

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 09.02.2018	Date of Pronouncing Judgment 26.03.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P. VELMURUGAN

Writ Appeal No.1170 of 2012 and
M.P.No.1 of 2012

The Commissioner
Tambaram Municipality
Tambaram, Chennai. Appellant

Vs.

1.K.Geetha
2.The District of Municipal Administration
Chepauk, Chennai-600 009. Respondents

PRAYER: The Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 19.12.2011 in W.P.No.2921 of 2006.

PRAYER IN W.P.2921 OF 2006:

Writ Petition filed Under Article 226 of the Constitution of India praying this Honourable court to issue a writ of mandamus directing the respondents to reinstate the petitioner and regularise the service of the petitioner with effect from the date of her initial appointment 01.04.1992 with all service and monetary benefits as per rules and government orders.

For Appellant : Mr.P.Srinivas
For R1 : No appearance
For R2 : Mrs.A.Sri Jayanthi
Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

The first respondent was employed on daily wages in the Revenue Department from 01.04.1992 to 1995. She was employed as Section Writer in Tambaram Municipality on daily wage basis from September 1995 to 31.12.1997 under LCS/NRY Scheme. Thereafter, she applied for the maternity leave and after completing the maternity leave period, when she came to the office for joining duty, the appellant refused to permit her to join duty.

2. The case of the first respondent is that even temporary employees or daily wage employees are eligible for maternity leave, provided they should have rendered service for 80 days, prior to applying the maternity leave, as per the Government Order in G.O.125, Municipal Administration and Water Supply Department, dated 27.05.1999. The first respondent also made representations dated 23.02.2000 and 25.06.2000 seeking regularization as per the afore mentioned Government Order. The other Nominal Muster Roll (NMR) workers, who were working along with her, have got the benefit of regularization of their service. Since there was no reply forthcoming from the appellant, the respondent filed Original Application in O.A.No.6876 of 2001 before the Tamil Nadu Administrative Tribunal (hereinafter referred to as the Tribunal). After abolition of the Tribunal, the matter stood transferred to the file of this Court and got-renumbered as Writ Petition No.2921 of 2006.

3. After contest, the learned Single Judge allowed the writ petition, and set aside the impugned order and issued a direction to the second respondent/employer to reinstate the first respondent and regularize her services, in terms of G.O. (MS)No.125, with all monetary benefits. Aggrieved by the said order, the appellant/Municipality is before this Court.

4. Heard the learned counsel appearing for the Appellant/Municipality as well as the second respondent.

5. The first respondent was working as Section Writer in the office of the second respondent. The first respondent applied for maternity leave, and after availing the maternity leave period, the second respondent prevented her from joining duty. As per maternity benefits Act, she is eligible for maternity leave. Even the temporary workers and daily wages who have worked for 80 days prior to avail the maternity leave are entitled to get the benefit. After passing the order in G.O. (MS)No.125, she made several representations before the

appellant, but the same have not yielded any response.

6. According to the appellant, the first respondent worked in the Revenue Department from 01.04.1992 to 1995. Thereafter, she was employed as Section Writer in the Municipality on daily rate basis from September 1995 to 31.12.1997 under LCS/NRY Scheme. She was engaged on daily wages, the G.O.(MS)No.125 is not applicable to her and she never applied for maternity leave. She herself absented from duty for more than two years and never turned up and taking advantage of the G.O.(MS)No.125, after passing the G.O., she made the claim and filed Original Application before the Tribunal.

7. Here, admittedly, the first respondent is not a permanent employee. She was on daily wages and as on the date of issuance of G.O.(MS)No.125, she was not in service. Therefore, the learned Single Judge, even assuming that as per G.O.(MS) No.125, dated 27.05.1999, the first respondent is eligible, should have only issued a direction to the appellant to consider the case and without ascertaining the details, such positive direction cannot be given. Therefore, the order passed by the learned Single Judge warrants interference by this Court. As already stated, the first respondent has not stated anything about the date of applying for the maternity leave and the date of completion and also the date of reporting her duty. Even assuming that, she has applied for leave, it is not clear why she has not immediately approached the Higher Authority or the appropriate court. It was only after the G.O.(MS)No.125 came into existence in the year 1999, she made a representation. The appellant totally denied her case that she applied for maternity leave and that she is not eligible for the benefit of G.O.(MS)No.125. She has not given any reference regarding the application for maternity leave.

8. Therefore, in the absence of sufficient proof, the learned Single Judge was not correct in issuing a positive direction.

9. In the result, the Writ Appeal is allowed. The order dated 19.12.2011 passed by the learned Single Judge in W.P.No.2921 of 2006 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-iv)

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Sub Assistant Registrar

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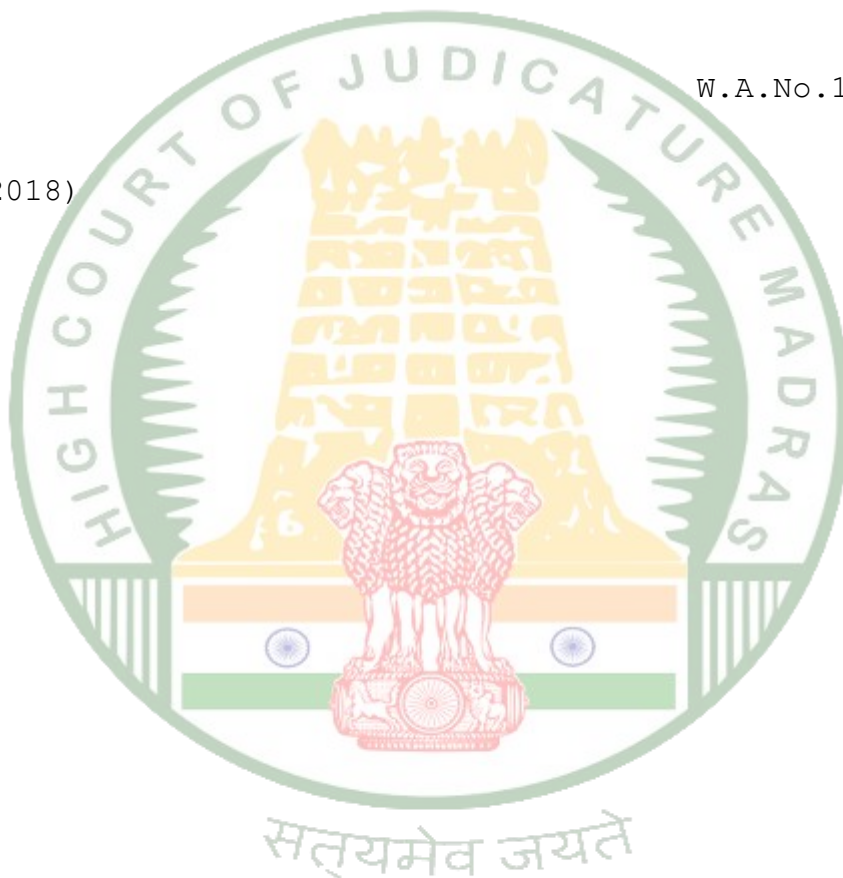
To

1. The Commissioner, Tambaram Municipality
Tambaram, Chennai.
2. The District of Municipal Administration
Chepauk, Chennai-600 009.

+1cc to Mr.P.SRINIVAS, Advocate, S.R.No. 23334

Judgment in
W.A.No.1170 of 2012

MR (CO)
TR(10/04/2018)



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