

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.10424 of 2011
and M.P.No.1 of 2011

1.M.Kalyanasundaram
2.S.Sivakumar
3.G.Natarajan
4.B.Saravanan
5.S.Udayakumar
6.K.Masilamani
7.K.Mariappan
8.N.Mani
9.R.Kasinathan
10.S.Baskaran

... Petitioners

Vs.

1.The Commissioner of Municipal
Administration
Chepauk, Chennai-5.

2.The Commissioner
Chidambaram Municipality
Chidambaram.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for records connected with proceedings issued in Na.Ka.No.3587/2008/E1 dated 15.09.2010 passed by the 2nd respondent (individual copy issued to all the petitioners), quash the same and consequently direct the respondents to appoint the petitioners in the regular vacancies as sweepers and regularise the petitioners' service in the same post.

For Petitioners : Mr.S.Ilamvaludhi
For R1 : Ms.R.Janaki
Additional Government Pleader

For R2 : Mr.R.S.Selvam
Government Advocate

O R D E R

Writ Petition is filed challenging the order bearing Na.Ka.No.3587/2008/E1 dated 15.09.2010 passed by the 2nd respondent (individual copy issued to all the petitioners) and for a direction to the respondents to appoint the petitioners in the regular vacancies as sweepers and regularise the petitioners service in the same post.

2(i).According to the petitioners, they are employed as Nominal Muster Roll (NMR) workers in 2nd respondent Municipality from the year 1983-1984 in Water Supply Department and the petitioners were allowed to continue till 1994. The petitioners studied up to 8th standard to S.S.L.C. They worked in 2nd respondent Municipality as NMR workers in various capacities for a long time. They were paid a sum of Rs.2,000/- per month as a consolidated pay. The petitioners filed O.A.Nos.9199 to 9208 of 2000 etc. before the Tamil Nadu Administrative Tribunal. The Administrative Tribunal disposed of the said O.As., directing the 2nd respondent Municipality to consider the representations of the petitioners. No order was passed by the 2nd respondent Municipality to appoint the petitioners.

2(ii).While so, the Government issued G.O.Ms.No.19, Municipal Administration and Water Supply Department, dated 18.01.2007 to fill up the vacant posts in all the municipalities through employment exchange. The then Commissioner in-charge of the 2nd respondent Municipality has written a letter dated 09.08.2006 to the 1st respondent in proceedings Na.Ka.No.2491/2006/E1 recommending that the petitioners can be appointed in the permanent posts on the ground that the petitioners were all served from 1983 to 1993. The 1st respondent without considering the recommendation of the 2nd respondent Municipality, directed all the Commissioners of Municipalities by the proceedings dated 24.01.2007 to appoint the NMRs from outside and from the open market.

2(iii). In pursuant to the proceedings of the 1st respondent, the 2nd respondent Municipality passed a resolution No.54, dated 26.02.2007 to appoint 25 posts of Junior Assistants, Record Clerks and Revenue Inspectors through Employment Exchange.

2(iv).The petitioners filed W.P.No.20016 of 2007 to dispose of their representations dated 11.05.2007. This Court by the order dated 11.06.2007 directed the respondents therein to dispose of the representations made by the petitioners dated 11.05.2007. The 2nd respondent Municipality rejected the petitioners' representations on the ground that G.O.Ms.No.21,

Municipal Administration and Water Supply Department, dated 23.02.2006, is not applicable to the petitioners and that the petitioners are not in employment as on 01.10.1996.

3(i).The learned counsel appearing for the petitioners contended that 60 posts were created in 2nd respondent Municipality. The 2nd respondent Municipality has already filled up 30 posts and other 30 posts are still vacant. The rejection of the petitioners' request is erroneous and is in violation of justice. The petitioners filed W.P.No.13959 of 2008 challenging the order of the 2nd respondent Municipality dated 10.07.2007 and prayed for a direction to the respondents to appoint the petitioners in the regular vacancies as sweepers and regularise the petitioners' services in the same post. This Court by order dated 06.08.2010 directed the 2nd respondent to consider the case of the petitioners for regularisation on humanitarian ground and directed the petitioners to give fresh representations. Accordingly, the petitioners gave representations dated 27.08.2010 to appoint them as regular employees of the 2nd respondent Municipality. The 2nd respondent by the impugned proceedings dated 15.09.2010 rejected the petitioners' claim without considering the long service rendered by the petitioners as NMR workers as well as order of this Court dated 06.08.2010.

