

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.744 of 2018
and WMP.No.902 of 2018

1.T.Saravanan
2.R.Nithiyanandam
3.P.Velmurugan
4.S.Ramesh
5.J.Pitchai
6.P.Mahendran
7.G.Siva
8.K.Pitchaimuthu Petitioners

-vs-

1.The Secretary to Government
Municipal Administration & Water Supply
Department (TP-1)
Fort St.George, Chennai-600 009
2.The Commissioner for Municipal Administration
Chepauk, Chennai-600 005
3.The Commissioner
Vellore Corporation
Vellore District ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records relating to the notice of the 3rd respondent dated 06.01.2016 issued in Na.Ka.No.C1/2206/2013 and quash the same and consequently to direct the respondents 1 to 3 to regularize the services of the petitioners in the category of sweepers from the date of their initial appointment or if not possible at least from the date of absorption in the 3rd respondent corporation with all attendant service & monetary benefits.

For Petitioners: Mr.P.I.Thirumoorthy

For Respondents: Mr.J.Pothiraj
Special Government Pleader
for R1 and R2.
Ms.P.Shanthi for R3.

O R D E R

These petitioners have been working as Sweepers continuously since the date of their initial appointment in 2003, 2008 and 2010 respectively. They have been paid wages on consolidated basis. Originally they were appointed in Panchayat Service. After merger of Panchayat with Vellore Corporation in the year 2011, these petitioners have been brought to the Corporation Service and once again employed and paid monthly salary on consolidated basis.

2. According to the petitioners, from the date they were absorbed in Vellore Corporation, after its formation, they have been continuously employed without any break as their absorption also has been recognised by issuing G.O.(Ms).No.118 MAWS (MC6) Department dated 19.12.2012.

3. The Government, in response to several representations from employees who were working on casual basis, seeking regularisation of their services had issued a number of orders covering various departments, granting the benefits of regularisation of their services by taking into account their long years of service as casual employees. As far as Town Panchayats and Municipalities, persons who have completed three years of service have been granted regular time scale along with service and monetary benefits in terms of various Government Orders in G.Os.199, 198, 72, G.O.Ms.No.125 etc. Likewise several departments were covered by various G.Os., for the purpose of regularising the casual employees employed in such of those departments.

4. In identical circumstances, Commissioner of Salem Corporation vide communication dated 15.05.1996 submitted a proposal to the Government to bring the daily wages employees of various village Panchayat who were absorbed with the Salem Corporation with the consolidated pay under regular time scale. Based on the proposal of Salem Commissioner, those employees were subsequently brought on regular time scale from 23.02.2006.

5. While matters stood thus, several orders were passed by this court both by the learned Single Judges and Division Benches granting the benefit of regularisation to casual employees who have completed 10 years of continuous service. In fact, the Government issued G.O.Ms.No.22 P & AR Department dated 28.02.2006, providing for regularisation of casual employees who have completed 10 years of continuous service as on 01.01.2006. Such of those employees who completed 10 years of service as on 01.01.2006 came to be regularised. In

the said circumstances, the petitioners have made representations individually and collectively seeking for their regularisation. But none of their representations has evoked any response initially, but however, ultimately thereafter, orders were passed on 06.01.2016, stating their request cannot be considered for the reason that since they were paid consolidated wages and are not entitled to the benefits of various GOs, particularly G.O.Ms.No.22 dated 28.02.2006. The said order is put to challenge in this writ petition.

6. Mr.Thirumoorthy, the learned counsel for the petitioners submits that the claim of the petitioners is covered by various decisions of this court and by G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department dated 28.02.2006. He would draw the attention of this court to the first of the orders passed by the Division Bench of this court in W.A.(MD). No.686 of 2017 dated 12.07.2017. The learned Division Bench of this Court had dismissed the appeal filed against the order passed by the learned Single Judge granting the benefit of regularisation, since in that case, the employee was employed for nearly 19 years on casual basis.

