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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **19.03.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
and

THE HONOURABLE MRS.JUSTICE **R.THARANI**

W.A(MD)Nos.1290 and 1419 of 2017
and

C.M.P(MD)Nos.8965 and 10626 of 2017
and

M.P(MD)No.1 of 2014 in W.A(MD)No.SR.48618 of 2014
and

W.A(MD)No.SR.48618 of 2014

and
CONT.A(MD)No.SR.36111 of 2017

W.A(MD)No.1290 of 2017:

1.A.Raja
2.G.Balasubramanian
3.I.Niamath Basha
4.K.Murugesan
5.T.Ramesh Babu
6.P.N.Kumar Babu
7.L.Murugesan
8.C.D.Rajaganesh
9.D.Irulappan
10.M.Noordeen Shajule
11.M.Syed Mohammed Shajule
12.V.Kannan

.. Appellants/
Third Party

Vs.

1.K.T.Durai Kannan
2.A.Shanmugam
3.R.Pandi
4.V.Loganathan
5.K.Balamurugan
6.C.Prabhakaran
7.S.Babu
8.L.Veerapandia Sekaran
9.J.Babu John
10.S.Murugan
11.L.Muthukannan
12.S.G.Dasthagir Basha
13.N.Karuppaiah
14.M.Ravichandran
15.A.Subramanian
16.K.Ganeshan

.. Respondents
1 to 16/Petitioners



17. The State of Tamil Nadu
rep. by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai - 600 009.

18. The Commissioner,
Corporation of Madurai,
Madurai.

.. Respondents
17 and 18/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order, dated 05.06.2017, made in W.P(MD)No.7205 of 2016.

Prayer in WP(MD). 7205/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to extent the benefits of the order passed by this Honourable Court in W.P.No.1821 of 2009 dt:22.08.2014, and consequentially direct the respondent to appoint / regularize the services of the petitioners to the posts of Wireman/Helper in the 2nd respondent Corporation with effect from their original date of appointment dt:06.01.1998 and to ensure equal pay to the petitioner in the scale of pay of Wireman/Helper with continuity of seniority and other attendant benefits.

For Appellants : Mr.B.Saravanan

For Respondents 1 to 16 : Mr.M.Ajmalkhan,
Senior counsel
for Mr.N.Mohideen Basha

For Respondent No.17 : Mr.VR.Shanmuganathan,
Special Government Pleader.

For Respondent No.18 : Mr.R.Murali

W.A(MD)No.1419 of 2017:

The Commissioner,
Madurai Corporation,
Madurai - 625 002.

.. Appellant/
Second Respondent



3.R.Pandi
4.V.Loganathan
5.K.Balamurugan
6.C.Prabhakaran
7.S.Babu
8.L.Veerapandia Sekaran
9.J.Babu John
10.S.Murugan
11.L.Muthukannan
12.S.G.Dasthagir Basha
13.M.Karuppaiah
14.M.Ravichandran
15.A.Subramanian
16.K.Ganeshan

.. Respondents
1 to 16/Petitioners

17. The State of Tamil Nadu
rep. by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai - 600 009.

..Respondent No.17/
First Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order, dated 05.06.2017, made in W.P(MD)No.7205 of 2016.

Prayer in WP(MD). 7205/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to extent the benefits of the order passed by this Honourable Court in W.P.No.1821 of 2009 dt:22.08.2014, and consequentially direct the respondent to appoint / regularize the services of the petitioners to the posts of Wireman/Helper in the 2nd respondent Corporation with effect from their original date of appointment dt:06.01.1998 and to ensure equal pay to the petitioner in the scale of pay of Wireman/Helper with continuity of seniority and other attendant benefits.

For Appellant : Mr.R.Murali

For Respondents 1 to 16 : Mr.M.Ajmalkhan,
Senior counsel
for Mr.N.Mohideen Basha

<https://hcservices.ecourts.gov.in/Respon> For Respondent No.17

: Mr.VR.Shanmuganathan,
Special Government Pleader.



M.P(MD)No.1 of 2014 and W.A(MD)No.SR48618 of 2014:

S.Murugan

.. Petitioner/
Appellant/Third Party

Vs.

