



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2019

CORAM

WEB COPY

THE HON'BLE Mr. JUSTICE **M.M.SUNDRESH**
and
THE HON'BLE Mr. JUSTICE **N. SATHISH KUMAR**

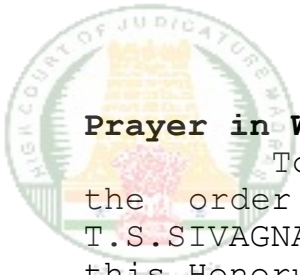
Rev.Applc (MD)No.178 of 2018
in
WA(MD)No.1270 of 2014
and
WP(MD)No.11835 fo 2010

1. The State of Tamil Nadu
represented by its Secretary to Government,
Rural Welfare Department,
Chennai-600 009
 2. The District Collector,
Virudhunagar District,
Collectorate,
Virudhunagar Town
 3. The Assistant Director of Rural Development,
(Village Panchayats),
Collectorate,
Virudhunagar Town.
 4. The Block Development Officer,
(Village Panchayats),
Narikudi Panchayat Union,
Narikudi,
Thiruchuli Taluk,
Virudhunagar District
- ..Petitioners/Appellants

Vs.

1. S. Selvam
 2. K. Mohan
 3. M. Kannapiran
- ..Respondents/Respondents

Review Application preferred under Section 114 and Order XLVII
Rule 1 & 2 of C.P.C. against the order of this Court made in W.A.
(MD) No.1270 of 2014 dated 11.07.2017.



Prayer in WA(MD) . 1270/ 2014 :

To prefer this Memorandum of Grounds of Writ Appeal against the order dated 18.04.2013 passed by His Lordship Mr. Justice T.S.SIVAGNANAM and made in W.P.(MD)No.11835 of 2010 on the file of this Honourable Court.

Prayer in WP(MD) . 11835/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIIFIED MANDAMUS or such other writ, order or direction in the nature of writ by calling for the records of the 4th respondent herein in Na.Ka.Aa1/494/10 dated 22.4.2010 and quash the same in so far as relating to the payment of amount due to 40% increase in salary and consequently direct the respondents herein to; pay the monitory benefits as stipulated in G.O.Ms.191 dated 29.4.1998 regarding 40% increase in salary and for the payment of the amount due for the period from 1.1.1996 to 31.8.2006 to the petitioners.

For Petitioners : M/s.S.Srimathi
Special Government Pleader

For Respondents : Mr.S. Natarajan
RR1 & RR3

ORDER

(Order of the Court was made by **M.M.SUNDRESH, J.**)

Seeking to review the Order passed in W.A.(MD) No.1270 of 2014 dated 11.07.2017, the present application has been filed by the applicants.

2. The issue pertains to conferment of benefits granted under Government Order passed in G.O.Ms.No.191, Finance (Pay Cell) Department, dated 29.04.1998 to those who are receiving consolidated/honorarium /40% increase in the fixed pay as on 01.01.1996.

3. Admittedly, the respondents are the employees of the local body. They were initially working on a consolidated pay. Under the Government Order passed in G.O.Ms.No.191, Finance (Pay Cell) Department, dated 29.04.1998, the Government Servants were given certain benefits and the writ petition has been filed by the respondents/writ petitioners *inter alia* alleging that till they have been brought under the regular time scale of pay, the benefits as per the aforesaid G.O. have not been extended to them.

4. The Writ Petition was allowed and the same was confirmed in the Writ Appeal. Seeking to review the aforesaid order, the present Review Application has been filed.



5. The learned Additional Government Pleader appearing for the applicants would contend that the order passed by the Division Bench in W.A.Nos.1666 and 1667 of 2009 dated 18.11.2009, subsequent to the Government Letter No.43880/E5/98-5 dated 04.03.1999, clarifying the scope and ambit of the said order to the effect that it is applicable only to the Government Servants alone, was not brought to the notice of this Court.

