

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2019

CORAM :

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.9129 of 2013
and M.P.No.1 of 2013

N. Lilli Vasanthakumari

... Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai - 9.

2. The Director of Town Panchayat,
Kuralagam, Chennai - 108.

3. The Executive Officer,
Sembakkam Town Panchayat,
Kancheepuram District.

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India, praying in the nature of Writ of Certiorarified Mandamus, to call for the records relating to the 3rd respondent in his Pro.Na.Ka.No.137/2006, dated 28.07.2006 and quash the same in so far as the petitioner is concerned and in respect of persons issuing under the category mentioned in Para 3(ii) of G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1988 by bringing him into regular time scale of pay from the date of completion of the one year of service in the consolidated pay service (i.e.23.10.2002) in the light of G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.08.1997 as amended in G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1998 and in the light of orders of this Court passed in W.P.No.25620 of 2006 dated 17.09.2008 and upheld by the judgment of Division Bench in W.A.No.47 of 2010 dated 23.06.2010 in respect of persons issuing under the category mentioned in Para 3(iv) of G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1988 with all consequential service and monetary benefits.

For Petitioner : Mr.D.Jawahar
for M/s.A.Baskaran

For 1st & 2nd
Respondents : Mr.Akhil Akbarali
Government Advocate

For 3rd Respondent : No appearance

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O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the 3rd respondent in his Pro.Na.Ka.No.137/2006, dated 28.07.2006 and quash the same in so far as the petitioner is concerned and in respect of persons issuing under the category mentioned in Para 3(ii) of G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1988 by bringing him into regular time scale of pay from the date of completion of the one year of service in the consolidated pay service (i.e.23.10.2002) in the light of G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.08.1997 as amended in G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1998 and in the light of orders of this Court passed in W.P.No.25620 of 2006 dated 17.09.2008 and upheld by the judgment of Division Bench in W.A.No.47 of 2010 dated 23.06.2010 in respect of persons issuing under the category mentioned in Para 3(iv) of G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1988 with all consequential service and monetary benefits.

2. The petitioner was appointed as Sweeper on daily wage basis on 01.10.1988. The Government of Tamilnadu passed G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.08.1997, wherein, the Government had taken a decision to appoint N.M.Rs., who are working in the Town Panchayat before 31.12.1996 in the existing post or in the created post on consolidated pay of Rs. 1,500/- per month for one year and after one year successful completion, they should be appointed in the time scale of pay. The petitioner, who was working as Sweeper on daily wage basis from 1988, was given benefits of G.O.Ms.No.199, by an order of the Executive Officer, Sembakkam Town Panchayat, Kancheepuram District, in his proceedings Na.Ka.No.137/2006, dated 28.07.2006 with effect from 23.06.2006.

3. G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.08.1997 reads thus:-

ABSTRACT

Establishment - Town Panchayat Administration -
Creation of the post of Sanitary Workers - as per
the yardstick prescribed for Town Panchayats -
Delegation of powers to the Director of Town
Panchayats.

MUNICIPAL ADMINISTRATION AND WATER SUPPLY (TP.2)

DEPARTMENT

G.O. (Ms) No.199

Dated 12.08.1997

1. G.O. (Ms) No.92, Rural Development Department, dated 22.04.1997.
2. G.O. (Ms) No.101, Municipal Administration and Water Supply Department, dated 30.04.1997.
3. From the Director Town Panchayats letter No.12452/A6, dated 23.07.1997.

ORDER :

In the Government Order first read above, orders were issued regarding the number of employees in various categories to be appointed in Town Panchayats. In the said G.O. indicative norms have been prescribed for creation of among other posts the post of sanitary workers as below:-

S. No	Name of the post	Indicative norms	Number of posts
1.	Sanitary Inspector	Town Panchayats having the population 20,000 and above and annul income of Rupees 15 lakhs	one
2.	Sanitary Maistry	For supervising the work of 15 menials	one
3.	Sweeper	Distane of 1 Km road in residential areas and 1.5 km in other areas	one
4.	Cess pool Cleaner	For cleaning 50 cess pools	one
5.	Compost Mazdoor	For preparing 1000 metric tons of manure per year	one
6.	Drainage Cleaner	For cleaning 500 m of katcha drainage or 1000 m of masionary drainage	one

As per the said orders, prior permission of the Government should be obtained for creation of the posts. However, as there is ban for creation of new posts, no new posts have been created in pursuance of the said G.O. Never the less, in order to manage the increasing work load, necessity arose for appointing employees under NMR basis. Representations are being received from the elected Chairman of the Town Panchayats that sufficient number of Sanitary Workers

is not available to look after the general sanitation of the Town Panchayats and that sanitary workers may be appointed in accordance with the increasing population of their Town Panchayats.