- 1.A.Raja
- 2.G.Balasubramanian
- 3.I.Niamath Basha
- 4.K.Murugesan
- 5.T.Ramesh Babu
- 6.P.N.Kumar Babu
- 7.L.Murugesan
- 8.C.D.Rajaganesh
- 9.D.Irulappan
- 10.M.Noordeen Shajule
- 11.M.Syed Mohammed Shajule
- 12.V.Kannan

.. Respondents
1 to 12/Petitioners

13. The State of Tamil Nadu
rep. by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai - 600 009.

14. The Commissioner,
Corporation of Madurai,
Madurai.

.. Respondents
13 and 14/Respondents 1 and 2

Prayer in M.P(MD)No.1 of 2014: Petition filed under Section 151 of C.P.C. praying to grant leave to the petitioner to file appeal as third party challenging the order, dated 22.08.2014, made in W.P (MD)No.1821 of 2009.

Prayer in W.A(MD)No.SR.48618 of 2014: Writ Appeal is sought to be preferred under Clause 15 of the Letters Patent, against the order, dated 22.08.2014, made in W.P(MD)No.1821 of 2009.

Prayer in WP(MD). 1821/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorarified Mandamus calling for the records relating to impugned order passed by the 1st respondent in his proceedings letter (2pa)No.153 dated 10/09/2007 and the consequential impugned order passed by the 2nd respondent in his proceedings Ma.Ne.2/47282/95 dated 21/11/2007 and quash the same in respect of <https://hcservices.ecm.gov.in/hcservices/> petitioners as unskilled labourers in the 2nd respondent corporation and consequently directing the respondents to



appoint / regularize the service of the petitioners in the post of Wireman/ Helper in the 2nd respondent corporation with effect from their original date of appointment and to ensure equal pay to the petitioners in the scale of pay of Wireman/Helper with continuity and other attendant benefits.

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For Appellant	: Mr.M.Ajmalkhan, Senior counsel for Mr.N.Mohideen Basha
For Respondents 1 to 12	: Mr.B.Saravanan
For Respondent No.13	: Mr.VR.Shanmuganathan, Special Government Pleader.
For Respondent No.14	: Mr.R.Murali

CONT.A(MD)No.SR.36111 of 2017:

Dr.Aneesh Sekhar,
The Commissioner,
Madurai Municipal Corporation,
Madurai.

.. Appellant/
Second Respondent

Vs.

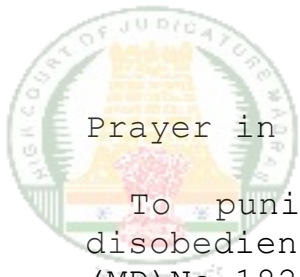
1.A.Raja
2.G.Balasubramanian
3.I.Niamath Basha
4.K.Murugesan
5.T.Ramesh Babu
6.P.N.Kumar Babu
7.L.Murugesan
8.C.D.Rajaganesh
9.D.Irulappan
10.M.Noordeen Shajule
11.M.Syed Mohammed Shajule
12.V.Kannan

.. Respondents
1 to 12/Petitioners

13. Mr.K.Phanindra Reddy, I.A.S.,
The Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai - 600 009.

..Respondent No.13/
First Respondent

PRAYER: Contempt Appeal is filed under Section 19 of the Contempt of Courts Act, 1971, against the order, dated 19.07.2017, made in Cont.P(MD)No.578 of 2016.



Prayer in CONT P(MD). 578/ 2016 :

To punish the respondents for the deliberate and willful disobedience of the order passed by this Honourable Court in W.P. (MD)No.1821 of 2009 on 22.08.2014.

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Prayer in WP(MD). 1821/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorarified Mandamus calling for the records relating to impugned order passed by the 1st respondent in his proceedings letter (2pa)No.153 dated 10/09/2007 and the consequential impugned order passed by the 2nd respondent in his proceedings Ma.Ne.2/47282/95 dated 21/11/2007 and quash the same in respect of fixation of educational qualification and appointment of the petitioners as unskilled labourers in the 2nd respondent corporation and consequently directing the respondents to appoint / regularize the service of the petitioners in the post of Wireman/ Helper in the 2nd respondent corporation with effect from their original date of appointment and to ensure equal pay to the petitioners in the scale of pay of Wireman/Helper with continuity and other attendant benefits.

