

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.7966 of 2010

M.Selvi

.. Petitioner

Vs.

1. The Commissioner,
Avadi Municipality,
Avadi, Chennai- 600 054.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.

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

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorari, to call for the records relating to the impugned order passed by the 3rd respondent in letter No.39341/ME1/08-1 MAWS Department dated 25.02.2010 and quash the same as illegal and to regularize the petitioner in the category of NMR in the light of the order passed in G.O.(MS) No.125 MAWS dated 27.05.1999 and also in G.O.(MS) No.296, MAWS dated 18.08.2004.

For Petitioner : Mr.V.G.Suresh Kumar

For R1 : Mr.P.Srinivas, Standing Counsel
For Municipality

For RR 2&3: Mrs.K.Bhuvaneswari
Additional Government Pleader

O R D E R

The writ petition has been filed by the petitioner, seeking to call for the records relating to the impugned order passed by the 3rd respondent in letter No.39341/ME1/08-1 MAWS Department dated 25.02.2010 and quash the same as illegal and to regularize the service of the petitioner in the category of NMR in the light of the order passed in G.O.(MS) No.125 MAWS dated 27.05.1999 and also in G.O.(MS) No.296, MAWS dated

2. The petitioner worked as N.M.R. in the Avadi Municipality in the post of Section Writer on daily wages from 01.04.85 to 31.10.91, 01.11.91 to 31.03.96, 01.04.96 to 31.08.96 and 01.09.96 to 30.07.98. While so, the Government had passed G.O.(Ms)No.125 MA&WS (Na.Pa.3), dated 27.05.1999 which reads as under:

In the G.O. read in the first reference above, orders were issued to bring all the daily wages workers who served prior to 01.10.1979 without break and who have completed 10 years on the date indicated above, to the permanent establishment and to fix the pay in the time scale of pay. Further, it was instructed to the Director of Municipal Administration to fix total strength of contingent employees for each municipality considering work load and financial status.

Apart from the work of cleaning, maintenance of street lights and supply of drinking water in the municipality, and in order to attend the other works and as posts could not be sanctioned in a regular times scale of pay and to meet urgent necessities based on contingent/work load, daily wages workers were appointed. Regarding to the regularizations of services of such daily wages workers, several cases are pending in High Court and Tamil Nadu Administrative Tribunal. Daily wages workers are serving municipalities, Town Panchayat and Corporations. Several requests were received by Government for appointing daily wages workers in permanent service.

In the G.Os. read above in the references 2 to 6 above, orders were issued fixing new guidelines for creating the posts scavengers, driver, street light maintenance worker, drinking water maintenance worker. Based on this the services of daily wages workers involved in these works are being regularized. Regarding the appointment of daily wages workers involved in the works others this, was examined the commissioner, municipal administration has sent proposals to Government. Based on this, regarding regularization of service of daily wages workers in Town Panchayat, Corporations Government have examined and ordered as follows:

In each Municipality, a list comprising the names of daily wages workers appointed for the works other than scavengers, driving, maintaining street lights and supplying drinking water no, of posts (designation wise) the date of appointment as daily wage worker educational qualification, the details if employed through employment exchange, have to be prepared.

3. Since the petitioner's name was not found in the list of the petitioner filed a writ petition in W.P.No.22056 of 2008 for himself being included in the list for regularizing his appointment in terms of G.O.(Ms)No.125. The petitioner has also produced a recommendation made by the Chairman of Avadi Municipality, wherein, the Chairman of Avadi Municipality had recommended that the petitioner herein is working as temporary staff from 1986.

4. This Court in W.P.No.22056 of 2008, by order dated 14.10.2008, observed and directed as follows:-

(3). Even though the petitioners have prayed for a direction against the third respondent in the above writ petitions in the light of the order passed in G.O.(MS)No.296, MAWS dated 18.08.2004, learned counsel for the third respondent is only objecting that G.O.(MS)No.296, MAWS dated 18.08.2004 came to be passed based on the direction of the High Court and in respect of the petitioners therein who were admittedly N.M.Rs and as far as the petitioners are concerned, it is not known as to whether they are N.M.Rs. According to her, the resolution and the subsequent files of the Municipality shows that the petitioners were Section Writers and hence the Government can pass orders in respect of the petitioners only after verifying the correctness of the said resolution.

(4). Considering the submissions of the learned counsel on either side, the above writ petitioners are disposed of with a direction to the third respondent, Secretary to Government, Municipal Administration and Water Supply Department to pass appropriate orders on the representations of the petitioners dated 18.10.2007 and 10.08.2006 on merits and in accordance with law expeditiously and in any event within twelve weeks from the date of receipt of a copy of this order. It is made clear that while passing such order, it is open to the Government to verify as to whether the petitioners are entitled to claim as N.M.Rs. having served in the first respondent Municipality and are eligible as per G.O.(MS).No.296, MAWS dated 18.08.2004 in respect of which other similarly

situated persons have been given benefit.

5. In compliance of the said order of this Court, the Government had passed the impugned order dated 25.02.2010, rejecting the case of the petitioner that the petitioner's name was not found in the list of daily wage workers and he had not served continuously as daily wage worker and since there is no evidence for the petitioner serving as daily wage worker, the petitioner's representation cannot be entertained. This order is challenged in the present writ petition.

6. Heard the learned counsels appearing for the parties.

7. A perusal of the above order in W.P.Nos.22055 and 22056 of 2008 dated 14.10.2008 shows that this Court had directed the Government to consider the representation of the petitioner on merits and also to verify as to whether the petitioner is entitled to get his service regularized as N.M.Rs., after having served the first respondent Municipality and is eligible as per G.O.(Ms)No.296. Apart from G.O.(Ms) No.125 MA & WS (Na.Pa.3) dated 27.05.1999, the Government has also passed G.O.(Ms)No.126 extending the benefit of G.O.(Ms) No.125 to two persons who had joined the Municipality and similarly placed like the petitioner.

8. A perusal of the above order of the Government shows that the petitioner's representation was forwarded by the Commissioner by giving her service details. This has not been considered. The grievance of the petitioner is that her name was wrongly excluded in the list. The grievance of the petitioner is that she has rendered service of 15 years as N.M.R. The impugned order has been passed without giving any reasons as to why the Government is not considering or rejecting the material given by the petitioner viz., service records to show that she is entitled to the benefit of G.O. (Ms)No.125, which has been extended to 10 other similar placed persons like the petitioner under G.O.(Ms)No.296. The recommendation of the Commissioner has also not been considered.

9. In view of the above, the impugned order passed by the 3rd respondent in letter No.39341/ME1/08-1 MAWS Department/dated 25.02.2010 is set aside and the matter is remanded back to the Government to adduce reasons, after considering the materials placed by the petitioner. The Government has to give valid reasons considering the materials given by the petitioner, her eligibility and the entitlement of the petitioner to get the benefit of G.O.(Ms).No.125, dated 27.05.1999, which was extended to other persons, who are similarly placed like that of the petitioner.

10. The 3rd respondent/Secretary to Government, Municipal Administration and Water Supply Department is

directed to complete the above exercise within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (Insp
Cell)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Commissioner, Avadi Municipality,
Avadi, Chennai- 600 054.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.
3. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai- 600 009.

+1cc to Mr.P.Srinivas, Advocate, S.R.No. 83885
+1cc to Mr.V.G.Suresh Kumar, Advocate, S.R.No. 84132
+1cc to the Government Pleader, S.R.No. 83972

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W.P.No.7966 of 2010

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