

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.08.2019

CORAM

The Honourable Mr.JUSTICE K.K.SASIDHARAN
and
The Honourable Ms.JUSTICE P.T.ASHA

W.A.No.2833 of 2018

S. Dharmaraj

..Appellant

Vs.

1. The Principal Secretary to
Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Chennai- 600009.

2. The Commissioner of City
Municipality Corporation,
Coimbatore -641001.

3. The Director of Town
Panchayat, Kuralagam,
Chennai- 600 108.

.. Respondents

Prayer: Writ Appeal is filed under clause 15 of the Letters Patent praying to allow this Writ Appeal and set aside the order dated 28.04.2018 passed in W.P.No.11315 of 2018 and allow the said Writ Petition as prayed for and pass such further or other order or orders as this Hon'ble Court may deem fit.

PRAYER IN W.P.No.11315 of 2018: - The Writ of Certiorarified mandamus filed under section 226 of the Constitution of India to call for the records ending with letter No.14142/MC4/2014-6 dated 23.1.2018 and quash the same and direct the respondents to regularize the service of the petitioner as unskilled worker under regular time scale of pay of Rs.5200-20200 + 1900 from 19.09.2004 as per GO.Ms.No.198 (MAWS Department) and as recommended in the letter Na.Ka.No.09379/2013/C2 dated 15.10.2014 of the Commissioner of Corporation Coimbatore who is the Appraising Authority under GO. Ms.No.117 MAWS (MC4) dated 19.12.2012 with all back wages and all admissible service benefits.

For Appellant : Mr. S.D.S. Phillip

For Respondents: Mrs. A. Srijayanthi,
Spl.G.P. For R1 and R3
Mr. R. Sivakumar for R2

J U D G M E N T

(Judgment of the Court was delivered by P.T.ASHA, J)

The intra court appeal arises out of the order in W.P.No.11315 of 2018 in and by which the request of the appellant for regularization of his services which had been negated by the first respondent by order dated 08.02.2018 has been confirmed by the learned Single Judge.

2. It is necessary to briefly allude to the facts which has given rise to the intra court appeal. The appellant had joined the services of the erstwhile Saravanampatti Town Panchayat as daily wage water supply operator prior to 18.04.1996. Thereafter the Saravanampatti Town Panchayat was amalgamated with the Coimbatore City Municipality Corporation. The Panchayat came under the direct control of the Commissioner of the City Municipality Corporation, Coimbatore. In fact the appellant had joined the services of the Saravanampatti Town Panchayat when the Athikadavu Pillur drinking water project was handed over to the Saravanampatti Town Panchayat. The appellant was appointed as overhead tank operator on consolidated pay by the erstwhile Saravanapatti Town Panchayat vide Resolution dated 08.08.1997. By an order dated 12.08.1997 of the Saravanapatti Town Panchayat, the appellant was given a consolidated pay of Rs.295/- per month. The appellant was a candidate whose name had been forwarded by the employment exchange.

3. By an order dated 10.07.2000, the Director of Town Panchayat had created seven posts of overhead tank operator/watchman for the erstwhile Saravanapatti Town Panchayat. The Panchayat had also passed a Resolution to request the Director of Town Panchayats to appoint the appellant in the newly created posts. Since the Resolution was not being implemented, the appellant had filed W.P.No.4800 of 2011 seeking regularization of his services. By order dated 25.06.2013, this Court was pleased to direct the Director of Town Panchayat to pass necessary orders.

4. Meantime the Saravanapatti Town Panchayat had merged with the second respondent Corporation and therefore the Director of Town Panchayat pleaded his inability to comply with the order of

this Court in W.P.No.4800 of 2011. Thereafter the second respondent had requested the first respondent through the Commissioner of Municipality Administration to issue necessary orders for appointment of the appellant as an unskilled worker in the time scale of pay 5200-20200+1900 from 19.09.2004 onwards. On 23.01.2015, the Additional Director of Municipal Administration had also requested the first respondent to regularize the appellant's services.

5. Since the said direction was not complied with, the appellant has once again moved this Court by filing W.P.No.42083 of 2016 for necessary directions for regularizing his services. By order dated 30.11.2016, the learned Single Judge was pleased to direct the appellant to give a fresh representation to the first respondent. On receipt of the representation, the first respondent was directed to consider the same in the light of G.O.Ms.No.198 and pass orders.