For Appellant : Mr.R.Murali

For Respondents 1 to 12 : Mr.B.Saravanan

For Respondent No.13 : Mr.VR.Shanmuganathan,
Special Government Pleader.

C O M M O N J U D G M E N T

[Common Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

W.A(MD)Nos.1290 and 1419 of 2017 are directed against the order, dated 05.06.2017, passed in W.P(MD)No.7205 of 2016. The appellants in W.A(MD)No.1290 of 2017, namely, A.Raja and 11 others, are third parties to the writ petition and the appellant in W.A(MD)No.1419 of 2017, namely, Commissioner of Madurai Corporation, is the second respondent in the writ petition.

2.The short but interesting question which falls for consideration, is whether the private respondents herein, namely, respondents 1 to 16 can seek for a direction to implement and extend the benefits granted to the third party/appellants (W.A(MD) No.1290 of 2017) in W.P(MD)No.1821 of 2019, by order, dated 22.08.2014 and direct them to appoint/regularize the services of the respondents in the posts of Wireman/Helper, with effect from their original date of appointment, dated 06.01.1988.



3.The Writ Court, by order, dated 05.06.2017, allowed W.P (MD)No.7205 of 2016, by directing the respondent Corporation to regularise the services of the private respondents/writ petitioners in the posts of Wireman/Helper, with effect from their date of appointment, i.e., 01.06.1998. The correctness of this order has to be considered in W.A(MD)Nos.1290 and 1419 of 2017.

4.The Government in G.O.(Ms)No.151, dated 10.06.1997, created the posts for maintenance of street lights for the areas falling within the jurisdiction of the Madurai Municipal Corporation. In the said Government Order, apart from other posts, 16 posts of Wireman, 16 posts of Helper and 40 posts of daily wagers were created. The private respondents/writ petitioners in W.P(MD)No.7205 of 2016 were appointed as daily wagers as against those 40 posts, by proceedings, dated 06.01.1988 and subsequently, they were brought into regular scale of pay as Unskilled Workers by G.O.(Ms)No.113, dated 10.05.1999 and consequential orders, implementing G.O.(Ms)No.113, was passed by the Commissioner of Corporation of Madurai, dated 06.08.1999. The private respondents/writ petitioners in W.P(MD)No.7205 of 2016, did not challenge their absorption into regular time scale of pay as Unskilled Workers and they continued to work in the said posts.

5.So far as the appellants in W.A(MD)No.1290 of 2017 are concerned, they were working as daily wagers and stated to be so much earlier than the private respondents and after the issuance of G.O.(Ms)No.151, they represented to the respondent Corporation that they should be absorbed as Wireman and Helpers. Since, their request was not considered, they filed W.P.No.10337 of 1997, praying to consider their case and absorb them in the posts of Wireman/Helper. The said writ petition was disposed of by order, dated 29.11.2002, by taking note of the resolution passed by the respondent Corporation and directed the State Government to consider the same. Subsequently, a clarification was issued by order, dated 24.04.2003, passed in W.P.M.P.No.673 of 2003 in W.P.No.10337 of 1997, by directing that while considering the case of the appellants, G.O.(Ms)No.151, should also be taken into consideration.

6.The Government, by Government Letter, dated 10.09.2007, considered the case of 22 candidates, who are all similarly placed as that of the 12 appellants in W.A(MD)No.1290 of 2017, and appointed 2 among them as Wireman, 2 as Helper and the remaining 17 as Unskilled Labourers in regular scale. The respondent Corporation passed a consequential order, dated 21.11.2007, by which, they were fixed in the scale of pay of Rs.2550-55-2660-60-3220 in the post of Unskilled Worker in regular scale.

