



Rev.A.107 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE N.SENTHILKUMAR

Review Application No.107 of 2019

1. The Government of Tamil Nadu by its Secretary
Municipal Administration and Water Supply Department
Fort St.George, Chennai-9

2. The Director of Town Panchayats, Chennai-108

3. The Assistant Director of Town Panchayats
Vellore

4. The Executive Officer, Polur Selection Grade
Town Panchayat, Polur, Tiruvannamalai

Applicants

Vs

1. M.Karunanidhi (deceased)

2. K.Kannan

3. Anitha

4. Ramesh

Respondents

Prayer:- This Review Application has been filed to review the order dated
01.09.2015, made in WP.No.25321 of 2014.

For Petitioners : Mr.Haja Nazurudeen, AAG, assisted by
Mrs.Meera Arumugam, AGP

For Respondent : Mr.R.Premnarayan



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ORDER

(Order of the Court was made by S.S.SUNDAR, J.)

1. This review application has been filed, by the Tamil Nadu State Government, challenging the common order, dated 01.09.2015 passed in a batch of Writ Petitions including WP.No.25321 of 2014. The Respondent herein is the Writ Petitioner in WP.No.25321 of 2014.
2. The prayer in the said Writ Petition is for regularisation of the services of the Writ Petitioner, in accordance with the GO.Ms.No.198, dated 26.10.1998 with all attendant benefits, which was granted to the Writ Petitioner by the said common order, passed in a batch of Writ Petitions.
3. The brief facts, which are necessary for disposal of this review application, are as follows:-
 - (a) The Writ Petitioner, in his affidavit, had given the particulars about his employment in detail. The Official Respondents had not filed a counter affidavit, denying the factual averments, which were stated in the affidavit filed in support of the Writ Petition in WP.No.25321 of 2014.
 - (b) The Writ Petitioner was appointed as a Over Head Tank Operator Cum Watchmen, on daily wages basis, by the 4th Respondent/ Executive Officer, Polur Selection Grade Town Panchayat, Polur, Tiruvannamalai District, on 16.09.1983. It is the case of the Petitioner that the 4th Respondent in the Writ Petition had appointed the Writ Petitioner through



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the Employment Exchange, but on daily wages basis. The Writ Petitioner stated in the affidavit that the District Collector concerned had granted approval to fix the salary of the Writ Petitioner at the market rate by the proceedings, dated 19.07.1999 . From then, the Writ Petitioner was drawing monthly salary with usual allowances applicable to the permanent employees and he had completed more than 10 years of service and the 4th Respondent had also submitted a proposal to regularise the services of the Writ Petitioner during 1995, but he was not regularised.

(c) In 1998, GO.MS.No.198 (Municipal Administration and Water Supply Department), dated 26.10.1998 was issued by the State Government to create posts specified in the GO and to absorb NMR workers, who had been employed on daily wages basis, before 31.12.1996 on consolidated pay for two years. The said GO also contemplated regularisation of NMRs on time scale of pay on completion of three years after assessment of performance of individual employees.

(d) It is the specific case of the Writ Petitioner that he is entitled to be regularised in terms of the said GO.Ms.No.198, dated 26.10.1998. It is admitted that the Writ Petitioner was regularised later in terms of GO.Ms.No.242 (Municipal Administration and Water Supply Department), dated 10.12.2009 issued regarding absorption of daily wages employees. Though the regularisation was almost identical with the previous GO, the terms of regularisation and the benefit of the



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GO.Ms.No.198, dated 26.10.1998 was not taken away by the subsequent GO.Ms.No.242, dated 10.12.2009. The Writ Petitioner had challenged the impugned proceedings dated 11.12.2009, regularising his services on time scale of pay on the basis of GO.Ms.No.242, dated 10.12.2009 in the Writ Petition. It was pleaded by the Writ Petitioner that he should be regularised in terms of GO.Ms.No.198, dated 26.10.1998 and in consonance with GO.Ms.242, dated 10.12.2009. The said Writ Petition was allowed, along with a batch of Writ Petitions, following the order passed in similar cases filed earlier. Ultimately, the Writ Petitioner was found entitled to be considered for grant of time scale of pay on regular basis on the basis of performance assessment to be done after completion of three years. In case the performance of the Writ Petitioner is found satisfactory, he is entitled to be regularised after completion of three years.

(e) However, the order made in the Writ Petitions is not complied with and hence, the Writ Petitioner was constrained to file Cont.P.No.1106 of 2018. After several adjournments given at the request of the learned Special Government Pleader for the State, the State has filed this review application, challenging the common order passed in similar cases, dated 01.09.2015.

4. In the review application, the Applicants have come forward with a different story that was not even pleaded by them in the Writ Petition. No material is



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produced before this Court, except the appointment order issued to the Writ Petitioner, dated 16.09.1983.

5. The learned Additional Advocate General, on instructions, submitted that the Respondent in the review application continued as a daily wager in the water supply maintenance for want of sanctioned post and therefore, he was absorbed in regular basis in the existing vacancy of Polur Selection Grade Town Panchayat, as per GO.Ms.No.242, dated 10.12.2009.
6. Having regard to the facts narrated in the affidavit filed in support of the Writ Petition, we are unable to countenance the submissions of the learned Additional Advocate General. Except a few facts stated in the written arguments, there was no record or verifiable material produced before this Court at the time when the batch of cases were disposed of. The fact that the Writ Petitioner was in service from 1983 is not in dispute. The fact that the Writ Petitioner was continuously working is also not disputed. The contention that the Writ Petitioner was not appointed as against the sanctioned post has no relevance having regard to the terms of GO.Ms.No.198, dated 26.10.1998. This Court need not go into all those facts as this Court has passed an order, categorically finding that the Writ Petitioner was also entitled to the benefit of GO.Ms.No.198, dated 26.10.1998, based on facts.
7. A Review is not an appeal, as has been, time and again, held by several judgements of this Court. The Court can exercise its power of review only when there is an error apparent on the face of record and even an error,



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which is not apparent on the face of the record, but has to be detected by a process of reasoning cannot be a ground for review. Any ground, which does not fall under Order 47 Rule 1 of CPC, cannot be considered in a review application. Therefore, this Court finds no ground as contemplated under Order 47 Rule 1 of CPC or merit in this Review Application.

8. The learned Additional Advocate General has also relied upon the judgement of the Division Bench of this Court, dated 26.04.2023 passed in a review application in Rev.A.No.31 of 2023, which was heard along with the connected contempt petitions. First of all, the facts that have been dealt with by the said Division Bench are entirely different from that of the present case on hand. It is seen that the Writ Petitioners therein were not absorbed in the regular service as per the GO.Ms.No.242, dated 10.12.2009. It is also noted by the Division Bench that the Writ Petitioners therein were absorbed in the regular service only by back door method. The fact that the absorption of the Petitioners in the said cases was on the basis of subsequent GO, vide GO.Ms.No.242, dated 10.12.2009 shows that the said case is different from the case of the Writ Petitioner in the present case, wherein he has sought for regularisation on the basis of GO.Ms.No.198, which was issued in the year 1998. This Court finds that the facts of the said case relied on by the learned Additional Advocate General have no relevance to the facts of the present case and hence, it cannot be made applicable to the facts of the present case and hence, this Court finds that there are no merits in this review application.



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9. In fine, this review application is dismissed, as devoid of merits. No costs.

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(S.S.S.R.J.) & (N.S.J.)
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Index:Yes/No
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Note to Office:-

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S.S.SUNDAR, J.
and
N.SENTHILKUMAR, J.

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