2. In the G.O. second read above, modified yardstick was prescribed relating to the number of sanitary workers in municipalities, and powers were delegated to the Director of Municipal Administration for creation of additional posts of sanitary works subject to the conditions laid down in the said G.O. in accordance with the revised yardsticks. Similarly, the Director of Town Panchayats has requested the Government that he may also be delegated with the powers of creation of the posts of sanitary workers in accordance with the yardsticks specified in para (1) above.

3. Regarding the creation of additional posts of sanitary workers in Town Panchayats as per yardsticks prescribed already and filing them up the Director of Town Panchayats has stated as follows:-

i.	As per the yardsticks prescribed in G.O. (Ms) No.92, Rural Development Department, dated 22.04.1993, the number of posts of sanitary workers required in Town Panchayats.	10,581/ -
ii.	Existing/sanctioned no. of posts.	6,068/-
iii.	Additional number of posts required	3,415/-
iv.	Number of employees working at present under NMR basis	1,615/-

The Director of Town Panchayats have also furnished the list consisting of the details of the number of posts required to be created as per the yardstick prescribed by the Government, the number of sanctioned post existing at present, the number of additional posts required and the number of employees working at present under NMR basis in each Town Panchayat. According to the list in some Town Panchayats the number of existing sanctioned posts exceeds the number of posts of sanitary works required as per prescribed yardstick and in some other Town Panchayats, the sum of the sanctioned posts of sanitary workers and the number of employees working under NMR basis exceeds. The number of posts permissible as per the prescribed yardstick. However, in most of the Town Panchayats the existing number of posts of sanitary workers is less than the number of posts of sanitary workers required as per the yardstick prescribed.

Considering the fact, the Director of Town Panchayats has recommended the following to Government:-

i. 3415 posts of sanitary workers required as per the yardstick prescribed in G.O.(Ms) No.92, Rural Development Department, dated 22.04.1993 may be created.

ii. Delegation of powers to the Director of Town Panchayats for creation of new posts of sanitary workers subject to the financial condition of the respective Town Panchayats and the yardstick prescribed by the Government.

iii. The qualified employees working under NMR basis since the date prior to 31.12.96 may be appointed in the posts so created and these excess sanitary workers may be appointed in the nearby Town Panchayats. The posts falling vacant even after such appointments may be filled up by calling for a list from the employment exchange following the regulations therefor.

iv. The employees appointed afresh may be appointed afresh for a period of one year and then they may be allowed to serve after renewing their appointment every year for a period three years and on completion of third year, considering their efficiency in work they may be appointed in the time scale of pay on regular basis in consultation with the Government and obtaining their recommendations.

4. After careful consideration of the proposals of the Director of Town Panchayats, the Government decided to accept them. The Director of Town Panchayats is directed to create posts of sanitary workers as per the yardstick prescribed in G.O. first read above subject to the following conditions:-

1) Instead of appointing sanitary workers for the works such as maintaining the pay and use Toilets in the bus stands and commercial complexes of the Town Panchayat, sweeping in the bus stand area etc. auction preceding should be carried out for entrusting such works to the private contractor by public auction. Wherever entrusting such works to contractors on public auction is not feasible, sanitary workers may be appointed for such works.

2) In the case of appointing additional sanitary workers as per the yardstick prescribed in

Town Panchayats, the respective Town Panchayat should approve to incur the expenditure therefor from the funds of the Town Panchayat and the Town Panchayat council should pass resolution accordingly.

3) After the Town Panchayat council has passed such resolution, the Director of Town Panchayats on examining the financial condition of the Town Panchayat will permit for creation of such additional posts.

4) In the additional posts created a new as per the prescribed yardsticks and in the vacancies of the already sanctioned posts, the employees working on NMR basis prior to 31.12.2006 shall be appointed on seniority basis. If in any of the Town Panchayats the sum of the number of sanitary workers working in the already sanctioned posts and those working on NMR basis exceeds employees shall be appointed in the nearby Town Panchayats where additional employees are required. The posts lying vacant over and above such appointment shall be filled by calling for list of candidates from the District employment exchange following the regulations therefor.

