

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.4714 of 2008

and

M.P.No.3 of 2013

N.R.Palanisamy

.. Petitioner

Vs.

1. The Commissioner,
Salem City Municipal Corporation,
Salem.
 2. The Commissioner and Municipal Administration,
Chepauk,
Chennai - 600 005.
 3. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 600 009.
- .. Respondents

(amended as per order dated 17.09.2018 made in M.P.No.1 of 2013)

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 the records relating to the orders in (1) Pro.Na.Ka.No.C3/4395/06 dated 31.05.2006 of the 1st Respondent and (2) Na.Ka.No.C3/21830/06, dated 17.05.2007 of the 1st Respondent and (3) Na.Ka.No.39220/2006/F4 dated 02.11.2007 of the 2nd Respondent, quash the order dated 31.05.2006 to the limited extent of appointing the petitioner as Unskilled Assistant, and quash the order dated 17.05.2007 and 02.11.2007 in entirety and issue consequential directions to the Respondents to take into account the service of the Petitioner from 15.06.2001 onwards for reckoning the five years of service for appointment as Skilled Assistant, Grade II, and appoint him as such regularly as Skilled Assistant, Grade II.

(amended as per order dated 17.09.2018 made in M.P.No.2 of 2013)

For Petitioner : Mr.M.Ravi

For R1 : Ms.K.Bhuvaneswari
(Additional Government Pleader)

For RR2 & 3 : Ms.R.Janaki
(Additional Government Pleader)

O R D E R

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus to call for the records relating to the orders in (1) Pro.Na.Ka.No.C3/4395/06 dated 31.05.2006 of the 1st Respondent and (2) Na.Ka.No.C3/21830/06, dated 17.05.2007 of the 1st Respondent and (3) Na.Ka.No.39220/2006/F4 dated 02.11.2007 of the 2nd Respondent, quash the order dated 31.05.2006 to the limited extent of appointing the petitioner as Unskilled Assistant, and quash the order dated 17.05.2007 and 02.11.2007 in entirety and issue consequential directions to the Respondents to take into account the service of the Petitioner from 15.06.2001 onwards for reckoning the five years of service for appointment as Skilled Assistant, Grade II, and appoint him as such regularly as Skilled Assistant, Grade II.

2.According to the petitioner, he was appointed as N.M.R. Worker on 06.11.1992 in the erstwhile Salem Municipality. When the Municipality was upgraded as Salem City Municipal Corporation from 01.10.1996, the petitioner continued to work in the said Corporation as N.M.R. on daily wage basis. Subsequently, as per G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999 and consequential order of the second respondent and resolution passed by the first respondent, the petitioner was appointed as unskilled worker in the Engineering Wing of the first respondent on consolidated monthly pay of Rs.2,000/- with effect from 15.05.2000. The petitioner joined in the month of June 2000 and the respondents ought to have granted time scale of pay to the petitioner with effect from 15.06.2001, on completion of one year and ought to have promoted the petitioner as Skilled Assistant, Grade II, on completion of 5 years from 15.06.2001. Contrary to the G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999, the first respondent by the proceedings dated 31.05.2006, appointed the petitioner as unskilled worker, with effect from 23.02.2006 in the time scale of pay of Rs.2550-55-2660-60-3200. The first respondent did not grant promotion to the petitioner as Skilled Assistant, Grade II on the ground that the petitioner was granted time scale of pay only from 23.02.2006 and he has not completed 5 years of service in the feeder category. The respondents failed to consider that the petitioner was fully qualified and the respondents failed to

take into account the services rendered by him on consolidated basis from 15.05.2000.

