



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) No. 10245 of 2013

K. Mohandhas

... Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort, St. George,
Chennai-600 009.

2. The Commissioner of Municipal
Administration and Water Supply,
Ezhilagam,
Chepauk,
Chennai-600 005.

3. The Paramakudi Municipality,
Represented by the Commissioner,
4/387, Gandhiji Road,
Paramakudi-623 707,
Ramanathapuram District.

... Respondents

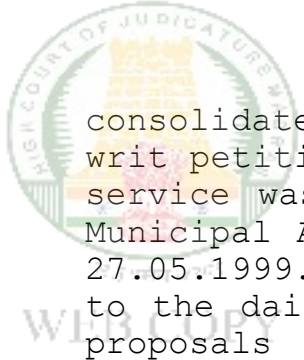
Prayer: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to appoint the petitioner on permanent basis on 27.05.1999 on consolidated basis for one year and after the said period of one year service to place the petitioner on time scale of pay with all consequential benefits.

For Petitioner : Mr. Ananth C. Rajesh
For Respondents 1 & 2 : Mr. VPM. Vaishnavi
Government Advocate
For 3rd Respondent : Mr. P. Srinivas

ORDER

The relief sought for in this writ petition is for a direction to direct the respondents to appoint the petitioners on permanent basis on 27.05.1999 on consolidated basis of one year and after the said period of one year service to place the petitioner on time scale of pay with all consequential benefits.

2. The writ petitioner was initially appointed as daily rated employee. He was observed on consolidated pay. Subsequently,



consolidated pay salary was paid to the petitioner. However, the writ petitioner was continuing only as a temporary employee and the service was not regularised. The Government issued G.O.Ms.No.125, Municipal Administration and Water Supply (ME.3) Department, dated 27.05.1999. Accordingly, the benefit of regularisation was extended to the daily wage employees. Pursuant to the Government order, the proposals were submitted by the competent authorities to the Government for the purpose of granting regularisation of the temporary daily rated employees. The case of the writ petitioner was also considered and accordingly the Government passed an order of regularisation in G.O.Ms.No.21, Municipal Administration and Water Supply (MC.3) Department, dated 23.02.2006. The said Government order reads as under:

"5.They accordingly, direct the appointing authorities viz., municipal commissioners, Grade-III Municipal Commissioners and Commissioners of Municipal Corporation (Except Chennai) to appoint the employees on consolidated pay and NMRs on daily wages on their roll as on 01.10.1996 in respect of Municipalities and Municipal Corporations (except Chennai) and as on 31.12.1996 in respect of Grade-III Municipalities in the vacant posts and to regularise their services in the regular post, from the date of issue of this order, subject to the following conditions:

i) Sanctioned posts should be available;

ii) Persons should fulfill all educational and other qualification; and

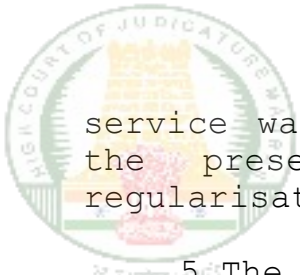
iii) establishment (pay and pension) expenditure of the Urban Local Body should not exceed 49% of revenue after filling up of posts.

6) The appointing authorities are strictly advised not to appoint any person on daily wages or on consolidated pay in the Municipalities and in the Municipal Corporation in future.

7) This order issues with the concurrence of the Finance Department-vide its U.O.No.866/FS/P/06, dated 23.02.2006."

3. Based on the Government order cited supra, the services of the writ petitioner was regularised in proceedings dated 02.06.2006. Accordingly, the writ petitioner is now working as permanent employee in the time scale of pay.

4. The grievances of the writ petitioner is that he was initially appointed long back from the year 1992 onwards. His



service was regularised only with effect from 2006 and therefore, the present writ petition is filed seeking retrospective regularisation of service.

5. The regularisation of services granted in favour of the writ petitioner itself is concession given by the Government. Admittedly, the writ petitioner was not appointed in accordance with the recruitment rules in force. Initial appointment of the writ petitioner was irregular. The constitution bench of the supreme Court of India has laid down the legal principles that irregular or legal appointments cannot be regularised. However, in the very same judgments in paragraph 53, the Honourable Supreme Court of India held that wherever the process had commenced then the same may be concluded and in future there cannot be any regularisation or permanent absorption in respect of temporary employment, who were not appointed by the regular recruitment rules in force.

6. The case of the writ petitioner was considered based on the proposal submitted by the authorities concerned and the Government also granted the benefit of regularisation by way of concession in G.O.Ms.No.21. Based on the said Government Order the services of the writ petitioner had already been regularised and now he is working as a permanent employee. The petitioner having availed the concession of regularisation by virtue of the Government order, cannot now claim any further concession by way of filing the present writ petition. When there is no legal right established, even for the purpose of grant of permanent absorption, now the petitioner cannot claim retrospective regularisation after getting the benefit of regularisation by way of concession by virtue of the Government order issued in G.O.Ms.No.21 dated 23.02.2006.

7. This being the factum, this Court is of an opinion that the claim of retrospective regularisation, as contrary to the legal principles settled by the constitution bench of the Honourable Supreme Court of India in the case of the Secretary, State of Karnataka and others .vs. Umadevi(3) and others reported in (2006) 4 Supreme Court Cases 1, cannot be granted and in respect of the writ petitioner the benefit of regularisation was already granted as a one time concession. Thus there cannot be any further concession in respect of his claim for retrospective regularisation.

8. In this view of the matter, this Court is of an opinion that the writ petitioner has not established any legal right for grant of retrospective regularisation and accordingly the writ petition is devoid of merits, hence, this writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(P&A)

/True copy/



To:

1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort, St. George,
Chennai-600 009.

2.The Commissioner of Municipal
Administration and Water Supply,
Ezhilagam,
Chepauk,
Chennai-600 005.

3.The Commissioner,
Paramakudi Municipality,
4/387, Gandhiji Road,
Paramakudi-623 707,
Ramanathapuram District.

+1CC TO M/S.ANANTH C.RAJESH, ADVOCATE, SR NO.50878

W.P. (MD) No.10245 of 2013
22.02.2018
1/15

vsg/ta

MS/JC/SAR-4/09.04.2018/4P.5C