



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2018

CORAM :

WEB COPY

**THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS. JUSTICE R.THARANI**

WA (MD) Nos.286 to 289 of 2018
and
C.M.P.(MD) Nos.1734 to 1740 of 2018

1. The State of Tamil Nadu
rep. By its Secretary to Government,
Department of Finance,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner,
Treasury and Accounts
(Now the Principal Secretary/Commissioner
of Treasuries and Accounts)
Panagal Buildings,
Saidapet, Chennai - 600 015.
(Now at integrated complex for Finance Department,
Veterinary Hospital Campus, Nandanam, Chennai -35)
- 3.The District Treasury Officer,
Palayamkottai,
Tirunelveli District. ... Appellants 1 to 3 in
all the Appeals
4. The Treasury Officer,
(The Assistant Treasury Officer)
Sub Treasury,
Palayamkottai,
Tirunelveli District. ...4th Appellant in
W.A(MD) .Nos.286,288, 289/18
4. The Treasury Officer,
(The Assistant Treasury Officer)
Sub Treasury,
Senkottai,
Tirunelveli District. ... 4th Appellant in WA(MD) .No.287/18

Versus



1.M.Mariappan

... Respondent in W.A.
286/2018

2.E.Paramasivan

... Respondent in W.A.
287/2018

3.S.M.Syed Mohammed Lebbai

... Respondent in W.A.
288/2018

4.S.Sankaranarayanan

... Respondent in W.A.
289/2018

Common Prayer: Writ Appeals are filed under Clause 15 of Letters Patent, to set aside the common order dated 12.05.2017 made in W.P.(MD)No.14712, 14713, 14716 and 14717 of 2013.

Prayer in WP(MD).No. 14712/ 2013 :

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 relating to the Order passed by the 1st respondent in his letter No.8851/Ka.Ka.-2/2012-2 dated 15.03.2013 and the letter No.25170/Ka.Ka.2/2013-1, dated 05.07.2013 and the consequential order of the 3rd respondent NA.KA.No.9411/2002/A2(3) dated. 19.08.2013 and quash the same and to direct the respondents to reinstate the petitioner as Night Watchman cum Masalchi and to regularize the services of the petitioner from 10.08.1992 and to pay the salary and all consequential benefits and thus render justice. [*Prayer amended as per order dt.19.06.14 in MP.1/14]

Prayer in WP(MD).No. 14713/ 2013 :

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 relating to the Order passed by the 1st respondent in his letter No.8851/Ka.Ka.-2/2012-2 dated 15.03.2013 and the letter No.25170/Ka.Ka.2/2013-1, dated 05.07.2013 and the consequential order of the 3rd respondent NA.KA.No.9411/2002/A2(1) dated. 19.08.2013 and quash the same and to direct the respondents to reinstate the petitioner as Night Watchman cum Masalchi and to regularize the services of the petitioner from 04.03.1988 and to pay the salary and all consequential benefits and thus render justice. [Prayer amended as per order dt.19.06.14 in MP.1/14]

Prayer in WP(MD).No. 14716/ 2013 :

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 relating to the Order passed by the 1st respondent in his letter No.8851/Ka.Ka.-2/2012-2 dated 15.03.2013 and the letter No.25170/Ka.Ka.2/2013-1, dated 05.07.2013 and the consequential order of the 3rd respondent NA.KA.No.9411/2002/A2 dated. 19.08.2013 and quash the same and to direct the respondents to reinstate the petitioner as Night



Watchman cum Masalchi and to regularize the services of the petitioner from 26.08.1995 and to pay the salary and all consequential benefits and thus render justice. [Prayer amended as per order dt.19.06.14 in MP.1/14]

Prayer in WP(MD).No. 14717/ 2013 :

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 relating to the Order passed by the 1st respondent in his letter No.8851/Ka.Ka.-2/2012-2 dated 15.03.2013 and the letter No.25170/Ka.Ka.2/2013-1, dated 05.07.2013 and the consequential order of the 3rd respondent NA.KA.No.9411/2002/A2(3) dated. 19.08.2013 and quash the same and to direct the respondents to reinstate the petitioner as Night Watchman cum Masalchi and to regularize the services of the petitioner from 03.03.1988 and to pay the salary and all consequential benefits and thus render justice. [Prayer amended as per order dt.19.06.14 in MP.1/14]

In all appeals

For Appellants : Mr.V.R.Shanmuganathan, Spl.G.P.

For Respondents : Mr.M.Md.Ibrahim Ali

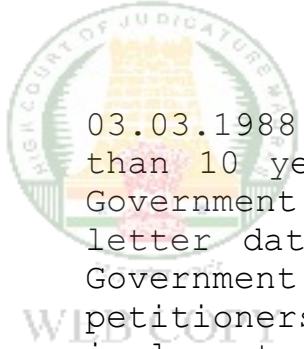
COMMON JUDGMENT

(Judgment of the Court was delivered by **T.S.SIVAGNANAM, J**)

This appeals are directed against the common order in W.P. (MD) Nos.14712, 14713, 14716 and 14717 of 2013 dated 12.05.2017 filed by the respondents/writ petitioners.