3.Mr.M.Ravi, learned counsel appearing for the petitioner contended that the similar issue with regard to consolidated pay and time scale of pay as per G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999, was considered by this Court in a number of cases and this Court by the order dated 08.09.2011 made in W.P.(MD).No.4068 of 2009, held that the persons similarly placed like petitioners are to be brought on consolidated pay of Rs.2,000/- in the entry level post and on completion of one year, thereafter they must be granted time scale of pay. The learned counsel appearing for the petitioner further contended that bringing the petitioner on time scale of pay with effect from 23.02.2006 as per G.O.(Ms) No.21 [Municipal Administration and Water Supply (MC3) Department] dated 23.02.2006 is erroneous and the petitioner is entitled to be brought on time scale of pay with effect from 15.06.2001 on completion of one year in the post of unskilled worker on consolidated pay of Rs.2,000/- with consequential benefits. The learned counsel appearing for the petitioner relied on the order of this Court dated 08.09.2011 made in W.P. (MD).No.4068 of 2011 and judgment of Division Bench of this Court dated 14.07.2007 made in W.A.(MD).Nos.187 of 2017 to 193 of 2017 and the Full Bench Judgment of this Court dated 30.05.2017 made in Rev.Applc.(MD).No.87 of 2014 in W.A.(MD). No.729 of 2013, Rev.Appl.No.223 of 2015 in W.P.(MD).No.1083 of 2012, W.A.(MD).No.555 of 2010 and Rev.Appl.No.254 of 2015 and prayed for allowing the Writ Petition.

4.The first respondent filed counter statement and the learned counsel appearing for the first respondent contended that as per G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999, the employees who were appointed on daily wage basis in the first respondent Corporation have been brought into consolidated pay of Rs.2,000/- per month. Thereafter, as per G.O.(Ms)No.21 [Municipal Administration and Water Supply (MC3) Department] dated 23.02.2006, they were brought on time scale of pay and appointed as unskilled worker. As per G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999, the petitioner was brought into consolidated pay by the proceedings dated 15.05.2000 and by the proceedings dated 31.05.2006, he was appointed as unskilled worker. The petitioner was brought on time scale of pay from 23.02.2006 as per G.O.(Ms) No.21 [Municipal Administration and Water Supply (MC3) Department] dated 23.02.2006. The petitioner has not completed 5 years of service in time scale of pay to be promoted as Skilled Assistant, Grade II. The unskilled workers were promoted to the post of Skilled Assistant, Grade II on the basis of seniority in

consolidated pay and educational qualification acquired by them at that time in which the seniority of the petitioner has not been over looked. The petitioner has suppressed the Government Order and therefore he is not entitled for the relief sought for in the Writ Petition and prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner as well as Ms.K.Bhuvaneswari, learned Additional Government Pleader appearing for the first respondent and perused the entire materials on record.

6. It is not in dispute that the petitioner was working from 01.10.1996 as N.M.R. Worker on daily wage basis in the first respondent Municipal Corporation. It is also not in dispute that the petitioner is entitled to benefit of G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999. The respondents based on G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999, brought the petitioner on consolidated pay with effect from 15.05.2000. Once the petitioner was brought on the consolidated pay, the petitioner is entitled to be brought in the time scale of pay on completion of one year of service after being brought on consolidated pay. The respondents granted time scale of pay to the petitioner only with effect from 23.02.2006 based on the G.O.(Ms)No.21 [Municipal Administration and Water Supply (MC3) Department] dated 23.02.2006 and the same is not proper. As per G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999, the petitioner has accrued right to be brought on time scale of pay after completion of one year of service on consolidated pay. The respondents by implementing the provisions of G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999, ought to have granted time scale of pay with effect from 15.05.2001. The respondents have not given any reason for granting such a benefit to the petitioner from 23.02.2006 except stating that the petitioner was brought on time scale of pay with effect from 23.02.2006 as per G.O.(Ms)No.21 [Municipal Administration and Water Supply (MC3) Department] dated 23.02.2006. The issue whether the daily wage worker who was brought on consolidated pay as per G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999, is entitled to be granted time scale of pay on completion of one year was considered by this Court in the order dated 08.09.2011 made in W.P.(MD).No.4068 of 2009. This Court considering the paragraph No.3(2) of G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999, held that the said workers are entitled to be granted time scale of pay on completion of one year. The said paragraph No.3(2) reads as follows:

