

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.32250 of 2007
and M.P.Nos. 1 & 2 of 2007

1.G.Ravikumar
2.M.Selvakumar

... Petitioner

Vs.

1. The Commissioner of Municipal Administration,
Chepauk, Chennai-5.
2. The Regional Director of Municipal Administration,
Tiruppur.
3. The Executive Officer,
Vellakoil 3rd Grade Municipality,
Vellakoil, Erode District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records connected with the proceedings issued in O.Mu.No.11001/2006/S6 dated 14.04.2006 passed by the 1st respondent in so far as petitioners are concerned and quash the same and consequently direct the respondents to reinstate the petitioners into service and regularise the petitioners services from the date of first appointment and to appoint the petitioners in sanctioned six posts of temporary sanitary workers.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.K.Ravikumar for R1 & R2
Additional Government Pleader
Mr.S.Gopinathan for R3

O R D E R

The petitioner has filed the present writ petition seeking to quash the impugned order of the first respondent dated 14.04.2006 in O.Mu.No.11001/2006/S6, in so far as the petitioners are concerned and consequently, direct the respondents to reinstate the petitioners into service and

regularize the petitioners' service from the date of their first appointment and to appoint the petitioners in the sanctioned six posts of temporary sanitary workers.

2. It is stated that the petitioners served as consolidated worker in Vellapadi third Grade Municipality from 1997 to 2001 and subsequently, the petitioners had been asked to attend the interview on 22.04.1998 and the petitioners were appointed on 28.05.1999 by the proceedings of the third respondent. It is further stated that the initially, the petitioners were working in private forum earning Rs.3,500/- per month and they resigned that job, and joined the Municipality. Since in the Municipality, they were given only Rs.900/- per month, which is not sufficient to maintain the family, they could not continue the job. Hence, they left the service. Thereafter, the petitioners came to know that the order issued by the Govern in G.O.Ms.No.125 dated 27.05.1995, was not followed strictly by the respondent/Municipality. Subsequently, the second petitioner submitted a representation before the Commissioner of Municipal Administration, seeking to reinstate him into the service. However, the respondents rejected the request stated that since the petitioners were appointed as consolidate worker, the G.O. cited by the petitioners is not applicable, and it is only applicable for one N.Annanmal, who has completed 10 years of service as on 01.10.1996. Challenging the rejection order, the petitioners have come forward with the present writ petition.

3. Heard the learned counsel for the petitioner as well as the learned Standing Counsel appearing for the respondents/Municipality.

4. The issue involved in this writ petition is covered by the decision of a Division Bench of this Court in reported (2014) 4 SCC 769 (Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others), wherein it has been held as follows:

" 5. The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularized. The issue is no more res integra. In State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806, this Court held as under:
There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments

consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.

6. In *Union of India & Ors. v. A.S. Pillai & Ors.*, (2010) 13 SCC 448, this Court dealt with the issue of regularisation of part-time employees and the court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

7. This Court in *State of Rajasthan & Ors. v. Daya Lal & Ors.*, AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is

irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be litigious employment. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a

statute. (Emphasis added) "

5. In the light of the above decisions, the prayer sought for by the petitioners in this writ petition cannot be granted by this Court. Accordingly, the writ petition is liable to be dismissed as there is no merits in it.

6. With the above observations, this writ petition is dismissed. No Costs. Consequently, the connected miscellaneous petition are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gmd

To

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Chepauk, Chennai-5.
- 2.The Regional Director of Municipal Administration,
Tiruppur.
- 3.The Executive Officer,
Vellakoil 3rd Grade Municipality,
Vellakoil, Erode District.

+lcc to the Government Pleader, S.R.No. 51858

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CS/04/09/18

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