



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2018

CORAM:

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.454 of 2015
and
M.P(MD)Nos.1 and 2 of 2015

The Commissioner
Municipality,
Puliyankudi,
Sivagiri Taluk,
Tirunelveli District.

... Petitioner

Vs.

1.R.Paramasivan

2.The Labour Court,
Tirunelveli,
Tirunelveli District.

3.The Secretary,
Municipal Administration and
Water Supply Department,
Chepauk,
Chennai.

4.The Commissioner of
Municipal Administration,
Chepauk,
Chennai.

(R3 & R4 have been impleaded suo motu
vide court order dated 01.03.2018 in
WP(MD)No.454/2015)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order in claim petition in C.P.No.6 of 2014 on the file of the second respondent on 04.12.2014 and to quash the same as illegal.

For Petitioner : Mr.T.S.Md.Mohideen
For Respondents : Mr.M.P.Senthil for R1
Mr.J.Gunaseelanmuthiah
Addl. Govt. Pleader
for R3 and R4
R2 Court

O R D E R

The Secretary, Municipal Administration and Water Supply Department, Government of Tamil Nadu and the Commissioner of Municipal Administration, Chepauk, Chennai are suo motu impleaded as respondents 3 and 4.

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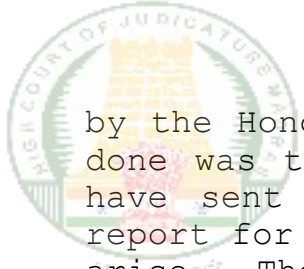
2.The first respondent Paramasivan was employed as Sweeper in NMR category on 19.06.1998. He was getting consolidated pay of Rs.2,000/- per month. He appears to have been on leave from 01.06.1999 to 11.11.1999 unauthorisedly.

3.The learned Standing Counsel appearing for the petitioner municipality furnished the details of the criminal cases, in which, the first respondent was involved. It is further seen that the first respondent was acquitted in 4 out of 5 cases. He was convicted only in S.T.C.No.549 of 1997 under Section 75 of the City Police Act. The Municipality did not give employment to the petitioner. At the same time, it also did not pass any order terminating his services.

4.The first respondent therefore, filed I.D.No.28 of 2004 on the file of the Labour Court, Tirunelveli. The Labour Court by award dated 25.01.2008 directed the petitioner herein to reinstate the first respondent into service in the same status as a temporary worker with the same pay from 01.06.1999 onwards and also to pay full backwages from 01.06.1999 onwards till the filing of the I.D. The I.D was allowed in favour of the first respondent. The same was questioned by the writ petitioner by filing W.P(MD)No.5574 of 2008. The said writ petition ended in favour of the first respondent, but liberty was given to the municipal management to take action against the employee. The said order passed in the writ petition was taken on intra-court appeal. The appeal also went against the Municipality. In the meanwhile, the first respondent filed C.P.No.11 of 2014 and the same was allowed in his favour. Subsequently, he filed C.P.No.6 of 2014. The said claim petition was resisted by the Municipality on the ground that it had already sent a communication calling upon the employee to report for work and that the employee did not turn up for work and that therefore, the C.P. should be dismissed. The stand of the Municipality was rejected by the Labour Court and C.P.No.6 of 2014 was also allowed. Questioning the same, this writ petition has been filed.

5.The learned Standing Counsel for the Municipality reiterated the grounds set out in the affidavit filed in support of this writ petition.

6.This Court went through the contents of the communication sent by the Municipality to the first respondent. The said communication dated 30.10.2012 called upon the first respondent to appear for a personal interview on 06.11.2012. When the Labour Court directed reinstatement of the worker and the said award of the Labour Court was confirmed both in the writ proceedings as well as



by the Honourable Division Bench, what the Municipality should have done was to comply with the order passed by the Court. It should have sent a communication to the first respondent asking him to report for duty. The question of holding personal interview did not arise. Therefore, this Court is of the view that the communication dated 30.10.2012 cannot be said to be sufficient compliance of the directions of the Labour Court. Therefore, the said stand taken by the Municipality was rightly rejected and the C.P was rightly allowed by order dated 04.12.2014.

7. When the writ petition was admitted, the Municipality was directed to deposit the entire amount. The first respondent has also withdrawn a certain sum. A sum of Rs.1,82,000/- still is remaining in the Court deposit.

8. The learned counsel appearing for the workman made a request that he would not press for withdrawing the said amount. He submitted that the first respondent may be allowed to retain what was already withdrawn and the remaining amount can be taken back by the Municipality. All that the petitioner wants is, he should be placed in the same position as that of his other workers who were appointed along with him with effect from 1998. According to the learned counsel for the petitioner, they are presently in the time scale of pay and their services have been regularized.

9. The learned counsel for the petitioner Municipality strongly opposed such a request. He also contended that it is for the Government to pass orders of regularization. He also highlighted the conduct of the first respondent.

10. This Court went through the materials on records. It is seen that the first respondent's son passed away recently. He has to take care of his grandchildren as well as the widowed daughter-in-law. The first respondent's wife is a physically challenged person. It is not in dispute that the Labour Court directed the Municipality to reinstate the first respondent by affording the status of temporary worker with the same pay from 01.06.1999 onwards. The persons who were placed on par with the first respondent as on 01.06.1999 have since been regularized and they are in time scale of pay for the last several years. There is a considerable force in the said submission of the learned counsel for the first respondent.

11. Taking note of the totality of circumstances and in the interest of justice, the following directions are issued:-

(i) The writ petitioner Municipality is permitted to withdraw the balance amount of Rs.1,82,000/- lying to the credit of C.P.No.6 of 2014 on the file of the Labour Court, Tirunelveli.

(ii) The first respondent shall not have any monetary claim against the municipality.

(iii) The writ petitioner Municipality is directed



to submit proposals for regularizing the first respondent's services and placing him in the time scale of pay on the same date on which the persons similarly placed were granted the benefit of regularization.

(iv) Such a proposal shall be submitted by the writ petitioner to the Commissioner of Municipal Administration within three weeks from the date of receipt of a copy of this order.

(v) The Commissioner of Municipal Administration shall forward the same within two weeks thereafter to the Government, namely, the third respondent herein.

(vi) The Government shall pass orders regularizing the services of the writ petitioner and placing him in time scale of pay from the date on which his coworkers were regularized.

(vii) It is made clear that the petitioner will be given only notional benefit and actual monetary benefit shall be given from the date of passing of such regularization order by the Government.

(viii) The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

(ix) It is made clear that the first respondent shall not claim to be placed under the old pension scheme and he will come only under the Contributory Pension Scheme.

With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Labour Court, Tirunelveli, Tirunelveli District.
2. The Secretary, Municipal Administration and Water Supply Department, Chepauk, Chennai.
3. The Commissioner of Municipal Administration, Chepauk, Chennai.

Copy to:

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai (2 Copies)
+1CC to Mr. T.S. Mohamed Mohidheen, Advocate, SR.No. 52361
+1CC to Mr. M.P. Senthil, Advocate, SR.No. 52658
+1CC to the Special Government Pleader SR.No. 52912

W.P. (MD) No. 454 of 2015 and M.P (MD) Nos. 1 and 2 of 2015

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