view of the voluminous documents produced by the respondent.

12. It is found from the documents available on record that the third appellant appointed Thiru.E.Eronimus as a Switch Board Operator, on 1 September 1986, on daily wages, pursuant to the resolution passed by Kallukottam Town Panchayat. He was later absorbed as Water Supply Attender on 20 July 1995. Thereafter, his services were regularized with effect from 25 February 1997. When a Writ Petition was filed by

Thiru.M.Eronimus, for regularization of his services, the learned Single Judge found merit in his contention. The learned single Judge allowed the Writ Petition by order dated 14 February 2006 in W.P.No.27022 of 2005. The said order was complied with by the appellants. The learned Special Government Pleader justified the regularization on the ground that the order was complied with on account of the direction given by the Writ Court while hearing the contempt petition.

13. The case of the respondent is similar to the one in W.P.No.27022 of 2005. The petitioner in W.P.No.27022 of 2005 was appointed in a post previously held by the respondent. In view of the appointment of the petitioner in W.P.No.27022 of 2005 in the post occupied by the respondent, there is no point in contending that the appointment of the respondent was not against a sanctioned post.

14. The learned Single Judge directed the appellants to regularize the services of the respondent with effect from 1 April 2001 and pay him all the monetary and service benefits. We modify the said order by directing the appellants to regularize the services of the respondent in the post of Assistant Electrician with effect from 1 April 2001 without any liability to pay the monetary benefits. The regularization of service from 1 April 2001 would be treated for all purposes including seniority and continuity of service, without there being any liability to pay the back wages for the period in question.

15. The order passed by the learned Single Judge is modified to the extent indicated above. The appellants are directed to comply with the order passed by the learned Single Judge as modified by this judgment, within a period of eight weeks from the date of receipt of a copy of this judgment.

16. The intra court appeal is disposed of with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tar
To

- 1 THE DIRECTOR OF TOWN PANCHAYATS,
KURALAGAM, CHENNAI-108.
- 2 THE ASSISTANT DIRECTOR OF TOWN
PANCHAYATS, NAGERCOIL,
KANYAKUMARI DIST.
- 3 THE EXECUTIVE OFFICER,
KALLUKOTTAM, KANYAKUMARI DIST.

+1cc to M/S.V.Jayaprakash Narayanan, Spl. Government Pleader
Sr.17461

+1cc to Mr.A.Amulraj, Advocate Sr.17087

W.A.No.750 OF 2017

svn[co]
srg 24/05/2018



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