<https://hcservices.ecourts.gov.in/hcservices/>

7.While so, 2 of the candidates, who are similarly placed as that of the private respondents 1 to 16 herein, who are

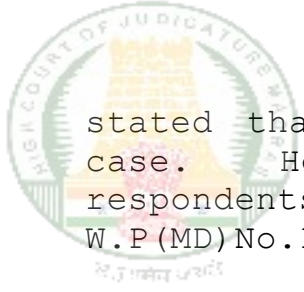


appointed as daily wagers, by order, dated 06.01.1998, filed W.P (MD)No.10503 of 2007, challenging the order passed by the Government, dated 10.09.2007, in favour of the appellants in W.A (MD)No.1290 of 2017 and others and also praying to direct the Corporation of Madurai, to post them as Wiremen with all monetary benefits and attendant benefits. The Writ Court, by order, dated 29.11.2012, dismissed the writ petition. Subsequently, no steps were taken by those 2 writ petitioners and the matter attained finality.

8. Even much prior to attaining finality of the order, dated 29.11.2012, passed in W.P(MD)No.10530 of 2007, the appellants in W.A(MD)No.1290 of 2017 filed W.P(MD)No.1821 of 2009, challenging the order, dated 10.09.2007, on the ground that they should not have been appointed as Unskilled Labourers in regular scale, but should have been appointed as Wireman, as they possessed the requisite qualification. The writ petition, after contest, was allowed, by order, dated 22.08.2014, which was confirmed by the Division Bench in W.A(MD)No.1393 of 2014, dated 28.09.2015. By way of implementation of the said order and the Judgment of the Division Bench, the respondent Corporation has passed the order, dated 30.09.2015, appointing 12 appellants in W.A(MD)No.1290 of 2017, as Helpers. The appellants have filed a contempt petition in Contempt Petition(MD)No.578 of 2016, stating that there is willful disobedience of the direction issued by the Writ Court.

9. Be that as it may, at the first instance, we are required to consider as to whether the private respondents in W.A(MD) No.1290 of 2017, who are the writ petitioners in W.P(MD)No.7205 of 2016, would be entitled to the same relief as granted in W.P(MD) No.1821 of 2009, as confirmed by the Division Bench, in W.A(MD) No.1393 of 2014. The answer to the same should be in the negative, against the private respondents, for the following reasons. Firstly, the private respondents, who are appointed on daily wages on 06.01.1998, accepted the said position and did not question the same. Subsequently, they were brought into regular scale of pay as Unskilled Workers, by G.O.(Ms)No.113, dated 10.05.1999. This Government Order was not put to challenge. The Government Order was implemented and the Corporation passed consequential orders, dated 06.08.1999. This order was also not put to challenge by any of the private respondents/writ petitioners in W.P(MD)No.7205 of 2016.

10. For the first time, two of the similarly placed persons as that of the private respondents, filed W.P(MD)No.10530 of 2007, questioning the Government Letter(2P)No.153, dated 10.09.2007. By the said Government Letter, the appellants and five others were brought into regular scale as Unskilled Labourers. The challenge proceedings failed and the writ petition was dismissed, by order, dated 29.11.2012. Thus, the Court rejected the case of the private respondents/similarly placed persons and



stated that they cannot be equated to that of the appellants' case. Hence, at this belated point of time, the private respondents are not entitled to seek the benefits of the order in W.P(MD)No.1821 of 2009, dated 22.08.2014.

11.The claim made by the private respondents in W.P(MD) No.7205 of 2016, is absolutely a stale claim, attempted to be resurrected after the disposal of W.P(MD)No.1821 of 2009, by order, dated 22.08.2014. We would be justified in stating that the private respondents are attempting to make a piecemeal challenge. The first attempt made through 2 of the similarly placed persons, failed in the year 2012. Thereafter, they abandoned the proceedings and did not file any appeal against the order passed in W.P(MD)No.10530 of 2007. Subsequently, after implementing the order in W.P(MD)No.1821 of 2009 by the respondent Corporation, the present writ petition has been filed. Thus, for all the above reasons, the private respondents are not entitled for any relief in the writ petition as sought for by them and therefore, W.P(MD)No.7205 of 2016 is liable to be dismissed and accordingly, W.A(MD)Nos.1290 and 1419 of 2017 are liable to be allowed.

12.The appellant in W.A(MD)No.SR.48618 of 2014 is one of the private respondents in W.A(MD)Nos.1290 and 1419 of 2017. Since, both the writ appeals are allowed, rejecting the benefits given to the private respondents therein, the petition in M.P(MD) No.1 of 2014, seeking to grant leave, is liable to be dismissed and accordingly, W.A(MD)No.SR.48618 of 2014 is liable to be rejected.