7. Thereafter, this court, by its order dated 22.09.2017, in a batch of Writ Petitions in W.P.No.29346 of 2013 etc Batch, has allowed all the Writ Petitions seeking regularisation of services notwithstanding subsequent Government Orders passed in G.O.Ms.No.74 P & A.R.Department dated 27.06.2013, by applying G.O.Ms.No.22 P & A.R.Department, dated 28.02.2006. This court has construed that persons who completed ten years of service, as on 01.01.2006 were entitled to regularisation under the said G.O., and the retrospective effect given to G.O.Ms.No.74 dated 27.06.2013 was held to be illegal and therefore, the same was struck down by this court in the above batch of Writ Petitions. In an identical circumstance, a Division Bench of this Court vide its order dated 29.06.2018 in W.A.No.1133 of 2014, has dismissed the Writ Appeal filed by the Department, wherein the Division Bench has placed reliance on G.O.Ms.No.74 P&AR (F) Department dated 27.06.2013. The Division Bench has upheld the Ruling of this court in respect of regularisation of the employees after 01.01.2006 in terms of G.O.Ms.No.22, P & AR Department dated 28.02.2006.

8. The learned counsel would ofcourse draw the attention of this court a detailed order passed in similar circumstances in the aforesaid batch of Writ Petitions and would draw the attention of this court particularly to the operative portion of the order dated 22.09.2017 in W.P.No.29346 of 2013 batch, which are extracted hereunder:-

" 20.Having heard the learned counsel appearing for the learned counsels for the petitioners and the learned Addl. Advocate General for the respondents and upon perusing the materials and pleadings placed on record, this Court is of the view that the offending portion of the G.O.Ms.No.74, dated 27.06.2013, namely, paragraph 6 which is extracted supra, is unconstitutional and it only seeks to introduce a naked discrimination in the matter of treatment of identically placed employees. As rightly contended by the learned counsels appearing for the petitioners and in view of the various decisions rendered by this Court, the right which is accrued to the employees cannot stand negated by giving retrospective effect to the G.O.Ms.No.74, dated 27.06.2013. Moreover, in the several decisions rendered by this Court which have been confirmed in Writ Appeals and also in some other cases by the Hon'ble Supreme Court, it does not lie within the power of the Government to bring the impugned G.O. with retrospective effect. Such retrospectively is blatant attempt by the Government to violate the principles of promissory and equitable estoppel and doctrine of legitimate expectation.

21.This Court also cannot lose sight of the fact that in several cases, in fact, few of them have cited above, the employees had obtained beneficial orders and those orders also came to be implemented by the Government on various dates even in the present year. In the said circumstances, this Court is unable to understand the situation as to how the petitioners alone can be singled out for discriminatory treatment by retrospectively applying the G.O.Ms.No.74, dated 27.06.2013. Any Government action is to be tested on the touchstone of Articles 14 and 16 of the Constitution of India. A State cannot be allowed to adopt the discriminatory practice while dealing with the citizens or Government servants.

22. In the instant case, the attempt to implement the impugned G.O.Ms.No.74, dated 27.06.2013 with retrospective effect, is nothing but a clear case of colourable exercise of power. The fundamental rights guaranteed by our Constitution sought to be impinged by bringing in the impugned G.O. with retrospective effect. Exercise of such power, therefore, cannot be held to be constitutionally valid. This Court is also conscious of the fact that in policy matters, the Court should be little slow in interfering with the same however, under the guise of public policy, the Government cannot arbitrarily and unjustly take away the rights of the employees which is against the scheme of the Constitution. In the instant case, the Government has preciously done the same.

23. In the light of the above narrative and discussion, this Court finds that retrospective implementation of the impugned G.O.Ms.No.74 dated 27.06.2013 and the other conditions enumerated in para 6 of the G.O., are liable to be struck down as being unconstitutional and interfering with the fundamental rights of the Government servants.

