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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.(MD)No.18740 of 2017

Ganesan ... Petitioner

Vs.

1.The Melagaram Town Panchayat
rep.through its Executive Officer,
Town Panchayat Office,
Melgaram, Courtallam P.O.
Tenkasi Taluk,
Tirunelveli District.

2.The Director of Town Panchayats,
Directorate of Town Panchayats
at Kuralagam, Chennai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the respondent to regularise and grant Time Scale of Pay and Service and Monetary Benefits to the Petitioner on and from 22.11.1999 along with all the attendant and differential Service and Pay Benefits and Arrears to the Petitioner.

For Petitioner : Mr.S.Ramesh @ Ramiah

For R1 : Mr.M.Rajarajan

For R2 : Mrs.J.Padmavathy Devi
Special Government Pleader

ORDER

Seeking a direction to the respondents for regularization of service and to grant time scale of pay on and from 22.11.1999 along with all attendant benefits, the petitioner is before this Court.

2.Heard the learned counsel for the petitioner; the learned counsel for the first respondent and the learned Special Government Pleader for the second respondent.

3.The learned counsel appearing for the petitioner submitted that the petitioner was appointed on a temporary post of Sanitary Worker on daily wage basis on 31.03.1994 in the office of the first respondent Panchayat and his service had been regularized on and from 01.09.2006 onwards and now he is receiving time scale of pay. Further it is submitted that as per various Government Orders,

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the services of the petitioner ought to have been regularized on and from 22.11.1999, but the same has not been considered by the respondents. Hence, this writ petition.

4.In order to fortify his contention that the petitioner who is a sanitary worker, is entitled for regularisation from the date of his initial appointment, the learned counsel appearing for the petitioner relied upon a 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.*

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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.

5.The learned counsel appearing for the respective respondents have agreed upon the submission so made by the learned counsel for the petitioner.

6.Following the aforesaid decision, the respondents are directed to regularize the service of the petitioner, taking into account the decision taken 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 six weeks from the date of receipt of a copy of this order.

7.The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To
The Director of Town Panchayats,
Directorate of Town Panchayats
at Ezhilagam, Chennai.

+1 CC to M/s.S.RAMESH ALIAS RAMIAH, Advocate in SR-54477
+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.54666

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mj
PK/25.04.2019 : 3P/4C

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