"...3(2) Those daily wage employees included in the above list should be appointed in the Entry Level posts in the vacancies arising from time to time depending on their suitability and their services should be regularised and monetary benefits calculated from the date of such appointment. They will be appointed on a monthly consolidated pay of Rs.2,000/- for one year and after one year they will be brought to regular time-scale of pay. The period prior to absorption of daily wage employees to regular post will not be taken into account for monetary benefits. Till the daily wage employees appointed in the vacancies as stated in Para 3(1) above, nobody should be appointed through Employment Exchange."

7. This Court, in the order dated 08.09.2011 made in W.P. (MD).No.4068 of 2009, in paragraphs Nos.11 and 13, has held as follows:

"...11. The petitioners in this case have been appointed as Skilled Assistant Grade-II in terms of the first part of paragraph 3(ii) of G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999 and their appointment is regularised by consequent order dated 08.04.2000. Therefore, on completion of one year in consolidated pay, they are entitled to be brought under regular time scale of pay. Both the benefits flow out of the same provisions of G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999 which still holds the field. Since the petitioners appointment has been regularised as Skilled Assistant Grade-II, on 08.04.2000, the petitioners will be entitled to regular time scale of pay on completion of one year. That is the mandate of the G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999. There is no need to pass further Government Order for regular time scale of pay."

13.The petitioners who have the benefit of G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999 and have been appointed in the Entry level post, namely, Skilled Assistant Grade-II on 08.04.2000 on the basis of the above said G.O., are entitled to further relief granted under the very same G.O. The respondents cannot postpone the petitioners' right to regular time scale of pay by virtue of another G.O., namely G.O.Ms.No.21 Municipal Administration and Water Supply (MC.3) Department dated 23.02.2006. There is no justification for specifying the effective date as 23.02.2006. When G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999 gives the benefit of regular time scale of pay on completion of one year in the consolidated scale of pay in terms of paragraph 3(ii), the alternate date stated in G.O.Ms.No.21 Municipal Administration and Water Supply (MC.3) Department dated 23.02.2006 cannot be justified as the earlier G.O., is very much in force and has not been rescinded, withdrawn or modified. When the benefit has already been granted under G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999, it cannot be denied based on the subsequent G.O., unless the said earlier G.O., has been specifically and intentionally overruled, modified or withdrawn." सत्यमेव जयते

8.Subsequently, this issue came up for consideration before the Division Bench of this Court made in W.A.(MD).Nos.187 of 2017 to 193 of 2017. The Division Bench, by judgment dated 14.07.2017 held that as per the judgment of Full Bench decision of this Court reported in 2017 3 CTC 673 [Secretary to Government, Municipal Administration and Water Supply Department and others Vs. V.Marisamy and others] and order in Review Petitions, the persons similarly placed like petitioner are entitled to be regularised after completion of respective period of consolidated pay, as specified in the Government Order from the date of their initial appointment. The petitioner was brought on consolidated pay with effect from 15.05.2000 and

according to the petitioner he has completed one year of service on 15.06.2001 and therefore he is entitled to time scale of pay on completion of one year and G.O.Ms.No.125 (Municipal Administration and Water Supply Department) dated 27.05.1999, is applicable to facts of the present case.

9.For the above reason, this Writ Petition is allowed as prayed for. The respondents are directed to settle the petitioner with all consequential benefits within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Commissioner,
Salem City Municipal Corporation,
Salem.
2. The Commissioner and Municipal Administration,
Chepauk,
Chennai - 600 005.
3. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 600 009.

+1 cc to M/s.K.Bhuvaneswari, Advocate, S.R.No.49887

+1 cc to Mr.M.Ravi, Advocate, S.R.No.49627

+1 cc to the Government Pleader, S.R.No.49487

W.P.No.4714 of 2008 and
M.P.No.3 of 2013

VSN-II (CO)
SSM(16/07/2019)