

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.26109 of 2011 and
M.P.No.1 of 2011

R.Velavan

... Petitioner

Vs

- 1.Government of Tamil Nadu,
Rep by Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai 600 005.
- 2.The Commissioner of Municipal Administration,
Chepauk,
Chennai-600 005.
- 3.The Municipal Commissioner,
Arni, Tiruvannamalai District. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the third respondent in Na.Ka.No.8541/2006/C1 dated 23.05.2011 to quash the same and issue directions to the first respondent to regularize the period from 01.05.1992 to 06.01.2004 as duty with attendant benefits except monetary benefits.

For Petitioner : Mr.K.Venkata Ramani (SC) for
Mr.M.Muthappan

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader for RR1 & 2
: Mr.M.Paulraj for R3

O R D E R

Heard Mr.K.Venkata Ramani, learned senior counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the first and second respondents and Mr.M.Paulraj, learned counsel appearing for the third respondent.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the third respondent in Na.Ka.No.8541/2006/C1 dated 23.05.2011 to quash the same and issue directions to the first respondent to regularize the period from 01.05.1992 to 06.01.2004 as duty with attendant benefits except monetary benefits.
"

3. The case of the petitioner is as follows:-

The petitioner was originally appointed as Sanitary Worker in Arni Municipality, Thiruvannamalai District. Thereafter, he was appointed as Night Watchman in the scale of pay of Rs.750-940 by the third respondent Municipality vide proceedings dated 05.04.1991. Thereafter, by proceedings dated 09.08.1991, 03.12.1991 and 25.02.1992, the petitioner was appointed as Office Assistant. The third respondent subsequently by proceedings dated 30.04.1992, reverted the petitioner to work as Badili Sanitary Worker, on account of audit objection stating that the employee from Health Service Wing to general Wing is against the rules.

4. As against the order dated 30.04.1992 of the third respondent, the petitioner approached the then Tamil Nadu Administrative Tribunal in O.A.No.7415 of 1993. The learned Tribunal by order dated 23.10.2003, disposed of the original application, by passing the following order:-

"This application is filed by Thiru R.Velavan, formerly working as Night Watchman in the Arani Municipality, challenging the order, dated 30.04.1992, as per which, he has been reverted from the post of Watchman to Daily Worker NMR. The applicant was initially appointed as a substitute Sanitary Worker on daily wages in the year 1990. Subsequently, he was appointed as Night Watchman and brought under time scale of pay. A leave vacancy arose for the post of Office Assistant and the applicant was appointed as Office Assistant. While he was working temporarily as Office Assistant, it seems the audit party have raised some objection for posting this applicant as Office Assistant. The audit party seems to have objected that applicant who was initially appointed only as NMR, ought not to have been appointed as Office Assistant by transfer of service, which is not contemplated by Rules. There is no question of the applicant being appointed as Office Assistant by transfer of service. The applicant was only working as an NMR Worker and he was appointed later as Watchman in regular time scale of pay. There is no impediment for appointing a

Watchman to the post of Office Assistant because all these posts are only in the basic service. The applicant was only appointed temporarily as Office Assistant and even if his appointment as Office Assistant is not proper, he ought to have been reverted and posted as Watchman in regular time scale of pay. The applicant ought not to have been terminated from service and should not be reverted as NMR. Reverting him as substitute worker cannot be done. Therefore, the respondents are directed to give postings to the applicant as Watchman and continue him in service. The applicant will not be entitled to claim back wages for the period of unemployment. However, the applicant shall be reinstated and allowed to work as Watchman in regular time scale of pay. In fact, the policy of the Government also has been only to regularize the daily rated workers and bring them under regular time scale of pay and provincialise their service as per the latest G.O.No.125, applicable to Municipalities and Local Bodies. Therefore, the applicant shall be given postings as Watchman. Orders shall be passed within a period of eight weeks from this date. The application is ordered in these terms."

5. From the above order passed by the Tribunal, it was clear that the petitioner was entitled to be reinstated as Watchman and he was to be allowed to continue in service as such. In pursuance of the order passed by the Tribunal, by proceedings dated 07.01.2004, the third respondent reappointed the petitioner as Watchman in the revised pay scale of Rs.2550-3200, on the same day, the petitioner joined the duty as Night Watchman. The grievance of the petitioner is that when he was appointed in pursuance of the order passed by the Administrative Tribunal, he was treated as a fresh entrant as Night Watchman from 07.01.2004 i.e., from the date of the appointment order.

6. According to the petitioner, the authority had misunderstood the directions passed by the relevant Tribunal, wherein, the Tribunal had only directed that the petitioner was not entitled to back wages and not continuity of service. According to him, the entire service from 01.05.1992 to 06.01.2004 had been wiped out by the action on the part of the third respondent. The learned Tribunal has only held that the appointment of Office Assistant was not proper and therefore, the question of terminating the service of the petitioner did not arise in the first place and as per the direction of the Tribunal, the petitioner ought to have been reinstated as Night Watchman, which means that his appointment must relate back to the initial date of appointment i.e., in 1992.