6. The position of the Government involves that such a status cannot be conferred upon a local body.

7. The learned Additional Government Pleader relied upon the judgment of the Apex Court in **Union Public Service Commission vs Dr.Jamuna Kurup and Others** reported in **(2008) 11 SCC 10** , wherein, the relevant paragraph is extracted as under:

" The learned counsel for the appellant submitted that the advertisement granted age relaxation to employees of MCD and employees of the Government of India, and that the words "permanent" or "regular" were not used either with reference to "employees of the Government" or "employees of MCD". It is pointed out that in Vaghela this Court while dealing with persons employed in identical circumstances, that is "engaged for a period of six months from the date of joining or till a candidate selected by UPSC joined on a regular basis", held that the term "government servant" did not refer to or include persons employed on contract basis. IT is argued that on the same principle, the term "employees of MCD" cannot include a contract employee of MCD. We cannot agree. Vaghela related to contract employment by the Government whereas in this case the contract employment is by a municipal corporation. The reason that weighed with this Court in Vaghela to hold that a contract employee was not a government servant, was in view of the special connotation of the term 'government servant'. This Court after referring to the decision of the Constitution Bench in Roshan Lal Tandon vs Union of India, and the decision in Dinesh Chandra Sangma vs State of Assam, held that employment under the Government is a matter of status and not a contract even though acquisition of such a status may be preceded by a contract; and that contract employees of the Government were governed by the terms of contract and did not possess the status of government servants, nor



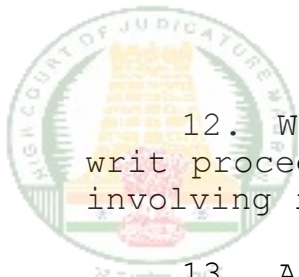
were government servants, nor were governed by the Rules framed under Article 309 of the Constitution, nor enjoyed the protection under Article 311. But a municipal corporation is not "Government", and municipal employees are not government servants by Articles 309 to 311. Though permanent employees of municipal corporation or other statutory bodies may be governed by statutory rules, they do not enjoy the status of government servants. Therefore, the decision in Vaghela, rendered with reference to government servants may not be of any assistance in interpreting the term 'employees of MCD'. In fact, for that very reason, these matters were delinked from the hearing of Vaghela."

8. The learned Counsel for the Respondents/employees submits that the review application cannot be maintainable. This Court distinguished the order of the Division Bench passed on the earlier occasion in setting aside the order of the learned Single Judge. Though the writ petition was dismissed, the findings and reasonings mentioned therein were not disturbed. The learned counsel also placed reliance upon the proceedings of the third applicant for the payment of dues as per the Government Order passed in G.O.Ms.No.191, Finance (Pay Cell) Department, dated 29.04.1998.

9. We find considerable merit in the Review Application. In the government Letter No.4880/E5/98-5 dated 04.03.1999. the Government issued clarification. It is not a letter substituting a Government Order. There is a difference in the status between the Government Servant and the employees of the local body. The mode of appointment is totally different. There is nothing on record to show that any Government Order subsequent to the Government Order in G.O.Ms.No.191, Finance (Pay Cell) Department, dated 29.04.1998 would also involve the employees of the local body.

10. The submission of the learned counsel for the respondents, placing reliance upon the communication of the third applicant also cannot be countenanced. The said communication will not have any binding effect as against the clarification given by the first applicant.

11. Unfortunately, we have not taken note of the Government Letter No.4880/E5/98-5 dated 04.03.1999 and the fact that the Order passed by the learned Single Judge in the earlier Writ Petitions in W.P Nos.1666 and 1667 of 2009 has also been relied upon, which were under appeal before us, set aside by the Order of the Division Bench by dismissing the Writ Petition, though the issues raised were not



12. When it comes to review of an order passed emanating from writ proceedings, the same stand in a different footing than a case involving in a civil case.

13. As stated above, we are dealing with an order emanating through a writ proceeding and therefore, the rigour of Civil Procedure Code may not have a strict application *per se*. Even otherwise, we find there is absolutely an error apparent on the face of the record when the very same Government which passed the order, has clarified subsequently which cannot be brushed aside easily by the Court.

14. In the light of the above coupled with the fact that there is absolutely no change in the status between the government servants and the employees of the Government bodies, we find there is considerable force in the submission of the learned additional Government Pleader. Moreover, the judgment of the Division Bench rendered in W.A.(MD) No.1270 of 2012, no relief has been granted to similarly placed employees by taking note of the fact that they have been brought under regular time scale of pay.

15. Thus, we feel that this is a fit case where the Review Application has to be allowed especially when the respondents have already been brought under regular time scale of pay.

16. With the above observation the Review Application is allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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4. The Block Development Officer,
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Narikudi,
Thiruchuli Taluk,
Virudhunagar District.

+1 CC to M/s.S.NATARAJAN, Advocate SR-59471.

**Review Appln. (C)
(MD) No.178 of 2018**

CS (30/05/2019) 6P 6C