



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.17764 of 2013

1.D.Rajendran
2.C.Kumaresan
3.T.John Raj

... Petitioners

Vs.

1.The Commissioner,
Municipal Administration,
Chepauk,
Chennai-6.

2.The Regional Director,
Municipal Administration,
Tirunelveli,
Tirunelveli District.

3.The Commissioner,
Kulithurai Municipality,
Kulithurai,
Kanyakumari District-629 163.

... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.4088/2012/Sil dated 19.12.2012 on the file of the respondent No.3 and quash the same as illegal and consequently to directing the respondent No.3 to regularise the services of the petitioners in the third respondent Municipality from the date of completion of three years of contingent service with all monetary benefits within the time stipulated by this Court.

For Petitioners : Mr.T.Lajapathi Roy

For Respondents 1 & 2 : Mr.R.Sethuraman
Special Government Pleader

For 3rd Respondent : Mr.K.Vamanan

ORDER

The relief sought for in this writ petition is to call for the records pertaining to the impugned order of rejection issued by the third respondent in proceedings dated 19.12.2012 and quash the same.



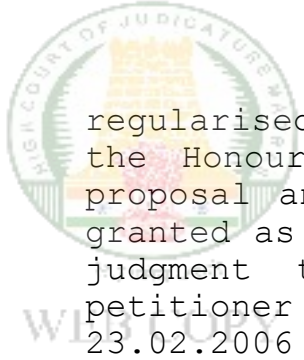
2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was appointed on consolidated pay salary with effect from 25.05.2000 in the third respondent Municipality as Wire Man. The claim of the writ petitioner is that he was continuing as consolidated pay employee for more 3 years and his services ought to have been regularised with effect from 25.05.2003 on completion of 3 years of services as consolidated pay employee. However, the services of the writ petitioners were regularised by the Government in G.O.Ms.No.21, Municipal Administration and water Supply Department, dated 23.02.2006 and the benefit of regularisation was given from the date of the Government order and not from the date of completion of 3 years of services as consolidated pay employee.

3.The learned counsel for the petitioner states that when the case of the writ petitioners were considered for regularisation the respondents ought to have granted the same with retrospective effect. Thus the writ petitioners are constrained to move the present writ petition. The learned counsel appearing on behalf of the third respondent states that the writ petitioners were already regularised with effect from 23.02.2006 and further retrospective regularisation cannot be granted. The benefit of regularisation granted to the writ petitioners itself is a concession and therefore, the writ petition deserves to be rejected.

4.The learned Government Pleader opposed the arguments advanced on behalf of the writ petitioners contending that the Government also considered the case of the Writ petitioners and issued G.O.Ms.No.21 dated 23.02.2006 itself. When the Government considered the case of the writ petitioners and the benefit of regularisation was granted, the writ petitioners cannot seek for retrospective regularisation of their services, in view of the fact that the initial appointment was not made in accordance with the recruitment rules in force.

5.This court is of an opinion that the writ petitioners were initially appointed on consolidated pay. The Recruitment procedures were not followed at the time of appointment of the writ petitioners. Thus , initial appointments of the writ petitioners were irregular and therefore, the contention of the learned counsel appearing on behalf of the writ petitioner that the retrospective regularisation should be granted to the writ petitioner cannot be accepted.

6.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, settled the legal principles by stating that the employees who were not appointed in accordance with the recruitment rules cannot claim regularisation and permanent absorption. In other words, the appointment made contrary to the rules in force cannot be



regularised. However, in the very same judgment in paragraph No.53 the Honourable Supreme Court held that in cases of the pending proposal and the same may be completed and regularisation may be granted as one time measure. In accordance with paragraph 53 of the judgment the Government also consider the case of the writ petitioner and granted regularisation in G.O.Ms.No.21 dated 23.02.2006 itself. Thus the question of granting further concession would not arise at all. The benefit of regularisation was granted to the writ petitioners by way of one time concession and therefore, they cannot seek extension of concession by seeking retrospective regularisation from the date of completion of 3 years of service.

7.Subsequently, Two Judges Bench of the Honourable Supreme Court of India in the case of Secretary to Government, School Education Department, Chennai .vs. R.Govindaswamy and others reported in (2014) 4 Supreme Court Cases 769, held that:

''8.This Court in State of Rajasthan .vs. Daya lal has considered the scope of regularization 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 issues involved therein. The same are as under:(SCC P.435, Para 12)

''(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 regularization of services of an employee which would be violative of the constitutional scheme.'''

8.Now the High Court cannot issue any direction for regularisation or permanent absorption, if the appointment were made in violation of recruitment rules in force. However, the present writ petition, all the writ petitioners were regularised and now they are working as permanent employees in the regular establishment. This being factum of the case no further consideration is required in respect of grant of retrospective regularisation to the writ petitioners. Accordingly, this writ petition stand dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CSII)

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To;
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1.The Commissioner,
Municipal Administration,
Chepauk,
Chennai-6.

2.The Regional Director,
Municipal Administration,
Tirunelveli,
Tirunelveli District.

+One cc to The Special Government Pleader, SR.No.52007

+One cc to M/s.T.Lajapathi Roy, Advocate, SR.No.51411

+One cc to M/s.K.Vamanan, Advocate, SR.No.51487

vsg

RL/6c/4p/JC/SAR1/28/3/2018

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