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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.12030 of 2011
and M.P. No.2 of 2011

A.Elizebeth

.. Petitioner

-vs-

1.The State of Tamil Nadu
rep. by the Secretary to Government,
Municipal Administration and
Water Supplies Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.

3.The Commissioner,
Thiruvarur Municipality,
Thiruvarur District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus to call for the records pertaining to the order passed by the third respondent vide his Proceedings in No.Na.Ka.No.2452/92/E1 dated 04.05.1992 thereby appointing me on daily wages at the rate of Rs.21/- per day and also the order passed by him vide his proceedings No.Na.Ka.No.252/2002/H1 dated 28.02.2006 and quash them in so far as the petitioner is concerned thereby direct the respondents herein to regularise the services of the petitioners with effect from the date of petitioner's initial appointment on compassionate grounds on 30.04.1992 or in the alternative to regularise the services of the petitioner a least from 15.06.2001 on which the petitioner was appointed as per G.O. Ms. No.125 (Municipal Administration and Water Supplies) Department dated 27.05.1999.
(Prayer amended as per order dated 28.07.2011 by DHPJ in M.P. No.3 of 2011 in W.P. No.12030 of 2011)



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For Petitioner : Mr.A.R.Suresh

For Respondents: Mr.M.Digvijaya Pandian,
Additional Government Pleader
for R1 and R2

Mr.R.Ravichandran,
Standing Counsel for R3

ORDER

The petitioner has come to this Court challenging the Proceedings No.Na.Ka.No.2452/92/E1 dated 04.05.1992 issued by the third respondent, appointing her on daily wages at the rate of Rs.21/- per day and also the order passed by him vide proceedings No.Na.Ka.No.252/2002/H1 dated 28.02.2006 and seeking a direction to the respondents herein to regularise her services with effect from the date of her initial appointment on compassionate grounds on 30.04.1992 or in the alternative to regularise her services from 15.06.2001 on which she was appointed as per G.O. Ms. No.125 (Municipal Administration and Water Supplies) Department dated 27.05.1999.

2.Learned counsel appearing for the petitioner would submit that the petitioner was working as a Sanitary Worker under the Commissioner, Thiruvavarur Municipality, the third respondent herein. Her husband, who was employed as a Gang Mazdoor under the third respondent, died while in service on 20.11.1991 leaving behind her as his legal heir. Due to his sudden demise, her family was put into irreparable loss and hardships. Hence, she had applied for appointment on compassionate ground on 02.03.1992. As per Government Order in G.O. Ms. No.1940 Rural Development and Local Administration Department dated 17.12.1980 and Council Resolution dated 30.04.1992, she was appointed as Gang Mazdoor in the time scale of pay of Rs.750-12-870-14-940 with other allowances. While so, vide Proceedings dated 04.05.1992 i.e. within four days, the third respondent, finding fault with his own order, has passed another order stating that temporary Gang Mazdoor should be appointed on daily wages only and thereby, cancelled the time scale of pay and fixed a sum of Rs.21/- as daily wage, which is highly arbitrary and unjustified.

3.Learned counsel appearing for the petitioner would further submit that since the petitioner was appointed on compassionate ground due to the death of her husband, who is a regular employee, these facts were not disclosed to the petitioner. While she was continuing her service by getting daily wages as Gang Mazdoor in the Engineering Section, the Government of Tamil Nadu passed some Government Orders in G.O.



Ms. Nos.101, 120, 70, 71 and 198 (MA&WS) Department dated 30.04.1997, 15.05.1997, 05.05.1998 & 26.10.1998 fixing the norms for appointment and regularisation of Sanitary Workers and Drivers. In so far as appointment and regularisation of the daily wage workers engaged in other works are concerned, the Commissioner of Municipal Administration had sent proposals and based on those proposals, the Government of Tamil Nadu issued another order in G.O. Ms. No.125 (MA&WS) Department dated 27.05.1999 directing the Government departments to prepare a list of daily wage workers. As per the above list, the daily wagers should be appointed in the regular vacancies and from the date of regularisation, the employees should be placed on consolidated pay of Rs.2,000/- per month for one year and thereafter, they should be brought into regular time scale of pay and their services prior to regular vacancy would not be taken into consideration for service benefits.

