

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P.s 1798 & 3607 of 2013

W.P. 1798 of 2013

1. T.Selvarasu
2. R.Sadhasivam
3. M.Arumugam
4. N.Pichaimuthu ... Petitioners

Versus

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai-600 009.
2. The Director of Town Panchayat,
Kuralagam,
Chennai-104.
3. The Executive Officer,
Varadharajanpettai Town
Panchayat,
Ariyalur District. ... Respondents

W.P. 3607 of 2013

K.Subramanian ... Petitioner

Versus

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai-600 009.

2. The Director of Town Panchayat,
Kuralagam,
Chennai-104.

3. The Executive Officer,
Kuruballur Town Panchayat,
Perambalur District.

...Respondents

PRAYER in W.P. 1798 of 2013 : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the proceedings issued in Na.Ka. No.13508/2011/A3, dated 04.08.2011 passed by the 2nd respondent herein and quash the same and consequently direct the respondents to regularise the petitioners services from the date of the petitioners initial appointment in the post of Turn Cock.
PRAYER in W.P. 3607 of 2013 : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the proceedings issued in Na.Ka. No.13508/2011/A3, dated 04.08.2011 passed by the 2nd respondent herein (in so far as petitioner is concerned) and quash the same and consequently direct the respondents to regularise the petitioner services from the date of the petitioner initial appointment in the post of Turn Cock.

For Petitioners in both W.P.s : Mr.S.Ilamvaludhi

For Respondents in both

W.P.s

: Mr.S.R.Rajagopal,
Addl. Advocate General

assisted by

Mr.S.Thangavel,

Special Govt. Pleader for R1

Mr.K.J.Sivakumar,

Addl. Govt. Pleader for R2

Mrs. A.Srijayanthi,

Special Govt. Pleader for R3

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ORDER

These Writ Petitions have been filed challenging the order passed by the 2nd respondent dated 04.08.2011 regularising the petitioners service only with effect from 10.12.2009 as per G.O.Ms.No.242, Municipal Administration and Water Supply Department, dated 10.12.2009.

2. The grievance of the petitioners is that, earlier, all the petitioners were appointed as Watchman by the Tamil Nadu Water Drainage Board on 02.03.1987, and they have worked for nearly 4 years. Subsequently, on 25.06.1991, all the petitioners were surrendered to Udaiyarpalayam Town Panchayat by the order passed by the Executive Officer vide Proc. No.Na.Ka.A1/620/80. Thereafter, in the year 1993, petitioners services were terminated along with some other persons, against which, they have approached the Labour Court, and the Labour Court has allowed their claim and ordered continuity of their service, and they are all in employment continuously.

3. Earlier, the petitioners have sent a representation to the Government to regularise their services,, that was not considered. Hence, the petitioners have filed a Writ Petition before this Court in W.P. 3417 of 1999 seeking for regularisation of their services, and this Court by an order dated 19.07.2002 directed the respondents to regularise the petitioners services as per G.O. Ms. 198, dated 26.10.1998 within a period of three months from the date of receipt of order. Despite the order passed by this Court, the respondents did not take any steps to regularise the petitioners service, but subsequently by the impugned order dated 04.08.2011, the respondents have regularised their services only from 10.12.2009 as per G.O.Ms. 242, Municipal Administration and Water Supply department. Challenging the said order, these Writ Petitions have been filed.

4. The 2nd respondent filed a counter affidavit stating that, in G.O. Ms. 198, Municipal Administration and Water Supply (TP3) Department, dated 26.10.1998, daily wage employees were appointed on consolidated pay, and the same shall be extended annually with 5% increase in consolidate pay for a maximum period of three consecutive years, thereafter based on the performance evaluation, the regularisation of their services shall be decided in consultation with the Government. As such, the names of petitioners were considered under the above said G.O. for appointment on consolidate pay. In the meanwhile, the Government declared general ban for new recruitment under G.O. Ms. 212, Personnel and Administrative Reforms (TP-II) Department, dated 29.11.2001, and the same was lifted only in the year 2006 under G.O. Ms. 14, Personnel and Administrative Reforms (TP-II) Department, dated 07.02.2006. Hence, the petitioners services could not be regularised. Thereafter, after lifting the ban, on 06.04.2006, a proposal was sent to the

Government to regularise the services of 168 daily wages including the petitioners, and the same was resubmitted with additional particulars as requested by the Government. Finally, the Government had passed G.O. Ms. 242, dated 10.12.2009, regularised the services of 174 daily wage employees including the petitioners. In the above circumstances, the impugned order has been passed regularising the services of petitioners from the year 2009.