5) Such employees shall be appointed with consolidated pay of Rs.950 per month and the consolidated pay will be enhanced by 10% every year (First year Rs.980/-, second year 990/-, third year 1089/-).

6) Such employees shall be appointed initially for a period of one year. Thereafter the appointment shall be renewed year after year for a period of three years. After a period of three years, reviewing the competency of the employees, the government shall issue orders with reference to appointing them in time scale of pay under regular basis.

5. This order issues with the concurrence of the Finance Department vide its U.O.No.64552/MAWS/97-1, dated 11.08.1997.

(BY ORDER OF THE GOVERNOR)

S.MALATHI
SECRETARY TO GOVERNMENT

To

The Director of Town Panchayats, Chennai - 108.

All District Collectors.

The Director of Local Fund Audit, Chennai - 108.

Copy to:

The Personal Assistant to Minister, Rural Development and Local Administration Department, Chennai.

Finance Department (Municipal Administration and Water Supply),
Chennai - 9.

Municipal Administration and Water Supply (General)
Department, Chennai - 9.
Joint Secretary (S.K.S) Finance Department, Chennai -
9.

/True Copy/

Section Officer."

4. The petitioner claims that as per G.O.Ms.No.199, extracted supra, he is entitled to be regularised and confirmed in the time scale of pay on completion of one year and therefore, from 23.10.2002, when the petitioner completed one year of successful service, he should be regularised in the time scale of pay. The petitioner states that instead of regularizing his service on completion of one year service on consolidated pay i.e. on 23.10.2002, the Executive Officer of Town Panchayat issued proceedings giving time scale of pay to the petitioner only from 23.06.2006, which is under challenge in the instant Writ Petition.

5. Heard the learned counsel appearing on both sides and perused the materials placed before this Court.

6. The petitioner states that the issue raised in the Writ Petition is squarely covered by the judgment dated 03.08.2012 passed by this Court in W.P.No.20605 of 2012. The facts in W.P.No.20605 of 2012 is reproduced as under:-

"The petitioner has filed the above writ petition praying for a Writ of Certiorarified Mandamus to quash the proceedings dated 28.07.2006 of the third respondent in so far as the petitioner is concerned and consequently direct the respondents to extend the benefit of the G.O.Ms.No.570, Municipal Administration and Water Supply Department dated 15.11.2010 to the petitioner by bringing him into regular time scale of pay from the date of completion of the one year of service in the consolidated pay services i.e., (23.10.2002) in the light of G.O.Ms.No.199, Municipal Administration and Water Supply Department dated 12.08.1997 and G.O.Ms.No.84, Municipal Administration and Water Supply Department dated 21.05.1998 and the orders of this Court passed in W.P.No.25620 of 2006 dated 17.09.2008 and the judgment of the Division Bench dated 23.06.2010 passed in W.A.No.47 of 2010 with all consequential service and monetary benefits."

2. According to the petitioner, he was appointed as Sweeper on daily wage basis in the third respondent Town Panchayat on 01.11.1984.

Subsequently, three posts of Wireman was sanctioned by the second respondent in his proceedings dated 13.10.1999 in which the petitioner was accommodated on 15.03.2000 for a consolidated pay of Rs.1,700/- per month and he also completed three years of satisfactory service on 14.03.2003. As per the various Government Orders issued by the Government, his services have to be regularised with effect from the date on which he completed three years of service, but, he was brought under regular time scale of pay by the third respondent only from 23.06.2006 instead of 14.03.2003."

7. The said order has quoted another judgment dated 17.09.2008 passed in W.P.No.25620 of 2006. Relevant portion of the order in W.P.No.25620 of 2006, which has been extracted in W.P.No.20605 of 2012 reads thus:-

"4. G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.08.1997 could not be given effect due to the policy decision of the Government not to fill up any post except in Police, Medical and Teacher as per the G.O. Ms.212, P & AR Department dated 29.11.2001 with effect from 29.11.2001. Further, there were instructions from the Government vide proceedings dated 29.7.2002, which directed to keep in abeyance the regularizations of sanitary workers due to financial crunch faced by many of the Town Panchayats. The petitioners could not be regularized in service with effect from 2001 mainly due to the ban orders of the Government for filling up of the vacancies. The petitioners have miserably failed to bring notice about G.O.Ms.No.21, Municipal Administration and Water Supply (MC3) Department, dated 23.2.2006, which was issued for regularization of services of workers on consolidated pay and NMRs on daily wages. In view of the policy decision of the Government and in view of the financial constraint the services of the petitioners could not regularized with effect from March 2001.