3(ii).The learned counsel appearing for the petitioners further contended that impugned order of the 2nd respondent Municipality is erroneous. The petitioners are even now working in the 2nd respondent Municipality through contractors. The learned counsel appearing for the petitioners referred to additional typed set of papers and contended that the then Commissioner of the 2nd respondent Municipality by the proceedings in Na.Ka.No.8076/2005/E1, dated 17.11.2005, recommended the 1st respondent to regularise the service of the petitioners. The documents filed by the petitioners will clearly prove that the petitioners are working even after 01.10.1996 in the 2nd respondent Municipality and they have fulfilled all the conditions as per the Government orders and prayed for allowing the writ petition.

4.The 2nd respondent filed counter affidavit. The learned Government Advocate appearing for the 2nd respondent contended that the petitioners are not entitled for regularisation as per G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999 as they were not in employment as on 01.10.1996 and not put in 10 years of service. The petitioners filed W.P.No.25622 of 2013 for a direction to the respondents to appoint them in the sanctioned posts like Turn Cock, Turner etc. in the 2nd respondent Municipality as per G.O. (4D)No.1, Municipal Administration and Water Supply (ME.1) Department, dated 17.01.2013. This Court by order dated

24.02.2017 disposed of the writ petition directing the petitioners to make a fresh representation to the 3rd respondent and therefore, the petitioners are not entitled for regularisation. After 1994, the petitioners were not employed even as NMR workers and prayed for dismissal of the writ petition. In any event, the petitioners 6 and 7 died and their legal heirs are not entitled for the relief sought for in the present writ petition.

5. Heard the learned counsel appearing for the petitioners as well as the learned Additional Government Pleader appearing for the 1st respondent and the learned Government Advocate appearing for the 2nd respondent and perused the materials available on record.

6. From the materials available on record, it is seen that it is the case of the petitioners that they are working from 1982 in the Water Supply Department of the 2nd respondent Municipality till 1994. They have necessary educational qualification to be appointed permanently in various posts in the 2nd respondent Municipality. Considering the long years of service, the then Commissioner in-charge of the 2nd respondent Municipality had recommended to the 1st respondent for regularisation of the services of the petitioners. The said recommendation was not accepted by the 1st respondent and the 1st respondent directed the Commissioner of the Municipality to appoint NMR workers from outside and from the open market and the persons from Employment Exchange. This Court by order dated 06.08.2010 made in W.P.No.13959 of 2008 directed the 2nd respondent to consider the case of the petitioners on humanitarian ground as they have served in the Municipality for a long period. The 2nd respondent has not considered the case of the petitioners. The learned counsel appearing for the petitioners referred to various documents filed in the additional typed set of papers and contended that the petitioners are still working as NMRs in various capacities through contractors in the 2nd respondent Municipality. From the documents filed in the additional typed set of papers, it is seen that some of the petitioners are still in service and the reason given by the 2nd respondent Municipality in the impugned order that all the petitioners are not in service as on 01.10.1996 is not correct.

7. In view of the same, the impugned order of the 2nd respondent Municipality is liable to be set aside and it is hereby set aside. The 2nd respondent Municipality is directed to consider to appoint the petitioners in the vacancy still available according to their length of service as well as their educational qualification. The petitioners are directed to furnish all the copies of documents filed in the typed set of

papers to the 2nd respondent. It is pertinent to point out that this Court by order dated 06.08.2010 made in W.P.No.13959 of 2008 directed the 2nd respondent to consider the case of the petitioners on humanitarian ground. The 2nd respondent is directed to take into consideration the earlier order of this Court referred to above along with the documents filed by the petitioners while passing the order. Accordingly, the 2nd respondent is directed to consider and pass orders within a period of 12 weeks from the date of receipt of a copy of this order.

8. With the above direction, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Insp cell)

//True Copy//

Sub Assistant Registrar

kj

To

1. The Commissioner of Municipal
Administration
Chepauk, Chennai-5.

2. The Commissioner
Chidambaram Municipality
Chidambaram.

+1cc to Mr.S.Ilamvaludhi Advocate, S.R.No.67880

+1cc to the Government Pleader, S.R.No.68061,68120

GJ(CO)

CB(27/09/2019)

W.P.No.10424 of 2011
and M.P.No.1 of 2011

WEB COPY