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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.Nos.1301 and 2618 to 2623 of 2012
and
C.M.P.Nos.5787 to 5792 of 2012

1. The State of Tamilnadu,
rep. by Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St.George,
Chennai - 9.
2. The Commissioner of Municipal
Administration,
Chepauk,
Chennai-5.
3. The Commissioner,
Manapparai Municipality,
Manapparai. ...Appellants in all the Writ Appeals

Vs.

D.Venkatesan	... Respondent in W.A.No.1301/2012
D.Kasinathan	... Respondent in W.A.No.2618/2012
P.Muthualagan	... Respondent in W.A.No.2619/2012
C.Narasimman	... Respondent in W.A.No.2620/2012
G.Annadurai	... Respondent in W.A.No.2621/2012
S.Kumar	... Respondent in W.A.No.2622/2012
L.Sasikumar	... Respondent in W.A.No.2623/2012

Writ Appeals filed under Clause 15 of the Letters Patent against the order passed by the learned single Judge of this Court in W.P.Nos.40924 40923, 40925, 40926, 40927, 40928 & 40929 of 2006 respectively dated 27.10.2010.



Prayer in W.P.Nos.40923 to 40929/2006:

This Writ Petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A. No. 2800 of 2000 from the file of Tamilnadu Administrative Tribunal with a prayer, to direct the respondents to confer the petitioner all the benefits of G.O. 198, Municipality Administration and Water Supply Department dated 26.10.1998 to regularise his service.

For Appellants : Mrs.Sree Jayanthi,
Special Government Pleader for A1
Mr.V.Durai Solaimalai for A2 & A3

For Respondents: Mr.L.Chandrakumar

COMMON JUDGMENT

(Judgment of the Court was made by K.K.SASIDHARAN, J.,)

The respondent in the respective appeals filed Writ Petitions for a direction to the appellants herein to absorb them in the service of Manaparai Municipality. The Writ petition was allowed by the learned single Judge and a Mandamus was issued to consider their absorption in accordance with the Government Order in G.O.Ms.No.198 Municipal Administration and Water Supply Department dated 26.10.1998. The said order is under challenge at the instance of the State, primarily on the ground that the Government Order in G.O.No.198 dated 26.10.1998 is only for identification of the posts and sanction of pay scale and it does not confer any right on the employees to claim absorption.

2. We have heard the learned Special Government Pleader on behalf of the 1st & 2nd appellants, the learned Standing Counsel appearing for Manaparai Municipality/3rd appellant and the learned counsel appearing for the respondents.

3. The respondent in the respective appeals contended before the writ court that they have been working in the Manapari Municipality before the issuance of the Government Order in G.O.Ms.No.198 Municipal Administration and Water Supply Department dated 26.10.1998 and as such, they are eligible for absorption. The appellants have taken up a contention that these employees were not regularly appointed and they were given work whenever the permanent employees took leave. The employees also fail to produce any substantive evidence to show that they have been working all along. However, there is a mention in the communication dated 05.10.1990 to the effect that the respondents have been working from 01.10.1996 in the Manaparai Municipality. The communication sent by the Commissioner dated 08.10.1999 indicates that pursuant to the instructions given by



the Minister of Local Administration, the daily rated workers who were not disengaged continued to work even after disengagement should be disengaged from 05.10.1999. The further communication sent by the Commissioner of Municipality dated 28.10.1999 to the Commissioner of Municipal Administration also shows that instruction was given by the concerned Minister, not to disengage the respondents. There are no other documents to show that the respondents worked subsequently.

4. After hearing the learned counsel for the respective parties, we are of the view that the learned single Judge was not correct in issuing a positive direction to the appellants to absorb the respondents in service. Since we are of the view that there is some evidence to show that the respondents have been working, we direct the appellants to consider the case of the respondents. In case any application is made by them for regular employment, the application shall be considered after giving age relaxation as indicated in Condition No.5 of the Government Order in G.O.Ms.No.198 Municipal Administration and Water Supply Department dated 26.10.1998. The appellants shall also be given preference to the concerned respondents in view of their past service in the Manaparai Municipality.

5. The intra court appeals are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

vsi

To

1. The Secretary to Government,
State of Tamilnadu
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai - 9.
2. The Commissioner of Municipal
Administration,
Chepauk,
Chennai-5.



3. The Commissioner,
Manapparai Municipality,
Manapparai.

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+1 CC to Mr.E.P. Senniyangiri, Advocate sr 49592, 49209, 49208.
+1 CC to Govt. Pleader sr 49117.
+1 CC to Mr.S.V. Durai Solaimalai, Advocate sr 48461.

W.A.Nos.1301 and 2618 to 2623 of 2012

RP(CO)
SP(02/08/2019)