



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :18.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

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WP (MD) No.389 of 2019
and
W.M.P. (MD) No.324 of 2019

Rajeswari

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Assistant Director(Panchayat),
Madurai District, Madurai.

3.The Block Development Officer
(Village Panchayt),
Madurai West Panchayat Union,
Thallakulam,
Madurai District.

4.The President,
Samayanallur Village Panchayat,
Samayanallur,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Order issued by the first Respondent vide his Proceedings in Na.Ka.No.24468/2016/Vu.Va.8 dated 29.07.2016 and quash the same as illegal and consequently direct the first Respondent to regularize the service of the Petitioner on completion of 3 years of service Sanitary Worker in the fourth Respondent Panchayat w.e.f. from 02.04.2002 from the initial date of appointment on 02.04.1999 in terms of Full Bench order of this Court reported in 2017(3) CTC 673 with all attendant and monetary benefits.

For Petitioner : Mr.M.Pounraj
For Respondents : Mrs.J.Padmavathy Devi
Special Government Pleader
for R.1 to R.3

ORDER



Na.Ka.No.24468/2016/Vu.Va.8 dated 29.07.2016 and consequently direct the first Respondent to regularize the service of the Petitioner on completion of 3 years of service as sanitary Worker in the fourth Respondent Panchayat.

2. Heard the learned Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents 1 to 3 and perused the materials available on record.

3. The learned counsel appearing for the petitioner submitted that the petitioner joined as Sanitary Worker-cum-Assistant Clerk on 02.04.1999 on consolidated basis. The petitioner has been in continuous service from 02.04.1999 to till date for more than 20 years, however her service was not regularised. Hence, She filed a writ petition in W.P.(MD)No.3221 of 2015 seeking a direction to the first respondent to consider her representation dated 10.02.2015 to regularize her service. This Court, by order dated 06.04.2016, disposed of the writ petition by directing the first respondent to consider her representation. Subsequently, the petitioner approached the respondents seeking regularization of her service. However, the same was rejected by the impugned order dated 29.07.2016, against which, the present Writ Petition has been filed.

4. The learned counsel appearing for the petitioner submitted that the issue involved herein is covered by the Full Bench decision of this Court reported in **2017 (3) CTC 673 [Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George, Chennai - 2 and two others Vs. V.Marisamy]**, wherein it is held as follows:

27. Another contention by the learned Additional Advocate General was that by virtue of G.O.Ms.No.166 dated 31.12.2014, the regularization can be given effect only from 23.02.2006. We do not agree with the said contention as we have already held that the sanitary workers are entitled to be regularized as per the terms of G.O.Ms.No.71 dated 05.05.1998 from the date of their initial appointment. Paragraph-29 of the decision of the Supreme Court reported in (2015) 1 SCC 1 (CIT vs. Vatika Township (P) Ltd.) is relevant and the same is extracted hereunder:

"The obvious basis of the principle against retrospectivity is the principle of fairness, which must be the basis of every legal rule as was observed in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd*, reported in (1994) 2 WLR 39. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious



omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."

28. In the present case, by virtue of G.O.Ms.No. 101 dated 30.04.1997 and G.O.Ms.No.71 dated 05.05.1998, the right to be considered for regularization on completion of the mandatory period had already accrued to the petitioners on the date of their appointment. The only condition is to be satisfied is the required number of days, of course without blemish. Therefore, any subsequent Government Order cannot take away the fundamental right of the petitioners to be considered for appointment.

29. In the result, Rev.Aplc.No.87 of 2014 is dismissed and Rev.Appl.Nos.223 and 254 of 2015 are allowed on the following terms:

a) Persons employed as sanitary workers and covered by G.O.Ms.No.101 dated 30.04.1997 and G.O. Ms.No.71 dated 05.05.98 are entitled to be regularized after the completion of the respective period under consolidated pay as specified in the Government Orders from the date of their initial appointment.

b) Any orders passed by any Municipality regularizing the service based on G.O.Ms.No.21 dated 23.02.2006, Full Bench Judgment dated 29.11.2013 and G.O.Ms.No.166 dated 31.12.2014 shall be recalled and appropriate orders shall be passed as held above.

In the light of the aforesaid decision, the learned Counsel prayed for appropriate direction to the respondents to consider the claim of the petitioner seeking regularization.

5. The learned Special Government Pleader appearing for the respondents has not seriously opposed the above submission made on the side of the petitioner.

6. Taking into the consideration the above said decision and also considering the submissions made by the learned Counsel on either side, the impugned order dated 29.07.2016 is set aside and the respondents are directed to consider the case of the petitioner seeking to regularize the service of the petitioner, in the light of the decision rendered by the Full Bench of this Court in the case



of **Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George, Chennai - 2 and two others Vs. V.Marisamy, (cited supra)** and settle the benefits due to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

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7.The Writ Petition stands allowed as indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Assistant Director(Panchayat),
Madurai District, Madurai.
- 3.The Block Development Officer
(Village Panchayt),
Madurai West Panchayat Union,
Thallakulam,
Madurai District.

+1cc to Mr.M.Pounraj, Advocate, SR.No. 54619

+1cc to M/s.Special Government Pleader,SR.No. 54961

WP (MD) No.389 of 2019

18.03.2019

SSL

KK/SAR/30.04.2019/ 4P- 6C