

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.11.2019
Coram

The Honourable Mr.Justice D.Krishnakumar

W.P.No.23823 of 2016

A. Sivananthan Nair

...Petitioner

Vs.

1. The Commissioner of Municipalities,
Ezhilagam, Chepauk, Chennai - 600 005.

2. The Assistant Director,
Local Finance Audit,
Kuralagam, 4th Floor, Chennai - 600 108.

3. The Commissioner ,
Nagercoil Municipality,
Nagercoil, Kaniyakumari District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records, relating to the impugned order dated 04.03.2016, bearing Ref. M.M. No.27709/Na.Lu.Sa (4) 2015 passed by the second respondent and to quash the same, and consequently, to grant family pension to the petitioner.

For Petitioner : Mr.C.P.Sivamohan

For Respondents: Mrs. K.Bhuvaneswari
Additional Government Pleader

सत्यमेव जयते
O R D E R

The petitioner has filed this Writ Petition challenging the order passed by the second respondent, dated 04.03.2016, whereby, the pensionary benefits have been denied to him and to quash the same, and consequently, to direct the second respondent to grant family pension to the petitioner.

2. Mr.C.P.Sivamohan, the learned counsel appearing for the petitioner submitted that the petitioner was appointed as Gardener by the proceeding of the third respondent, dated 16.10.2000 and subsequently, by proceedings of the third

respondent, dated 03.05.2011, his service was regularised with effect from 16.10.2001. The petitioner also, in support of the said contention filed the proceedings bearing Na.Ka.No.4858/2001/E1, dated 03.05.2011 passed by the third respondent/Municipality at page No.28 of the typed-set of papers filed in support of the Writ Petition. Therefore, the learned counsel contended that the second respondent, without taking note of the said proceeding, dated 03.05.2011 passed the impugned order, dated 04.03.2006, stating that the employees, who were appointed on 16.10.2000, their services has to be regularized w.e.f. 23.02.2006, as per G.O.Ms.No.21 of Municipal Administration and Water Supply Department, dated 23.02.2006. The learned counsel submitted that the said Government Order is applicable only for the employees, whose services were not regularized. But the petitioner's service was regularised w.e.f. 16.10.2001. Therefore, the petitioner is entitled for pensionary benefits under the old Pensionary Scheme. Therefore, he contended that, ex facie, the aforesaid impugned proceedings of the second respondent is liable to be quashed.

3. Mrs. K.Bhuvaneswari, learned Additional Government Pleader for the respondent by referring to the counter affidavit filed by the respondents submitted that, no Government order or proceedings along with service register of the petitioner, indicating that the petitioner's service was regularized w.e.f. 16.10.2001, was sent to the second respondent. Therefore, the petitioner's claim has not been considered by the second respondent and the same has been rightly rejected.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader for the respondents and perused the materials placed on record.

5. On perusal of records, it is seen that by proceedings dated 03.05.2011 passed by the third respondent/Municipality, the petitioner's service was regularized w.e.f. 16.10.2001. But the said proceedings has not been taken note of by the second respondent, (as the same has not been brought to the notice of the second respondent by the third respondent) and the second respondent passed the impugned order, rejecting the claim of the petitioner. Even in the counter affidavit filed by the second respondent, the said stand has been taken. This Court would like to point out that before rejecting the claim of the petitioner, the second respondent could have either given an opportunity of being heard to the petitioner, or called for service particulars of the petitioner, instead, the second respondent straightaway rejected the petitioner's claim.

Therefore, this Court has no hesitation to set aside the impugned order passed by the second respondent. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the petitioner is directed to produce relevant records substantiating his claim before the second respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the aforesaid particulars, the second respondent is directed to pass appropriate orders, as expeditiously as possible, preferably, within a period of four months thereafter. If required, the second respondent shall also seek for service particulars of the petitioner from the third respondent and thereafter, shall pass appropriate orders within the time as stipulated by this Court. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Commissioner of Municipalities,
Ezhilagam, Chepauk, Chennai - 600 005.
2. The Assistant Director,
Local Finance Audit,
Kuralagam, 4th Floor, Chennai - 600 108.
3. The Commissioner ,
Nagercoil Municipality,
Nagercoil, Kaniyakumari District.

+1 cc to M/s.C.P.Sivamohan Advocate sr95315

+1 cc to the Government Pleader sr95618

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