2.The writ petitioners sought for issuance of writ of mandamus to quash the order passed by the first appellant dated 15.03.2013 and 05.07.2013 and consequential order of the third appellant dated 19.08.2013 and for a direction to reinstatement them as Night watchmen cum Masalchi and regularise their services from 10.08.1992, 04.03.1988, 26.08.1995 and 03.03.1988 respectively and to pay the salary and to pay all consequential benefits.

3.The undisputed facts are that the writ petitioners, who are 4 in number were all appointed as part time Night watchmen cum Masalchi in the District Treasury Office, Tirunelveli. Their names were sponsored by the employment exchange and after undergoing process of recruitment, they were engaged as part time Night Watchman cum Masalchi. The date of such appointments are being M.Mariappan - 10.08.1992, E.Paramasivan - 04.03.1988, S.M.Syed Mohammed Lebbai - 26.08.1995 and Sankaranarayanan -



03.03.1988. Thus, all the writ petitioners had completed more than 10 years of service as part time Night Watchmen. Based on Government Orders in G.O.Ms.No.528 dated 10.10.1988, Government letter dated 20.01.1995, G.O.Ms.No.212, dated 20.01.1995 and the Government letter dated 19.12.2001, proposals were sent and the petitioners were brought under regular time scale of pay and implemented against the sanctioned vacancies in the post of Night Watchmen cum Masalchi. All of them were brought into the regular time scale of pay with effect from 30.05.2003. Even on the said date, all the petitioners have completed more than 10 years of service. However, after working for about 10 years, during 2013, abruptly their services were terminated by proceedings, which were impugned in the writ petitions. The writ Court after elaborately considering the factual position and also taking notice of the various Government Orders has allowed the writ petitions. The reason for termination of the services of the respondents/writ petitioners was that during 2001, there was a ban on recruitment and therefore, in 2003, the respondents/writ petitioners could not have been brought into regular time scale of pay.

4.We have perused the order dated 30.05.2003 issued to Mr.Mariappan by which he was brought into regular time scale of pay. On a reading of the said proceedings, we find that the past services of Mariappan was taken into consideration and that his name was sponsored by the employment exchange and he possessed the requisite age and educational qualification.

5.Taking note of the Government Orders which were passed in the yea 1995 - 2001, he was brought under regular time scale of pay. Some orders were passed in respect of other three petitioners as well. Therefore, the Writ Court was fully justified in holding that the ban on recruitment can have no impact on the orders passed by the authorities directing the writ petitioners in to regular time scale of pay. The directions issued in the writ petitions are contained in paragraph No.22, which reads as follows:

"22.In the result, the following orders are passed in these writ petitions:

(i)the writ petitions are allowed:

(ii)the respondents are directed to reinstate the petitioners in W.P.(MD) Nos.14712, 14713, 14717 of 2013. Insofar as the petitioner in W.P.(MD) No.14716 of 2013 is concerned, since the petitioner has attained the superannuation, reinstatement at this juncture may not arise. However, the respondents shall take into account his service till his superannuation as a qualified service for the purpose of service benefits except back wages.

<https://hcservices.ecourts.gov.in/hcservices/>) Insofar as the other three petitioners, who are directed to be reinstated are concerned, their



services for the period i.e. from 19.08.2013 till their reinstatement shall be calculated as a duty period for getting service benefits. However, they are not entitled to claim salary for the said period.

(iv) As indicated above, the petitioners' service shall be regularised on completion of 10 years from the date of their initial appointment and from that date onwards they should be treated as permanent employees and accordingly they shall be entitled to get other service benefits, except, salary difference.

(v) The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order."

6. Therefore, we find that there is no ground made out by the appellants to interfere with the order passed by the Writ Court. However, one of the directions issued by the Writ Court is to regularise the respondents service on completion of 10 years from the date of their initial appointment and from that date onwards, they should be treated as permanent employees and accordingly entitled to get other service benefits except salary difference. In our considered view, such direction cannot be issued. Since in the year 2003, the Writ petitioners accepted the orders which brought them into time scale of pay and were continuously working for 10 years, they have never made a claim that their part time services should be reckoned for the purpose of regularisation and other benefits. Therefore, to that extent, we are inclined to modify the orders passed in the writ petitions.

7. In the result, the writ petitions are partly allowed and the directions issued by paragraph No.22(i), (ii), (iii) and (v) are confirmed and the writ appeals stands dismissed. The direction contained in paragraph No.22(iv) is set aside. The appellants are directed to comply with the aforesaid direction within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu
Department of Finance,

<https://hcservices.ecourts.gov.in/hcservices/>
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+ 4 ccs TO Mr.M.Md.Ibrahim Ali , Advocate in SR No. 50510

Arul

AE/KKR/SAR3/05.03.2018/6P/10C

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