24. For the foregoing reasons, the impugned G.O.Ms.No.74 P.&Ar. Department, dated 27.06.2013 is hereby set aside insofar as para 6 is concerned and the petitioners in all the Writ petitions are entitled to regularization of their services on completion of 10 years of service by virtue of G.O.Ms.No.22 P.& AR. Department, dated 28.02.2006 and also in line with similar orders passed by this Court in various earlier writ petitions quoted supra. The respondents are directed to pass orders regularizing the services of the petitioners, within a period of three months from the date of receipt of a copy of this order."

9. The learned counsel would also submit that in pursuance of the several directions passed by this Court, the Government has implemented the orders and has regularised several thousand employees. Therefore, these petitioners are entitled to be extended the same parity of treatment in the matter of regularisation as these petitioners have been employed as sweepers continuously for several years since 2003, 2008 and 2010 respectively.

10. Notice has been issued by this court in this writ petition vide order dated 12.01.2018. Ms.P.Shanthi, learned counsel has entered appearance and filed counter affidavit. It is averred in paragraph 3 as under:-

"3. It is submitted that the employees of merged local body were redesignated as per the corporation service rules in accordance with the provision of G.O. (Ms).No.118 MA&WS Department, dated 19.12.2012. The Petitioners, who had been the workers of the erstwhile Kangeyanallur Village Panchayat were not at all appointed in accordance with any service rules or against any sanctioned posts. But, on the other hand, they were engaged as workers to look after sanitation on consolidated pay. They have been allowed to work continuously as per the above government order. Their services could not be regularized as they were not appointed either based on any service rules or against any sanctioned posts."

11. From the counter, it is also seen that the petitioners herein already filed a Writ Petition in W.P.No.25451 of 2013 and the writ petition was disposed of with the direction to consider all the claims in terms of G.O.Ms.No.22 dated 28.02.2006. However, the same was considered, but, the benefit of the said G.O., could not be extended to the petitioners. Hence, the claim was rejected on 06.01.2016. Therefore, it is the case of the respondents that the petitioners herein are not entitled to be regularised in terms of G.O.Ms.No.22 dated 28.02.2006.

12. As regards the legal principles laid down by this court and the implementation of the same, the learned counsel appearing for the respondents would have no dispute on that position.

13. Considering the submissions made on behalf of the petitioners as well as respondents, an irresistible conclusion that could be drawn by this court is that the issue of regularisation of these petitioners is no more res integra since identical claims have been considered repeatedly in respect of various G.Os particularly G.O.Ms.No.22 P & AR Department dated 28.02.2006 and those claims have been allowed and the Government thought fit to implement the same, in respect of several

thousand employees. Therefore, this court does not think that these petitioners who belong to the last grade servants of the Government can be left in lurch without being considered for regularisation as granted similarly placed employees. Since claims of these petitioners squarely come within the ambit of the orders passed by this court, particularly a decision of this court rendered in a batch of Writ Petitions in W.P.No.29346 of 2013 dated 22.09.2017 and also a Division Bench of this Court in W.A.No.1133 of 2014 dated 29.06.2018, this court is of the considered view that these Writ Petitioners have made out a case for grant of relief as any other conclusion that could be drawn in the matter would be discriminatory and arbitrary and that cannot be countenanced in both law and facts in terms of the equality principles enshrined in Articles 14 and 16 of the Constitution of India.

14. In view of the above, the impugned order issued in Na.Ka.No.C1/2206/2013 dated 06.01.2016 by the 3rd respondent is set aside. The respondents are directed to grant the benefit of regularisation to all the petitioners as the last grade servants in the Corporation service or in the post they are actually employed, if necessary by obtaining due sanction to create adequate posts, with all attendant benefits, in terms of Government Orders issued particularly G.O.Ms.No.22 P & AR (F) Department dated 28.02.2006, by following the legal principles laid down by this court in the aforementioned orders. The respondents are directed to pass appropriate orders in this regard, within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above observation and direction, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government
Municipal Administration & Water Supply
Department (TP-1)
Fort St.George, Chennai-600 009

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

3.The Commissioner
Vellore Corporation
Vellore District

+1cc to Mr.P.I.Thirumoorthy, Advocate sr.69146

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svi(co)
nr 03/09/2019



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