



WEB COPY

W.P(MD)Nos.14590 & 18639/2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.14590 and 18639 of 2014

and

M.P(MD)No.1 of 2014

A.Palaniammal

... Petitioner in both WPs

vs.

1)The Director,
Rural Development Department,
Chepauk,
Chennai-5.

2)The District Collector,
Karur District,
Karur.

3)The Block Development Officer,
Kadavoor,
Dharamgampatti,
Kaur District.

... Respondents in both WPs

W.P(MD)No.14590 of 2014 filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 3rd respondent in his proceedings in Na.Ka.A1/3266/2012 dated 27.05.2014 and quash the same and consequently direct the respondents to regularise the service with effect from the date of compassionate appointment dated 20.04.1984 and confer all the consequential benefits.

W.P(MD)No.18639 of 2014 filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to sanction all eligible retirement benefits by considering the petitioner representation dated 25.09.2014.

In Both WPs

For Petitioner

: Mr.V.Panneer Selvam

For Respondents

: Mr.S.Dhayalan, Government Advocate

COMMON ORDER

The prayer in W.P(MD)No.14590 of 2014 is for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 3rd respondent in his proceedings in Na.Ka.A1/3266/2012 dated 27.05.2014 and quash the same and

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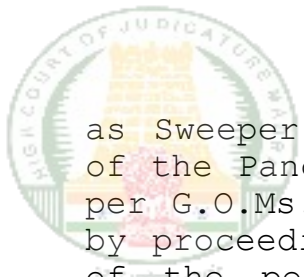


consequently direct the respondents to regularise the services of the petitioner with effect from the date of her compassionate appointment on 20.04.1984 and confer all the consequential benefits.

2.Learned counsel for the petitioner would state that the petitioner's husband died on 15.08.1983 while he was working as Office Assistant in the 3rd respondent Kadavoor Panchayat Union Office. As per the scheme, the petitioner made a request for compassionate appointment and the same was considered and she was appointed as Sweeper on compassionate grounds and posted at Kadavoor Siddha Hospital on 20.04.1984 as per the resolution dated 31.03.1984 of the Kadavoor Union Council. Since the petitioner's appointment was not regularised by the authorities, she made a request to regularise her services. At that time, the Government issued G.O.Ms.No.161, Rural Development (E7) Department, dated 26.06.2000 to regularise the service of the employees who are working for more than ten years. The above government order is applicable only for NMRs who were working for more than 10 years, but applying the said G.O., the petitioner's services were regularised only with effect from 22.07.2000 and the petitioner retired from service on 30.06.2014.

3.It is the grievance of the petitioner that the respondents ought to have regularised her services from the date of her compassionate appointment. Hence, she made a request for regularisation from the date of compassionate appointment and since there was no reply, she filed W.P(MD)No.17907/2013 seeking direction to regularise her service from 20.04.1984 with all consequential benefits. This Court, by order dated 26.02.2014, disposed of the writ petition with a direction to consider and pass orders on the representations of the petitioner dated 19.03.2013 and 05.06.2013 within eight weeks, but the respondents simply rejected the request of the petitioner by order dated 27.05.2014, on the ground that she was appointed only as a contingent employee. According to the petitioner, she was appointed on compassionate grounds. In support of his contention, the learned counsel would rely on a decision of this Court in W.P(MD)No.3634 of 2004 dated 08.08.2007 and stated that similar issue was considered by this Court in the above writ petition which was allowed ordering to bring the petitioner therein into regular establishment from the date of initial appointment with consequential benefits. Thus, the learned counsel would pray for setting aside the impugned order.

4.The respondents filed counter affidavit. Learned Government Advocate appearing for the respondents would contend that the petitioner's husband who was working as Office Assistant in the 3rd respondent office died in harness while in service. Though the petitioner did not have the required educational qualification for being appointed as Office Assistant on compassionate grounds, taking note of the indigent circumstances of the family, she was appointed



as Sweeper under contingency expenditure head vide resolution No.2 of the Panchayat Council, Kadavur, dated 31.03.1984. Thereafter, as per G.O.Ms.No.161, the petitioner was brought under regular service by proceedings of the 2nd respondent dated 19.07.2000 and the claim of the petitioner to regularise her services from the date of joining namely, 20.04.1984 could have been considered if she was appointed on compassionate grounds, whereas she was appointed as Sweeper only under contingency expenditure and therefore, the respondents have rightly regularised her services from 22.07.2000. Thus, he would pray for dismissal of the writ petition.