7. Therefore, the petitioner had submitted a representation to the third respondent on 09.08.2010. In response to the representation, the third respondent passed an order on 25.05.2011, rejecting the claim of the petitioner for regularising the period from 01.05.1992 to 06.01.2004. According to the petitioner, there was no proper consideration of the claim of the petitioner and the reasons set forth in the impugned communication has mentioned other extraneous facts. Therefore, the impugned communication suffers from non application of mind.

8. The learned senior counsel would submit that the authority had deliberately misinterpreted the order passed by the learned Tribunal, restricting the benefit of back wages and interpreted the same as if there was also denial of continuity of service also. The order of the Tribunal, according to the learned senior counsel is very clear that the third respondent was directed to reinstate the petitioner in service. Once the employee is reinstated in service, the continuity of service is automatic and the same cannot be denied to the petitioner. Such action on the part of the third respondent was contrary to the specific directions of the Tribunal.

9. Upon notice, learned counsel appearing for the respondents has entered appearance. On behalf of the third respondent, counter affidavit was also filed.

10. The substance of the contention on behalf of the third respondent, resisting the claim of the petitioner is set out in paragraph 6 of the counter affidavit, which is extracted below:-

"6. With regard to the averments made in paragraph 6 of the affidavit, it is submitted that the averments made by the petitioner are denied. The Tribunal has directed the respondents to give postings to the applicant as Watchman and continue him in service. At the same time, it has also observed that the applicant shall not be entitled to claim back wages for the period of unemployment. Accordingly, he was appointed as Watchman in regular time scale of pay. Since the applicant is not entitled to claim back wages, the unemployment period cannot be considered for regularization."

11. The learned counsel appearing for the third respondent would submit that in view of the denial of back wages to the petitioner by the Tribunal, the petitioner was not entitled to regularise the service during the period of his non-employment. Therefore, he was rightly denied the regularization as sought by the petitioner.

12. At this, learned senior counsel would submit that it was not the fault of the petitioner for his non-employment, as the petitioner was prevented from performing his duty by illegal action initiated against him. Once such action found to be invalid, the natural corollary would be that the petitioner was entitled to count the entire period of service. The Tribunal has only denied the benefit of back wages on the principle of "no work no pay", which did not mean that even continuity of service could be denied to him.

13. This Court has considered the rival submissions of the learned counsel on either side and perused the relevant materials and pleadings placed on record. This Court is in agreement with the contention advanced by the learned senior counsel that the petitioner cannot be denied the continuity of service and regularization of service from 01.05.1992 to 06.01.2004, since the Tribunal's direction is very clear that the petitioner should be reinstated in service as Night Watchman. The benefit of back wages alone was denied on the principle of "no work no pay" and such restriction by the Tribunal cannot be enlarged to include the benefit of continuity of service. Once the learned Tribunal has judicially found that the action of the third respondent is illegal, there cannot be any justification in law for denial of continuity of service to the employee concerned.

14. The averments contained in the counter affidavit as extracted supra, clearly discloses the complete misapplication and non-application of mind on the part of the third respondent. The denial of back wages cannot be the basis for the denial of continuity of service and such interpretation by the third respondent demonstrates the complete ignorance of understanding the orders by the judicial forum. Moreover, the reasons as found in the impugned proceedings dated 23.05.2011, are extraneous and did not address the claim of the petitioner in proper perspective. The third respondent has passed the impugned proceedings without due examination of the import of the Tribunal's order or the claim of the petitioner in the light of the facts and circumstances of the case.

15. Therefore, this Court is of the considered view that the impugned proceedings suffers from the vice of non-application of mind and also contrary to the directions issued by the learned Tribunal. In any event, such denial of continuity of service is without any justification and the impugned action is therefore, cannot be countenanced both in law and on facts.

16. In the said circumstances, this Court has no other option except to set aside the impugned proceedings in Na.Ka.No.8541/2006/C1 dated 23.05.2011. Consequently, there

shall be a direction to the respondents to regularise the period of service of the petitioner from 01.05.1992 to 06.01.2004, as duty with all attendant benefits except monetary benefits as directed by the learned Tribunal. The consequential direction passed by this Court shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

17. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

gsk

To

- 1.The Secretary,
Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai 600 005.
- 2.The Commissioner of Municipal Administration,
Chepauk,
Chennai-600 005.
- 3.The Municipal Commissioner,
Arni,
Thiruvannamalai District.

- + 1 cc to Mr.M.Paulraj Advocate,SR.13017
+ 1 cc to Mr.M.Muthappan Advocate,SR.13459

W.P.No.26109 of 2011

nr 27/03/2018

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