



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2019

Coram

The Honourable Mr. Justice D. KRISHNAKUMAR

W.P.No.16308 of 2013
and M.P.No.1 of 2014

1.G.K.Sakthivel
2.S.Kadirvel
3.C.Madhappan
4.R.Chinnausamy
5.V.Lakshmanan
6.N.P.Murugesan
7.M.Selvam
8.N.Krishnan
9.P.Kuzhandaivel
10.D.J.Devakumar

...Petitioners

Versus

1.Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Rep. by its Secretary,
Fort St.George,
Chennai - 600 009.

2.The Commissioner,
Erode Municipality,
Erode,
Erode District.

3.The Director,
Municipal Administration,
Ezhilagam,
Chennai - 600 006.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent made in its Letter No.14197/Na.Pa.3/03-8 dated 14.02.2005 and the consequential Letter of the second respondent in Na.Ka.No.C1/8178/2011 dated 20.09.2011 and quash the same and consequently, direct the respondents 1 to 3 to consider the appointment by reinstatement of the petitioners herein as NMRs or Mazdoors in Erode Corporation in any of the vacant posts in



any department of the Corporation as per their qualification and consequently, regularize their services by bringing them into regular establishment.

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For Petitioner : Mr.Silambanan
for Profexs Associates

For Respondents - 1 & 3 : Mr.K.Bhuvaneswari,
Addl. Govt. Pleader

Respondent - 2 : Mr.M.Rajamathivanan

O R D E R

The relief sought for in the present writ petition is to call for the records of the first respondent made in its Letter No.14197/Na.Pa.3/03-8 dated 14.02.2005 and the consequential Letter of the second respondent in Na.Ka.No.C1/8178/2011 dated 20.09.2011 and quash the same and consequently, direct the respondents 1 to 3 to consider the appointment by reinstatement of the petitioners herein as NMRs or Mazdoors in Erode Corporation in any of the vacant posts in any department of the Corporation as per their qualification and consequently, regularize their services by bringing them into regular establishment.

2. The case of the petitioners is that they were all employed by the Commissioner of Erode Municipality as Mazdoor and assigned work of implementing the National Malaria Eradication programme and for prevention and control of Malaria in Erode Town. The petitioners worked as such for 3 to 4 years i.e., from 1991 to 1994.

2.1 While so, when the petitioners were suddenly asked not to report for duty from 01.01.1995, the Assistant Entomologist (X/C) Zonal Entomological Team, Coimbatore vide Letter dated 12.12.1994 had strongly recommended to retain the petitioners as Mazdoors, however, they were not reinstated. Hence, the petitioners and few others filed W.P.No.4804 of 1995 before this Court praying to direct the respondents therein to reinstate them as Mazdoor in the Erode Municipality Periyar District in the posts in which they were originally working and consequently, to regularize their services by bringing them into regular establishment. By order dated 30.07.2002, this Court had disposed of the said writ petition directing the petitioners to duly forward their representation to the respondents therein within a period of two weeks from the date of receipt of a copy of that order and the first respondent was directed to deal with the same and pass appropriate orders within a period of eight weeks thereafter.



2.2 Further, the petitioners herein and one other petitioner of W.P.No.4804 of 1995 sent a detailed representation within time to all the 4 respondents on 26.08.2002. Thereafter, the petitioners received a reply on 10.10.2002 from the Commissioner, Erode Municipality stating that the matter has been sent to Government to get further instructions on the aforesaid order of this Court. However, the petitioners were dragging from pillar to post. Hence, they met the District Collector and gave a compliant.

2.3 The District Collector vide letter dated 09.12.2004, informed the petitioners that the matter has been forwarded to the counsel for Erode Municipality for opinion. In January 2005, the counsel of the Municipality had given opinion that the respondent should follow with G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999 in the petitioners' case and comply with the orders of this Court. Thereafter, the petitioners sent a legal notice on 10.01.2006 to the Commissioner, Erode Municipality and the Director, Municipal Administration, Chennai, for which, the Commissioner Erode Municipality sent reply vide letter Np.Na.Ka.No.H1/14579/97 dated 15.02.2006 informing that on its representation, the Municipal Administration, Chennai has written to the Government to consider the request of the petitioners and that the Municipality cannot take unilateral decision.

2.4 The petitioners filed a batch of Writ Petitions in W.P.Nos.23853 & 45780 of 2006 and 22678 & 30553 of 2008 and by order dated 13.07.2011, this Court disposed of the same by holding as follows:

"21. A perusal of the Government Order in G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999 would show that there is no bar in considering the request of the petitioners liberally on sympathetic grounds, based on their educational qualification and service.

22. Considering the aforesaid Government Orders referred to above passed by the Government of Tamil Nadu (Municipal Administration and Water Supply Department), I find it just and reasonable to direct the second respondent to consider the representation made by the petitioners sympathetically, subject to their educational and other required qualifications for the available vacancies and the respondents are also directed to comply with the guidelines given in G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999 and other G.Os. The petitioners are also at liberty to approach the second respondent in this regard towards the compliance



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of this order and the respondents are directed to consider the representations made by the petitioners and pass appropriate orders within three months from the date of receipt of a copy of this order sympathetically.

23. With the above directions, these writ petitions are disposed of. Consequently, connected Miscellaneous Petitions are closed. However, there is no order as to costs."

2.5 Thereafter, the petitioners sent a legal notice on 16.08.2011 to the respondents 1 & 2 and the second respondent had passed an order dated 20.09.2011 rejecting the claim of the petitioners on most untenable and unsympathetic manner stating that the G.O.Ms.No.125 is not applicable to them as they have not rendered sufficient service as per G.O.Ms.No.125. Since the order dated 20.09.2011 was against the letter and spirit of the order of the High Court dated 13.07.2011 made in W.P.Nos.23853 & 45780 of 2006 and 22678 & 30553 of 2008, the petitioners filed Contempt Petitions 92 of 2011 & 94 of 2012.