4.Learned counsel appearing for the petitioner would further submit that these Government Orders are not applicable to the case of the petitioner since she was appointed on compassionate ground and her services ought to have been regularised from the date of her initial appointment on 02.05.1992. As the third respondent had appointed her as Sanitary Worker on consolidated pay as per the above G.O. Ms. No.125 and she joined the services as Sanitary worker on 15.06.2001, the respondents ought to have regularised her services from 15.06.2001 as per the above G.O. But, the third respondent has recommended the petitioner for regularisation to the Regional Director of Municipal Administration, Thanjavur vide Proceedings dated 04.09.2002 and he had, in turn, recommended to the second respondent vide Proceedings dated 07.11.2002. While so, another Government Order in G.O. Ms. No.21 (MA&WA) MC-3) Department dated 23.02.2006 was passed directing the Municipal Commissioners to regularise the services of the consolidated pay and N.M.Rs on daily wages on their roll as on 01.10.1996 in respect of municipalities in the vacant posts and to regularise the services in the regular post from the date of issuance of the above G.O. In this regard, the petitioner's services were regularised with effect from 23.02.2006 vide Proceedings dated 28.02.2006 only along with other Sanitary Workers, who were appointed after 1998, instead of regularising her services with effect from 02.05.1992, ignoring 14 years of the petitioner's service. As a result the petitioner has been put to grave prejudice and hardships. Therefore, she had submitted a representation to regularise her services from the date of initial appointment on compassionate ground with effect from 02.05.1992.

5.Learned counsel for the petitioner further submitted that it is not a question of getting an order, but they should have taken steps to regularise the case of the petitioner on

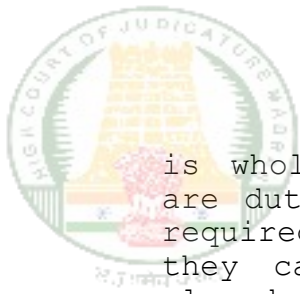


completion of two years of probation period as she would reap the benefit of regularisation on completion of the probation period namely after two years from the date of appointment. Since the respondents have not regularised the petitioner and they have forgotten the fact that the petitioner is only an employee under the compassionate ground, the petitioner is before this Court for getting the legal issue of regularisation after completion of period of two years of probation. Therefore, the impugned order granting regularisation only from 28.02.2006 should be modified to the extent that the petitioner stood regularised on completion of two years of probation period.

6.A counter affidavit has been filed by the third respondent admitting the case of the petitioner that the petitioner's husband was a regular employee and he died on 20.11.1991 while in service. After his death, the petitioner was appointed as Gang Mazdoor on time scale on 30.04.1992 as per Proceedings dated 30.04.1992 issued by the Commissioner, Thiruvarur Municipality, who has passed an order in ROC. No.2452/92/E1 dated 04.05.1992 cancelling the time scale and modifying as daily wage at Rs.21/- per day. But the petitioner gave her representation only on 15.06.2000. Based on the representation, the third respondent issued Proceedings bearing ROC. No.5398/1991/H1 dated 15.06.2001 appointing the petitioner as Sanitary Worker on consolidated pay at Rs.2,000/- per month. Only thereafter Government Order in G.O. Ms. No.21 (MC3) Municipal Administration and Water Supply Department dated 23.02.2006 was passed. The third respondent passed another Proceedings dated 28.02.2006 appointing the petitioner to get the regular time scale of pay and other allowances. Since the petitioner has not been aggrieved by the above order and she has been continuing her service, she cannot come to this Court and complain the above order.

7.This Court finds it difficult to accept the stand taken in the counter affidavit. When the petitioner lost her husband, while he was working as a regular employee and died on 20.11.1991, immediately a representation has been given seeking compassionate appointment. As the petitioner was appointed on compassionate ground on the time scale of pay on 30.04.1992, it is for the respondents to consider the case of the petitioner and to regularise her service on completion of two years of probation period and they should have taken up the issue with care and diligence and should have passed the order of regularisation, after declaring the probation period, which has not been done.

8.Counter affidavit filed by the third respondent cannot say that when the time scale of pay was cancelled by the third respondent and the petitioner was put to receive the daily wage of Rs.21/- per day, she should have made an application, which



is wholly un-warranted and un-justified. When the respondents are duty bound to regularise her services on completion of the required length of services, extracting her continuous service, they cannot put the blame on the poor petitioner, who has already lost her husband. Firstly, the respondents ought not to have cancelled the time scale of pay. Secondly, they cannot take a stand that she is entitled to get regularisation only on 28.02.2006 on the basis of G.O. Ms. No.21, issue for other persons, ignoring the fact that she was appointed on compassionate ground, failing which the purpose of appointing the poor widow on compassionate ground would become meaningless. Therefore, the impugned order is set aside. Accordingly, the writ petition stands allowed and the respondents are directed to regularise the services of the petitioner on completion of the probation within a period of four weeks from the date of receipt of a copy of this order. Consequently, M.P. No.2 of 2011 stands closed. No costs.

Sd/-

Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

vga

To

- 1.The State of Tamil Nadu
rep. by the Secretary to Government,
Municipal Administration and
Water Supplies Department,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.
- 3.The Commissioner,
Thiruvarur Municipality,
Thiruvarur District.

+1cc to Mr.A.R.Suresh, Advocate SR.20033
+1cc to the Government Pleader SR.20670

W.P.No.12030 of 2011
and M.P. No.2 of 2011

PVS (CO)
CB(09/07/2020)