

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED **28.10.2020**

CORAM

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN,J.**

Review Application(Writ) No.145 of 2009

in

W.P.31957 of 2005

R. Gnanasekaran .. Petitioner

versus

The Commissioner,
Thiruvottiyur Municipality,
Thiruvottiyur,
Chennai – 600 019

.. Respondent

Prayer: Petition filed under Order 47 Rule 1 r/w. Section 114 of Criminal Procedure Code to review the order passed in W.P.No.31957 of 2005 dated 17.08.2009.

For petitioner : Mr.V. Manisekaran

For respondent : Mr.R.Gopinath

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ORDER

This Review Application has been filed to review the order passed by this Court in W.P.No.31957 of 2005, dated:17.08.2009.

2. Originally, the applicant has filed an application before the Administration Tribunal in O.A.No.5854 of 1997. After abolition of the said Administration Tribunal, the said Original Application was transferred to this Court and this Court has taken the application as writ petition and renumbered as W.P.No.31957 of 2005 and the said writ petition was dismissed by this Court on 17.08.2009.

3. Now the petitioner has filed the present Review Application on the ground that originally the petitioner was temporarily appointed as Electrician and after 5 years he is eligible for regularization as electrician. But, despite giving several representations, he was not appointed as electrician. He was appointed as Pump House Watchman, even though he was eligible to be posted as electrician, and it was not considered by this Court while dismissing the writ petition. Paragraph 3 of the order passed in the writ petition reads as follows :

"3. On notice from the Tribunal, the

respondent Municipality has filed a reply affidavit dated 07.11.1997. In paragraph 11 of the reply affidavit, it was averred as follows:-

"11. the Electrician Gr.I was vacant from 01.05.1997 due to the retirement of Thiru G.Singaravelu, Thiru K.Rameshkumar, who was working as Electrician Grade.II, has been promoted as Electrician Gr.I as per appointment committee Resolution No.7 dated 26.06.1997. Appointment order promoting him as Electrician Gr.I was issued on 14.07.1997 vide Roc.No.5655/97/E1 prior to the Tribunal's order and the Gr.II Electrician post is vacant till date and not filled up. "

In the light of the said stand taken by the respondent-municipality, no further relief can be granted to the petitioner.

4. The learned counsel for the applicant would submit that the original application was filed before the Tribunal stating that the applicant was appointed as electrician on daily wage of Rs.20/-. The daily wages was periodically revised. The District Collector was

authorised to fix the daily wages every year. The applicant was paid Rs.46.50 per day from 1989 to February 1990. The respondent by an order no.14/88 C1 dated 10.09.1999 registered the applicant herein as electrician in Water and Underground Sewerage Scheme on daily wages basis. He has made several representations to the respondent to regularize him as electrician on time scale of pay. The respondent by his order in Na.Ka.No14093/91 E1 dated 27.02.1995 regularized the applicant as Pump House Watchman on the scale of pay of Rs.750-12-870-14-940. He is the regular employee of the municipality and, he was paid Rs.46.50 per day as wages as electrician from April 1989 to February 1990 by the respondent. The respondent by an order in NK.No.15952/95/E2 dated 16.06.1995 ordered for recovery of a sum of Rs.5,525/- from the applicant's salary at the rate of Rs.110/- per month. The respondent informed the applicant that he was entitled for Rs.29.50 per day as watchman, but he was paid Rs.46.50 per day from April 1989 to February 1990. The respondent without any notice or enquiry, passed the order for recovery. The respondent has appointed several of his juniors as Maistry and Electrician. Even though the applicant herein is qualified as electrician and worked as electrician for 9 years, now, he is appointed as pump house watchman. The

applicant has made several representations to the respondent to regularize him as electrician, but the respondent failed to regularize him as electrician. After the retirement of one Singaravelu, who is an electrician, now there is a vacancy for the post of electrician in the municipality. But, the respondent tried to fill up the vacancy from the person working in the other Municipality. While disposing the writ petition, this Court only quoting the reply affidavit filed by the respondent, dismissed the writ petition stating that relief sought for by the petitioner cannot be granted since the Municipality has not filled up the vacancy. As per the Government order if a person completes 5 years as daily wages, he is eligible for regular post. The applicant is qualified for electrician as he was observed as regular employee, But he was appointed as Pump House Watchman on time scale of pay even though he is eligible for electrician on time scale of pay even though there was a vacancy and he made several representations and the same were not considered. At the time of filing Original Application, he was 47 years and he could have been considered as an electrician on time scale of pay. Instead of regularizing him as electrician on time scale of pay, he was regularized only as Pump House Watchman. This Court failed to note the said facts and simply

quoting that the Municipality has not fill up the vacancy and dismissed the writ petition. Therefore, the order passed by this Court has to be reviewed.

5.The learned Additional Government Pleader would submit that already the applicant was retired from service and that he was appointed as daily wages though he was working in Water and Underground Sewerage Scheme, due to the administrative reason, he was allotted to look after the electrician work. Subsequently, his service was considered and he was appointed as Pump House Watchman on the time scale of pay. Since he was paid the electrician scale due to audit objection they claim recovery. Subsequently, when the vacant was arised all the persons, who are eligible were considered and appointed. Therefore, at the time of the filing the Original Application, he was appointed as a Pump House Watchman on the time scale of pay and therefore, this Court after considering the fact dismissed the writ petition and there is no apparent error on the phase of the orders and there is no ground to review the order passed in the writ petition. the petitioner has taken the very same stand as taken in the writ petition. Therefore, this review application has to be

dismissed.

