

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.02.2020

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.26482 of 2010

K. Ramakrishnan

...Petitioner

vs

1. State of Tamil Nadu
Rep. by its Secretary
Municipal Admn., & Water Supply
(MC 3) Department
Fort St. George,
Chennai 600 009.

2. The Director of Town Panchayat
Kuralagam,
Chennai 600 108.

3. The Executive Officer
Sirumugai Town Panchayat
Sirumugai,
Mettupalayam Taluk
Coimbatore District

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to pass an order or direction, particularly in the nature of Writ of Certiorarified Mandamus calling for the records of the respondents, particularly the third respondent's order dated 31.10.2007, vide Ref. No. Na.Ka.7/2007 and quash the same and consequentially direct the respondents to regularise the petitioner's service from the date of initial appointment dated 20.08.1983 to enable the petitioner to get all attendant benefits, monetary benefits including pensionary benefits after superannuation of the petitioner's service.

For Petitioner : Mr. R. Thanjan

For Respondents: Ms. R. Janaki
Additional Government Pleader
for R1 to R3.

O R D E R

The petitioner has filed the above Writ Petition praying to pass an order or direction, particularly in the nature of Writ of Certiorarified Mandamus calling for the records of the respondents, particularly the third respondent's order dated 31.10.2007, vide Ref. No. Na.Ka.7/2007 and quash the same and consequentially direct the respondents to regularise the petitioner's service from the date of initial appointment dated 20.08.1983 to enable the petitioner to get all attendant benefits, monetary benefits including pensionary benefits after superannuation of the petitioner's service.

2. The petitioner was sponsored by Coimbatore District Employment Exchange for the post of Water Cleaner under the third respondent in proceedings Na.Ka.No.1229/1983 dated 30.07.1983. The third respondent called the petitioner for personal interview with all certificates in original and conduct certificate. On 05.08.1983, the petitioner attended the interview and was selected provisionally and was appointed as cleaner in proceedings No.1229/1983 dated 20.08.1983 by the third respondent. Ever since he continued in the appointment till his superannuation. The first respondent vide G.O. Ms. No.21 Municipal Administration and Water Supply (MC3) Department, dated 23.02.2006, has taken a decision to regularize all the workers on consolidated pay and NMRs on daily wages in the Municipalities and Corporation, provided there were sanctioned posts available, provided they fulfill all educational and other qualifications, where the establishment expenditure does not exceed 49% of revenue after filling up of post. This was implemented by another G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006, wherein the employees working on daily wages brought on regular establishment, if they have completed 10 years of service as on 01.01.2006. Accordingly, required relaxation of rules was obtained and a proposal was sent to the Government for regularising the employees. Thus it is seen that more than 6058 employees engaged for street light maintenance, sanitary work, water supply and general entry level post in the Municipalities and other Corporations and 674 employees in Grade III Municipalities were brought on regular time scale of pay with immediate effect. Thereafter, this was implemented by the third respondent in proceedings Na.Ka. No.7/07 dated 31.10.2007. The petitioner was brought on Time Scale of Pay of Rs.2550-55-2660-60-3200 with effect from 01.11.2007. The petitioner filed an original application for regularization before the Tamil Nadu Administrative Tribunal in O.A.No.5761 of 1996, which was transferred to this Court and renumbered as W.P. No.21698 of 2006. This Court, recording the submissions of the petitioners that his services were already regularised, by its order dated

11.01.2010, closed the Writ Petition with an observation that the said order was not a bar for seeking regularization from the date of initial appointment. Thereafter, the petitioner filed W.P. No.13907 of 2007 seeking regularization from the date of his initial appointment. However, it was submitted before this Court that a separate order dated 31.10.2007 has been passed by the third respondent regularising the petitioner with effect from 01.11.2007 and therefore the said order has to be challenged. Liberty was also granted to the petitioner to challenge the said order dated 31.10.2007 passed by the third respondent and to seek for regularization from the date of initial appointment. Thereafter, the petitioner made a representation to the respondents on 25.10.2010. Since the respondents have not considered the same, this present Writ Petition has been filed challenging the impugned order in the proceedings No.Na.Ka.7/2007 dated 31.10.2007 regularizing the petitioner in the time scale of pay with effect from 01.11.2007.

3. The learned counsel for the petitioner would contend that the petitioner was sponsored through employment exchange. After going through the regular selection process of attending interview, he was appointed by the third respondent. Therefore, his appointment is a regular and valid appointment. Only those people who were appointed through irregular method were ordered to be regularized from the date of the order passed by the Government. Whereas, in the instant case, the petitioner was appointed through the regular selection process and he should have been regularized with effect from the date of his initial appointment. Therefore, the petitioner seeks an order directing the respondents to regularize his appointment from the date of his initial appointment.