2.6 Subsequent to the order dated 20.09.2011, the first respondent/Secretary to Government, Municipal Administration and Water Supply Department addressed a letter dated 14.02.2005 to the Municipal Commissioner, Chennai and Erode Municipality stating that the Municipality had sought for clarification whether G.O.Ms.No.125 can be applied to petitioners who were working under the Malaria Eradication Programme on daily wages once in 3 months and the Government informs that it is not possible to apply G.O.Ms.No.125 to the petitioners. Hence, the left with no other alternative, the petitioners have filed the present writ petition for the relief stated supra.

3. The learned counsel appearing for the petitioners would contend that the impugned order dated 20.09.2011 is absolutely erroneous since the second respondent had passed the same mechanically without considering the order dated 13.07.2011 passed by this Court in W.P.Nos.23853 & 45780 of 2006 and 22678 & 30553 of 2008. He would further contend that though the petitioners have rendered their service in the respondent Municipality as Mazdoor from the year 1991 to 1994 without any break, the second respondent had rejected the claim of the petitioners. By overriding the order of this Court, the second respondent had passed the said impugned order dated 20.09.2011 and therefore, the same is liable to be quashed. In support of his contention, he relied on paragraph No.16 of the order passed by this Court in W.P.Nos.23853 & 45780 of 2006 and 22678 & 30553 of 2008 dated 13.07.2011 which reads as follows:



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"16. This Court (K.P.SIVASUBRAMANIAM, J.,) by order dated 30.07.2002 made in W.P.No.4804 of 1995 in a similar matter directed the Commissioner, Erode Municipality, the Director, Municipal Administration, Ezhilagam, Chennai, the Director, Health and Preventive Medicine, Chennai, which reads as follows:

"2. The grievance of the petitioners is that they have been working as staff attached to the National Malaria Eradication Programme and for Preventive and Control for the last 3 or 4 years, and hence, they have worked for more than 400 days, they are entitled to be regularised in permanent services. In this context, the learned counsel for the petitioners brings to my notice, the Government Order issued in G.O.Ms.No.125, Municipal Administration, dated 27.05.1999, framing a scheme of regularising such employees. The fact that the petitioners is not disputed by the learned counsel for the respondents. In a similar writ petition in W.P.No.19515 of 1994, dated 29.06.2000, P.SHANMUGAM, J., after considering the said Government Order and directed the Municipal Authorities to follow the norms and guidelines contained in those orders.

3. As regards the requirements of hands for the National Malaria Eradication Programme, the learned counsel for the respondents refers to the letter of the Assistant Entomologist, dated 12.12.1994, addressed to the Director of Public Health and Preventive Medicine as regards the need to employ persons for the purpose of Eradication of Malaria.

4. In the above circumstances, there will be a direction to the respondents to strictly comply with the direction contained in G.O.Ms.No.125, Municipal Administration, dated 27.05.1995. The petitioners are also directed to duly forward the representation to the respondents within a period of two weeks from the date of receipt of a copy of this order and the first respondent is directed to deal with the same and pass appropriate orders within a period of eight weeks thereafter."



4. The learned Additional Government Pleader appearing for the respondents 1 & 3 would contend that the G.O.Ms.No.125 dated 27.05.1999 would not apply to the petitioners herein since in the said G.O, it is stated that only for the employees working on daily wage basis prior to 01.10.1996, ought to be paid a consolidated pay of Rs.2,000/- per month and after the completion of one year, they should be brought to time based wages, however, the petitioners have worked only since 06.12.1994.

5. Heard both sides and perused the materials on record.

6. As far as this case is concerned, the writ petitioners herein are seeking for the similar relief which was already granted by this Court vide order dated 13.07.2011 in W.P.Nos.23853 & 45780 of 2006 and 22678 & 30553 of 2008.

7. A perusal of the order dated 20.09.2011, passed by the second respondent clearly shows that there is no discussion regarding the direction already given by this Court vide order dated 13.07.2011 in W.P.Nos.23853 & 45780 of 2006 and 22678 & 30553 of 2008. The second respondent had simply rejected the claim of the petitioner without considering the same. Hence, the order passed by the second respondent is unsustainable in law and therefore, this Court has no hesitation to quash the same.

8. Accordingly, the order passed by the second respondent vide Na.Ka.No.C1/8178/2011 dated 20.09.2011 is hereby quashed. Further, considering the facts and circumstances of the case, this Court issues the following directions:

(i) The petitioners are directed to duly forward the fresh representation to the second respondent within a period of two weeks from the date of receipt of a copy of this order.

(ii) On receipt of such representation, the second respondent is directed to consider the same and pass appropriate orders in the light of the order passed by this Court dated 13.07.2011 in W.P.Nos.23853 & 45780 of 2006 and 22678 & 30553 of 2008, as expeditiously as possible within a period of six weeks from the date of receipt of a copy of this order.

9. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

mrr



To

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

2.The Commissioner,
Erode Municipality,
Erode,
Erode District.

3.The Director,
Municipal Administration,
Ezhilagam,
Chennai - 600 006.

+1cc to M/s.Profexs Associates, Advocate SR.No.96452

+1cc to Mr.M.Rajamathivanan, Advocate SR.No.95855

+1cc to Government Pleader SR.No.96571

W.P.No.16308 of 2013

BD(CO)
GMY(26/11/2019)