5.Heard both sides.

6.Admittedly, the petitioner was appointed to the post of Sweeper and the qualification for the said post as per Section 19-5 (2)(aa) of the Special Rules for Tamil Nadu Basic Service is only read and write in Tamil. The Government Order in G.O.Ms.No.161, Rural Development (E7) Department, dated 26.06.2000 is relied upon to regularise the services of the petitioner from 22.07.2000. But, the said G.O was issued to regularise the service of NMRs who are working for more than ten years. Here, admittedly, the petitioner was appointed on compassionate basis. In the decision relied upon by the counsel for petitioner in W.P(MD)No.3436/2004, where the petitioner also stands on the same footing, this Court has considered the similar issue. In that case also, the respondents took a stand that since the petitioner therein was paid on contingency expenditure, he was not entitled for regularisation and the learned Judge has considered that issue elaborately and by order dated 08.08.2007, allowed the writ petitions directing the respondents therein to bring the petitioner's services on regular establishment and has passed the following orders:-

'8.Even though the Director of Rural Development Department is a party to the writ petition, till now, no counter affidavit has been filed on his behalf. The petitioner has been working on contingency basis for the last 26 years. The ground raised by the respondents was that as per G.O.Ms.No.878 RD & LA Department, dated 15.5.1981, no new post in the category of contingent establishment after 1.4.1981 should be created and after 1.4.1981, vacancies should not be filled up. It was because of the ban order, the petitioner's case was not considered even though the other respondents have strongly recommended his case.

9.It is not the question of respondents considering the relief to the petitioner for being brought on regular establishment especially when the petitioner had completed silver jubilee service under the third respondent. The inaction on the part of the respondents cannot be condoned.

10.Under these circumstances, both the writ petitions will stand allowed. No costs. The second respondent is



directed to grant necessary post in respect of the petitioner's contingency establishment and direct that the petitioner's services to be brought on regular establishment as proposed by the third respondent. The second respondent shall pass such orders within a period of three weeks from the date of receipt of a copy of the order in that regard. After such approval is granted by the second respondent, the third respondent is directed to bring the petitioner into regular establishment with effect from 26.8.2001 on which date the petitioner was appointed on compassionate ground and also to pay all the arrears of salary attached to the said post within a period of four weeks thereafter.''

7.In my considered opinion, the said decision is squarely applicable to the present case on hand. Hence, the order passed by the 3rd respondent in his proceedings in Na.Ka.A1/3266/2012 dated 27.05.2014 is quashed and the respondents are directed to regularise the services of the petitioner with effect from the date of her initial appointment namely, 20.04.1984 and as the petitioner has retired from service on 30.06.2014, the respondents are directed to pay all consequential benefits including the retirement benefits by regularising the services of the petitioner from the date of her initial appointment namely, 20.04.1984. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

8. With the above direction, W.P(MD)No.14590/2014 is allowed. No costs.

9.In view of the passing of the orders in W.P(MD)No.14590/2014, the subsequent writ petition in W.P(MD)No.18639/2014 filed by the petitioner for a direction to the respondents to sanction all eligible retirement benefits stands closed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1)The Director,
Rural Development Department,
Chepauk,
Chennai-5.

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2) The District Collector,
Karur District,
Karur.

3) The Block Development Officer,
Kadavoor,
Dharamgampatti ,
Kaur District.

+1 CC to Mr.V.PANNR SELVAM, Advocate (SR-105524[F]dated
18/12/2019)

+1cc to SPL GP SR.No.105550

ORDER MADE IN
W.P (MD) Nos.14590 & 18639/2014
DATED : 17.12.2019

VB(13.01.2020) 5P 6C