6.Heard both sides and perused the materials available on records carefully.

7.Admittedly, the applicant herein was appointed as Commercial Muster Roll by the TWAD Board. Subsequently, he was handed over by TWAD Board to Thiruvottiyur Municipality as Electrician on daily wages of Rs.20/-. The daily wages was also periodically revised and the applicant was paid Rs.46.50 from April 1989 to February 1990. Vide order dated 10.09.1999 in No.14/88/C1 registered the applicant as electrician in Water and underground Sewerage Scheme on daily wages. Subsequently his service was regularized by an order dated 27.02.1995 in Na.Ka.No.14093/91 as Pump House Watchman on time scale of pay of Rs.750-12-870-14-940 and he has become a regular employee of the Municipality. Though the claim of the applicant that he is eligible to be appointed or regularized as Electrician from April 1989 to February 1990 on time scale of pay, he was regularized on the time scale of pay as Pump House Watchman. On the date of appointment as Pump House Watchman, the post of Electrician was vacant and he should have been regularized as electrician since he was fully qualified

for the same. Now, it is admittedly he was appointed as daily wager. However, the persons, who have completed 5 years, can be considered for regular appointments as such the petitioner was regularized as Pump House Watchman. He has stated that he is eligible for electrician, and he was working as electrician for 9 years . And one Singaravelu, electrician, retired from service and subsequently one Rameshkumar, who was also working as electrician Grade II has been promoted as Electrician Grade I and Grade II post was vacant .

8. On a perusal of the typed set of papers filed in the review application, as on 19.02.1987, the applicant was considered on daily wages and regularized as pump House Watchman. Even at the time of filing application, he was 47 years old and subsequently retired on superannuation. Therefore, the applicant has stated that he was retired as Pump House Watchman. Therefore, the order passed by this Court in the writ petition on 17.08.2009 was not required to be reviewed. The date of birth of applicant was on 16.06.1949 and He has reached the superannuation during the year 2008, i.e., even prior to passing of the order in the writ petition. Therefore, there is no need to review the order. Considering the said fact, no further relief can be

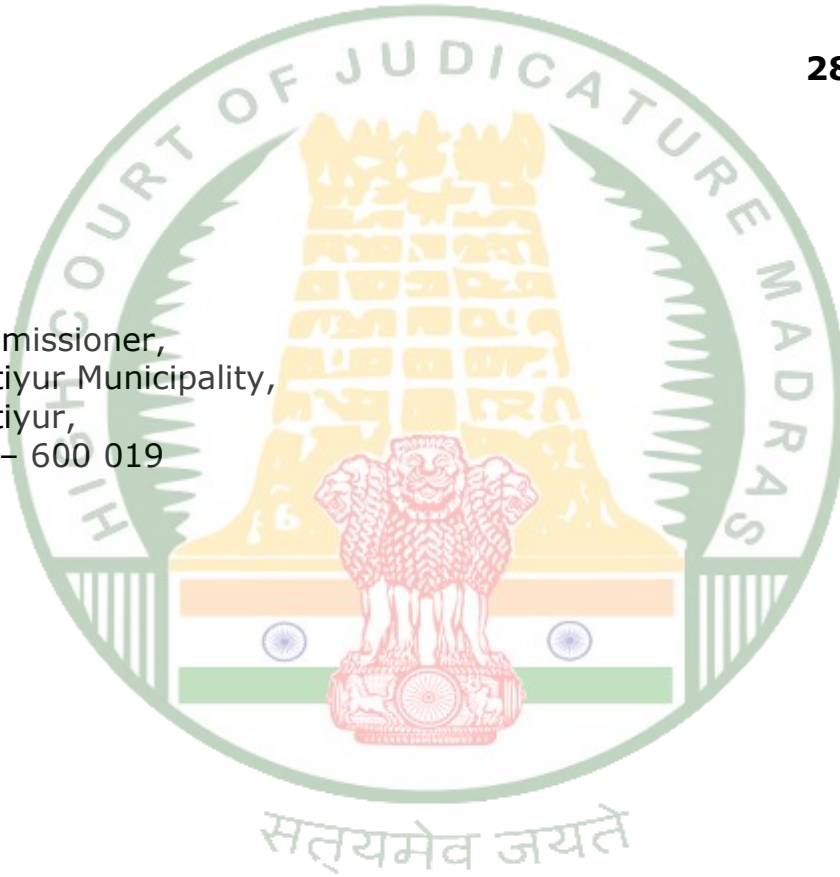
granted to the applicant. Therefore, under the circumstances, now there is no error apparent on the face of the order. Therefore, the order passed by this Court, does not required to be reviewed. Hence, this review application is dismissed.

28.10.2020

mrp

To

The Commissioner,
Thiruvottiur Municipality,
Thiruvottiur,
Chennai – 600 019



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