5. Mr.V.Vijay Shankar, learned counsel appearing for the petitioners and Mr.K.Elango, learned Special Government Pleader appearing for the respondents have made their submissions based on the above pleadings.

6. It is not in dispute that the petitioners were appointed as sanitary works initially on consolidated basis in Palladam Municipality in

pursuant to G.O.Ms.No.199, Municipal Administration and Water Supply Department dated 12.8.1997. As per the said G.O., the sanitary workers shall be regularized on completion of three years of service. The petitioners, who have been appointed on 27.3.1998 as per the said G.O. ought to have been regularized by 27.3.2001. The reason for not regularizing their services as per the counter affidavit of the respondents is that there was a ban for recruitment except in Police, Medical and Teachers service and hence the services of the petitioners could not be regularized. The ban imposed could only be for a new appointment and the petitioners, who have been already appointed prior to the ban imposed by the Government cannot be denied regularization of their services citing the said ban. All the petitioners have already been appointed and it is not as if new posts are being created or new appointments are made. Hence the contention raised by the learned Special Government Pleader appearing for the respondents that the services of the petitioners could not be regularized in view of the ban imposed by the Government cannot be accepted.

7. Yet another reason that has been stated by the respondents is that due to financial crunch, such regularization could not be made. Again this cannot be the reason for refusing the regularization of the petitioners in service. The petitioners have been appointed in pursuant to G.O.Ms.No.199, referred to above, wherein it is specifically provided that after the completion of three years, their services should be regularized. In view of the said fact, the said contention of the learned Special Government Pleader appearing for the respondents cannot also be accepted.

8. Further more as rightly pointed out by the learned counsel appearing for the petitioners G.O.Ms.No.21, Municipal Administration and Water Supply (MC3) Department dated 23.2.2006 referred to by the respondents, does not refer about G.O.Ms.No.199 Municipal Administration and Water Supply (MC3) Department dated 12.8.1997. Thus, the respondents cannot be permitted to say that the services of the petitioners could be regularized only as per G.O.Ms.No.21 Municipal Administration and Water Supply (MC3) Department, dated 23.2.2006 cannot also be accepted.

9. Considering the above facts and circumstances, I am of the considered view that refusal to regularize the services of the petitioners with effect from 27.3.2001 is totally erroneous. In the result, the impugned proceedings of the third respondent dated 27.2.2006 directing the regularization of the services of the petitioners only with effect from 23.2.2006 is required to be set aside and accordingly set aside and the writ petition stands allowed."

8. It is further noted that the order in W.P.No.25620 of 2006 was taken up in an appeal in W.A.No.47 of 2010 and the Hon'ble Division Bench has affirmed the order in W.P.No.25620 of 2006. The order of the Hon'ble Division Bench was taken up before the Hon'ble Supreme Court in S.L.P (Civil) No.26605 of 2010, which was dismissed by an order dated 27.09.2010.

9. Taking note of these facts, the learned single Judge in W.P.No.20605 of 2012 has concluded by observations as under:-

"9. In the above circumstances, the impugned order dated 28.07.2006 of the third respondent in so far as it restricts the date of regularization of the petitioners from 23.06.2006 is not set aside and the writ petition is allowed. The respondents are directed to regularise the services of the petitioner in the third respondent Town Panchayat, from the date of completion of one year of contingent service in terms of G.O.Ms.No.199, Municipal Administration and Water Supply (MC3) Department, dated 12.08.1997 and G.O.Ms.No.84 Municipal Administration and Water Supply Department dated 21.05.1998, with all monetary benefits. The respondents can very well verify the dates of completion of service of the petitioner and grant relief. Necessary order is directed to be passed by the respondents within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. However, there is no order as to costs."

10. In view of the above judgment, the petitioner is therefore, entitled to the same relief, which has been given to the petitioner in W.P.No.20605 of 2012. Accordingly, this Writ Petition stands allowed. Consequently, connected

miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai - 9.
2. The Director of Town Panchayat,
Kuralagam, Chennai - 108.
3. The Executive Officer,
Sembakkam Town Panchayat,
Kancheepuram District.

+2ccs to Mr.D.Jawahar , Advocate SR.No. 36570

+1 cc to Government Pleader Sr.No. 37741

W.P.No.9129 of 2013
and M.P.No.1 of 2013

A.SK(25/06/2019)

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