6. In compliance of the said order, the appellant had already made a fresh representation on 10.03.2017. The request was however turned down by the first respondent by order dated 08.2.2018. Therefore aggrieved by the said order, the appellant had filed W.P.No.11315 of 2018. The learned Single Judge by order dated 28.04.2018 was pleased to dismiss the writ petition stating that the initial appointment was not made as per the recruitment Rules and therefore the appellant was not entitled to the relief claimed by him. Challenging the said order this intra court appeal has been moved by the appellant.

7. The learned counsel for the appellant would argue that the appellant had been working with the Saravanampatti Town Panchayat much prior to 1997 and that the said Town Panchayat had merged with the Corporation. Even prior to the merger, the appellant had moved this court and this Court had directed the appellant to be regularized, which however did not materialize and even as late as 30.11.2016 this Court in W.P.No.42083 of 2016 had directed the Commissioner for Municipal Administration to consider the representation of the appellant but however even before the order could be complied with, the merger had taken place. After the merger, the second respondent had recommended to the first respondent to regularize the services of the appellant and similarly placed persons, in view of the resolution of the Saravanampatti Town Panchayat and as per the guidelines in G.O.Ms.No.198. Despite such a recommendation, the first respondent has rejected the request.

8. Mrs. A. Srijayanthi, Special Government Pleader would contend that no exception could be taken to the order passed by the learned Single Judge who has considered the fact that the appellant was only employed as a daily wage employee and

therefore the order of the learned Single Judge deserves to be sustained.

9. From the records, it is clear that the appellant had been working with the Saravanampatti Town Panchayat even before 1996 and thereafter by a Resolution dated 08.08.1997 bearing Resolution No.129/1997 and 131 of 1997, the appellant and other similarly placed persons were directed to be brought into a consolidated pay. Thereafter, it is also seen that Saravanampatti Town Panchayat passed a Resolution to recommend regularization of the services of the appellant and the others and the said resolution was passed as Resolution No.55 dated 19.09.2001. The Resolution was also forwarded to the third respondent herein vide letter dated 28.01.2002 of the Executive Officer of the Saravanampatti Town Panchayat. Added to this after Saravanampatti Town Panchayat had merged with the Corporation the second respondent had also favourably recommended the appellant's name for regularization vide his letter dated 11.04.2017 bearing Na.No.Ka.No.09379/2013/C2 (va).

10. Further, the Municipal Administration and Water Supply Department as per G.O.Ms.198 dated 26.10.1998 had recommended the appointment of all daily wage earners as on 31.12.1996 in the Municipalities to be appointed in the newly created consolidated pay. The appellant clearly qualifies for such appointment. The first respondent while passing the impugned order had rejected the claim on the ground that the appellant had been appointed after 31.12.1996 in the erstwhile Saravanampatti Town Panchayat.

11. From the resolution dated 08.08.1997 of the Saravanampatti Town Panchayat, it is evident that the appellant was employed as daily wage earner even as on 18.04.1996 when the Athikadavu Pillur drinking water project was handed over to the Saravanampatti Town Panchayat. That apart, the Town Panchayat passed a resolution as early as in the year 2001 to regularize the service of appellant and similarly placed persons and the same could not be given effect to only on account of the merger of the Town Panchayat with the second respondent. The first respondent has also over looked the recommendation given by the second respondent. The second respondent had also referred to the resolution dated 08.08.1997 of the Town Panchayat where the appellant and others were placed on consolidated pay till sufficient cadre post were sanctioned. Therefore the order of the first respondent dated 23.01.2018 has to be set aside. The learned Single Judge has not considered the above facts before dismissing the Writ Petition. The order of the learned Single Judge therefore requires to be set aside and is accordingly set aside. This intra court appeal is allowed with a direction to the first and second respondents to forthwith regularize the

services of the appellant with effect from 19.09.2004, giving benefit notionally and treating the said period for all other purposes, including pension. No costs.

mrn

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to
Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Chennai- 600009.

2. The Commissioner of City
Municipality Corporation,
Coimbatore -641001.

3. The Director of Town
Panchayat, Kuralagam,
Chennai- 600 108.

+2cc to Mr.S.D.S.Philip Advocate, SR.No.69671
+1cc to Mr.R.Siva Kumar, Advocate, SR.No.69075
+1cc to the Govt.Pleader, Vide Sr.No.69404

W.A.No.2833 of 2018

Kak(27/09/2019)