

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.16393 of 2017

and

W.M.P.No.17717 of 2017

C.Samapath Immanuel

...Petitioner

vs.

1. The Government of Tamil Nadu,
rep. by its Secretary,
Municipal Administration & Water Supply
(T.P) Dept.,
Fort St.George,
Chennai - 600 009.

2. The Director of Town Panchayats,
Kuralagam Building,
Chennai - 600 108.

3. The Assistant Director of Town Panchayats,
Nagercoil Region,
Kanyakumari District.

4. The Executive Officer,
Kothanallur Grade-I,
Town Panchayat,
Kalkulam Taluk,
Kanyakumari District.

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents 2 and 3 to create one post of driver for one vehicle, the vehicle purchased by the 4th respondent town panchayat for removal of garbage based on the proposal submitted by the 4th respondent in his proceedings Na.Ka.No.183/2013 dated 03.02.2014 from the date of the issue of G.O.Ms.No.37 Municipal Administration and Water Supply Department (T.P. dated 1.2.2011) so as to enable the petitioner to get time scale pay from 1.2.2011 after adjusting the consolidated pay paid to the petitioner.

For Petitioner : Mr.P.Ebenezer Paul

For Respondents : Mr.D.Suriyanarayanan,
Additional Government Pleader

O R D E R

The prayer in this writ petition is as follows:

To issue a Writ of Mandamus directing the respondents 2 and 3 to create one post of driver for one vehicle, the vehicle purchased by the 4th respondent town panchayat for removal of garbage based on the proposal submitted by the 4th respondent in his proceedings Na.Ka.No.183/2013 dated 03.02.2014 from the date of the issue of G.O.Ms.No.37 Municipal Administration and Water Supply Department (T.P. dated 1.2.2011) so as to enable the petitioner to get time scale pay from 1.2.2011 after adjusting the consolidated pay paid to the petitioner.

2. It is submitted by both sides that the issued involved in this case is covered by an order passed by the Division Bench of this Court in W.A.No.587/2018 etc. dated 26.03.2018 wherein the Division Bench of this Court has observed at paragraph No.3 as follows:

3. Though notice was issued and the respondent is represented by a counsel, so far, no counter is filed. The order passed by the learned Single Judge is to the effect that since already a proposal has been forwarded by the fourth respondent therein, one post of Driver for one vehicle has to be created so as to regularize the services of the writ petitioners. So far as the direction is concerned, it appears that it is totally uncalled for because of the fact that nature of appointment has not been examined and it is only contractual in nature. Moreover, a mandamus cannot be issued in case of appointment and to regularization of services. However, the authorities may consider, if they find that it so warrants and do the needful in accordance with law. The order passed by the learned Single Judge is modified with the above observation and the writ appeals are disposed of. No costs. The connected miscellaneous petitions are closed.

3. Mr.Ebinesar Paul, learned counsel appearing for the petitioner and the learned Additional Government pleader appearing for the respondents submitted that the same order can be passed in this matter also, since the issue is one and the

same.

4. Considering the above stated facts and circumstances and in view of the order passed by the Division Bench of this Court in similar matter, this Writ Petition is disposed of with an observation that the authorities may consider, if they find that creation of post of driver is so warranted and do the needful in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Secretary,
Government of Tamil Nadu,
Municipal Administration & Water Supply
(T.P) Dept.,
Fort St.George,
Chennai - 600 009.
2. The Director of Town Panchayats,
Kuralagam Building,
Chennai - 600 108.
3. The Assistant Director of Town Panchayats,
Nagercoil Region,
Kanyakumari District.
4. The Executive Officer,
Kothanallur Grade-I,
Town Panchayat,
Kalkulam Taluk,
Kanyakumari District.

+1cc to Mr.P.Ebenezer Paul, Advocate, S.R.No. 3626
+1cc to the Government Pleader, S.R.No. 4546

W.P.No.16393 of 2017

SSV(CO)
GN(18/02/2019)