13.Insofar as Cont.A(MD)No.SR.36111 of 2017 is concerned, it has been filed against the order, dated 19.07.2017, made in Contempt Petition(MD)No.578 of 2016. The contempt appeal is yet to be numbered, as the Registry has raised an objection, stating that there is no order of punishment passed against the respondent Corporation.

14.However, Mr.R.Murali, learned standing counsel appearing for the respondent Corporation pleads that the Court may clarify certain issues as there is genuine difficulty in giving effect to the orders passed in W.P(MD)No.1821 of 2009, dated 22.08.2014, though it was implemented by passing an order, on 30.09.2015, the respondents 1 to 12/appellants in W.A(MD)No.1290 of 2017 filed the contempt petition alleging that the respondent Corporation has willfully violated the direction issued by the Court.

15.The problem has arisen because of the respondents 1 to 12/ appellants in W.A(MD)No.1290 of 2017, were accommodated as <https://hccpcorps.gov.in/reserve> it is contended that on that date, when the writ petition was disposed of, there were 8 vacancies in the post of Wireman and atleast 8 of the 12 appellants should have been



accommodated. However, the respondents 1 to 12/appellants in W.A (MD)No.1290 of 2017, cannot try to get a march over 2 of their erstwhile colleagues, who were appointed as Helpers, vide Government Letter, dated 10.09.2007. Those two persons, by name, Mr.B.Deivasigamani and Mr.V.Arunachalam Vadivel are continuing to work as Helpers and under the threat of contempt, the appellant Corporation has passed the order, dated 30.09.2015.

16.The learned counsel appearing for the respondents 1 to 12/ appellants in W.A(MD)No.1290 of 2017, submits that the Court may clarify and the respondents 1 to 12 are not objecting the case of Mr.B.Deivasigamani and Mr.V.Arunachalam Vadivel. Therefore, this Contempt Appeal is liable to be disposed of at this stage, with a direction, as stated infra.

17.In the result,

(i)W.A(MD)Nos.1290 and 1419 of 2017:

The writ appeals are allowed and the impugned order, dated 05.06.2017, passed in W.P(MD)No.7205 of 2016, is set aside and consequently, W.P(MD)No.7205 of 2016 is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(ii)M.P(MD)No.1 of 2014 in W.A(MD)No.SR.48618 of 2014 and W.A(MD)No.SR.48618 of 2014:

M.P(MD)No.1 of 2014 is dismissed. No costs. consequently, W.A(MD)No.SR.48618 of 2014 is rejected.

(iii)Cont.A(MD)No.SR.36111 of 2017:

This Contempt Appeal is disposed of, by directing the appellant Madurai Corporation to accommodate Mr.B.Deivasigamani and Mr.V.Arunachalam Vadivel as Wireman and in the remaining vacancies, accommodate 6 among 12 of the respondents 1 to 12/appellants in W.A(MD)No.1290 of 2017 and the remaining be retained as Helpers. This being a consent order, we hope and trust that there is no further litigation at the instance of the respondents 1 to 12/appellants in W.A(MD)No.1290 of 2017. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,

<https://hcservices.mca.gov.in/UseAids> Administration and

Water Supply Department,

Fort St. George, Chennai - 600 009.



2. The Commissioner,
Corporation of Madurai,
Madurai.

+2cc to Mr.B.Saravanan, Advocate Sr.No.56507
+1cc to Mr.R.Murali, Advocate Sr.No.56306
+1cc to Mr.N.Mohideen Basha, Advocate Sr.No.56771
+1cc to The Spl Government Pleader Sr.No.56470

SMN

VB/JC/SAR4/04/05/2018/11P/8C

COMMON JUDGMENT MADE IN
W.A(MD)Nos.1290 and 1419 of 2017
and
C.M.P(MD)Nos.8965 and 10626 of 2017
and
M.P(MD)No.1 of 2014 in W.A(MD)No.SR.48618 of 2014
and
W.A(MD)No.SR.48618 of 2014
and
CONT.A(MD)No.SR.36111 of 2017
19.03.2018