



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.04.2019

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WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVANW.P(MD)Nos.391 to 396 of 2016

T.AYYAMMAL	... Petitioner in WP(MD). 391/ 2016
R. DHANALAKSHMI	... Petitioner in WP(MD). 392/ 2016
R.PALANI	... Petitioner in WP(MD). 393/ 2016
K.JEYALAKSHMI	... Petitioner in WP(MD). 394/ 2016
M.PETCHIAMMAL	... Petitioner in WP(MD). 395/ 2016
R.VELANKANNI	... Petitioner in WP(MD). 396/ 2016

- Vs. -

1. THE MUNICIPAL COMMISSIONER,
USILAMPATTI MUNICIPALITY,
USILAMPATTI,
MADURAI DISTRICT.

2. THE DIRECTOR OF MUNICIPAL ADMINISTRATION,
CHENNAI. ... Respondents in all Writ Petitions

Prayer in WP(MD). 391/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondent to Regularise the Services of the Petitioner from 20.01.2002 and further direct the Respondent to Pay the Differential Arrears of Wages between 20.01.2002 to 21.03.2006 with all attendant benefits to the Petitioner.

Prayer in WP(MD). 392/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondent to Regularise the Services of the Petitioner from 12.01.2002 and further direct the Respondent to Pay the Differential Arrears of Wages between 12.01.2002 to 21.03.2006 with all attendant benefits to the Petitioner.



Prayer in WP(MD). 393/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondent to regularise the services of the petitioner from 07.01.2002 and further direct the respondent to pay the Differential Arrears of wages between 07.01.2002 to 21.03.2006 with all attendant benefits to the petitioner.

Prayer in WP(MD). 394/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondent to Regularise the Services of the Petitioner from 21.02.2002 and further direct the Respondent to Pay the Differential Arrears of Wages between 21.02.2002 to 21.03.2006 with all attendant benefits to the Petitioner.

Prayer in WP(MD). 395/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondent to Regularise the Services of the Petitioner from 13.01.1999 and further direct the Respondent to Pay the Differential Arrears of Wages between 13.01.2002 to 21.03.2006 with all attendant benefits to the Petitioner.

Prayer in WP(MD). 396/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondent to regularise the services of the petitioner from 21.02.2002 and further direct the respondent to pay the Differential Arrears of wages between 21.02.2002 to 21.03.2006 with all attendant benefits to the petitioner.

For Petitioner
in all cases :Mr.S.Ramesh alias Ramiah

For Respondents
in all cases : Mr.K.Mahendran
for R.1

: Mrs.J.Padmavathy Devi
Special Government Pleader
for R.2

COMMON ORDER

Seeking a direction to the respondents for regularization of service and to grant time scale of pay along with all attendant and pay benefits, the petitioners are before this Court.

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



3.The learned counsel appearing for the petitioners submitted that the petitioners were initially appointed as Sanitary Workers on daily wage basis in the office of the first respondent Panchayat and their services had been regularized on and from 21.03.2006 onwards and now, they are receiving time scale of pay. Further, it is submitted that as per various Government Orders, the services of the petitioners ought to have been regularized on and from 20.01.1999, 12.01.2002, 07.01.2002, 21.02.2002, 13.01.2002 and 21.02.1999 respectively, but the said claim has not been considered by the respondents till date. Hence, the petitioners have filed the present writ petitions.

4.In order to fortify his contention, the learned counsel appearing for the petitioners 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.

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."

Hence, the learned Counsel prayed for a similar relief in these writ petitions also, for which, the learned Counsel for the respective respondents have no objection.

5. Considering the facts and circumstances of the case and having regard to the submissions made by the learned Counsel on either side and also following the aforesaid order passed by the Full Bench of this Court, the respondents are directed to regularize the services of the petitioners and settle the benefits due to the petitioners, within a period of twelve weeks from the date of receipt of a copy of this order.

6. All the writ petitions are disposed of accordingly. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Municipal Commissioner,
Usilampatti Municipality,
Usilampatti, Madurai District.



2.The Director of Municipal Administration,
Chennai.

+1CC TO MR.K.MAHENDRAN, Advocate Sr. No.61919

+6CC TO MR.S.RAMESH ALIAS RAMIAH, Advocate Sr. No.62568 TO 62573

W.P(MD)Nos.391 to 396 of 2016
23.04.2019

DKS (CO)

TR (28.05.2019) 5P 10C