5. The 3rd respondent filed a counter affidavit admitting the fact that the petitioners were appointed on daily wages, and further stated that, G.O.Ms. 242, Municipal Administration and Water Supply (TPI) Department, dated 10.12.2009 regularised the services of 174 workers on daily wages and 10 workers paid from contingent fund on the roll, who have completed 10 years of service. The petitioners are one among them. As per the said Government Order, the 3rd respondent vide proceedings Na.Ka.595/2006/TP2, dated 11.12.2009 sanctioned time scale of pay to the petitioners. Thereafter, the petitioners are getting the pay on time scale. According to the 3rd respondent, the Udaiyarpalayam Town Panchayat has no sanctioned post till date. However, they were appointed as per the proceedings issued by the 3rd respondent dated 11.12.2009.

6. Mr.S.Ilamvaluthi, learned counsel appearing for petitioners would contend that, this Court by an order dated 19.07.2002 issued a positive direction to the respondents to regularise their service as per G.O. Ms. 198, dated 26.10.1998. Despite that, the petitioners services was not regularised, and the respondents have deliberately kept the same pending for more than seven years for no fault on the part of petitioners. Finally, on a proposal sent by the 2nd respondent to the Government to regularise their services, the petitioners services were regularised as per G.O.Ms. 242 dated 10.12.2009. The order passed by this Court has become final, but, the authorities have not regularised the petitioners from the date of order passed by this court. Hence, the petitioners services may be regularised atleast from the date of proposal dated 06.04.2006.

7. Mr.S.R.Rajagopal, learned Addl. Advocate General appearing for respondents would submit that, at the time of passing the order in the Writ Petition, there was a ban on recruitment by the Government, it was not brought to the notice of this Court. Subsequently, the ban was lifted vide G.O. Ms. 14, Personnel and Administrative Reforms Department, dated 07.02.2006. Hence, the petitioners services could not be

regularised, and there is no deliberate intention on the part of respondents. After the ban was lifted in the year 2006, the 2nd respondent has requested the Government to regularise the services of petitioners, along with other similarly placed employees. Finally, the Government issued G.O.Ms. 242, dated 10.12.2009 and from that date, the petitioners services have been regularised. In view of ban on the recruitment, the respondents are not in a position to regularise petitioners services.

8. I have considered the rival submissions made by learned counsel appearing for petitioners as well as learned counsel appearing for respondents, and perused the records carefully.

9. As rightly contended by Mr.M.Ilamvaluthi, learned counsel appearing for petitioners, this Court by an order dated 19.07.2002, in W.P. 3417 of 1999, issued a positive direction to the Government to regularise services of petitioners as per G.O. Ms. 198, dated 26.10.1998. According to the respondents, at the time of passing the above order, there was a ban on recruitment, hence, the petitioner services could not be regularised. In the above circumstances, the order passed by this Court could not be implemented. On perusal of records, it could be seen that, there was a ban on recruitment between 2001 to 2006, and the ban was lifted on 07.02.2006. Thereafter, on 06.04.2006, a proposal was sent to the Government to regularise the services of petitioners, but the respondents have kept the file pending for more than three years, and no steps have been taken to regularise petitioners services for no fault of the petitioners. Considering the above circumstances, I am of the view that, even though the petitioners are entitled for regularisation of their services from the date on which the order passed by this Court, in view of ban on recruitment, the respondents could not take steps to regularise the service of petitioners. However, after lifting the ban, even though the 2nd respondent vide proposal dated 06.04.2006, has sent recommendationi for regularising the petitioners services, without valid reasons, the matter has been kept for three years, and finally, G.O. Ms. 242, came to be passed in the year 2009. Hence, I am of the view that the petitioners are entitled to get their services regularised atleast from the date on which, the 2nd respondent has sent a proposal dated 06.04.2006 after lifting the ban. In the said circumstances, the impugned order passed by the 2nd respondent in Na.Ka.13508/2011/A3, dated 04.08.2011 is set aside, and the 1st and 2nd respondents are directed to regularise the petitioners service with effect from 06.04.2006. However, since the petitioners are already retired from service, after regularising their services, the respondents are directed to pay salary

payable to the petitioners within a period of twelve weeks from the date of receipt of copy of this order. Accordingly, these Writ Petitions are allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai-600 009.
2. The Director of Town Panchayat,
Kuralagam,
Chennai-104.
3. The Executive Officer,
Varadharajanpettai Town
Panchayat,
Ariyalur District.
4. The Executive Officer,
Kuruballur Town Panchayat,
Perambalur District.

+2cc to M/s.S.Ilamvaludhi, Advocate Sr.23463, 23464
+1cc to the Government Pleader Sr.24102

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srg 29/07/2020