4. Controverting the statement made by the writ petitioner, the third respondent filed an elaborate counter affidavit, wherein it is stated that the petitioner was appointed on daily wages by the District Collector. He was appointed as an Overhead Tank watchman with effect from 01.11.2007 vide proceedings in Na.Ka.No.7/07 dated 31.10.2007. He attained superannuation on 31.01.2011 and allowed to retire from service with effect from 31.01.2011. As there was no sanctioned post, the petitioner was engaged as daily wage for water supply and cleaning and the nature of duty was also for limited hours. G.O.Ms.No.198, Municipal Administration and Water Supply (TP-3) Department dated 26.10.1998 prescribed norms to create post in Water Supply maintenance and permitting the Town Panchayat to appoint the eligible daily wage employee on consolidated pay for a year and extend the service annually for maximum of three years, based on the performance evaluation with annual increase of 5% in consolidate pay. Vide G.O. Ms. No. 125, Municipal Administration and Water Supply Department, dated 27.05.1999, the Government permitted the Town Panchayats to appoint the

persons who continue on daily wage as on 31.12.1996 in Entry Level Posts under Non Provincialised category with consolidate pay of Rs.2,000/- per year and thereafter, to regularise their service. Vide G.O. Ms.No. 212 , P & AR (P) Department dated 29.11.2001, a ban for new recruitment was imposed and it was lifted vide G.O.Ms.No.14, P&AR(TP-II) Dept dated 07.02.2006. Thereafter only, several employees appointed under consolidated pay were brought under Time Scale of Pay. The petitioner sought for appointment in accordance with G.O. Ms. No. 125, Municipal Administration and Water Supply Department, dated 27.05.1999, and other Government Orders in W.P.No.13907 of 2007 and, for regularization and to bring him in Time Scale of Pay in W.P. No.32832 of 2007. Pursuant to the directions of this Hon'ble Court, the petitioner was appointed as Overhead Tank Watchman in Time Scale of Pay with effect from 01.11.2007 and in view of the endorsement made by the petitioner before this Court the said relief was granted. The petitioner now cannot ask for further relief of regularization with effect from the date of his initial appointment. He could not be regularised in view of the ban on recruitment from the year 2001 to 2006 and he could be regularized only from 2007 and therefore, when there was no sanctioned post available, he cannot be regularized prior to 2007. Therefore, the petitioner cannot say that his service was shortened. Further, as per the judgment of the Apex Court, the daily wage employees or contract workers do not have a right of regularisation in the permanent post with Time Scale of Pay and regularization can be made only subject to the availability of the vacancies in the sanctioned post and through proper mode of recruitment. Since the petitioner was not engaged following regular recruitment process, he cannot be regularized against the sanctioned post and therefore, the petitioner is not entitled for regularization with effect from initial appointment and hence, the learned Additional Government Pleader prayed that this Writ Petition is liable to be dismissed.

5. I considered the rival submissions. It is not in dispute that the petitioner was selected through regular selection process. On the request made by the third respondent, the petitioner was sponsored by the District Employment Exchange for an interview to be conducted on 05.08.1983. The third respondent himself has called him for interview on 30.07.1983. After following the selection procedure, the petitioner was appointed on 20.08.1983 against the post of Cleaner under the third respondent for the Water project works on temporary basis. Surprisingly, the temporary post work continued till 2011, till the petitioner attained the age of superannuation. It is also relevant to note that G.O. Ms. No.21 Municipal Administration and Water Supply (MC3) Department, dated 23.02.2006 shows that more than 6058 daily wages in Municipal Corporation and 674 daily wages in Grade-III

Municipalities were found working for more than 10 years. The Government has taken a decision to bring them in regular time scale of pay with immediate effect subject to the condition there exist sanctioned post and the employees fulfill the educational qualification. In the instant case, the petitioner was appointed against a cleaner post by the third respondent by calling the candidates from employment exchange. Such appointments cannot take place without there being a sanctioned post. He was asked to bring the certificates in original and conduct certificate. He having fulfilled all the educational and other qualifications, was appointed in the year 1989. That means, the essential ingredients of G.O.Ms. No.21 dated 23.02.2006 has been satisfied. G.O. Ms.No.21 was implemented by the respondents only from the year 2007. In the meanwhile, the Government has decided to regularize the employees who have put in 10 years of service as on 01.01.2006 itself. Even under that category, the petitioner had completed his 10 years of service in the year 1993 itself. Either way, the petitioner is eligible to be appointed. The only issue to be decided is whether he is entitled to be regularized from the date of initial appointment or not? Even before passing of the GO, the petitioner had approached the Court in the year 1996 itself. His services were regularized even before the date of judgment by virtue of the GO. In that event the order should take effect from the date of course of action mentioned in the original application and not from the date of GO. Therefore, petitioner, who was selected and appointed through the regular selection process against the sanctioned post, is entitled for regularization from the initial date of appointment. The reliance of Additional Government Pleader in G.O.Ms.No.242 Municipal Administration an Water Supply (TP-1) Department of 10.12.2009 stating that the regularization will take effect from the date of the order cannot be accepted. The person who had put in continuous service for a period more than 38 years cannot be deprived of his vested rights. Further, the contention of the learned Additional Government Pleader that the petitioner was regularized only with effect from the 2007 and therefore, as held by the Hon'ble Division Bench of this Court, in W.A.No.158 of 2016, the petitioner is not entitled to count service for pension is also not tenable. The petitioner having been selected by a regular selection procedure through Employment Exchange, his appointment should be considered as a regular appointment against a sanctioned post. Therefore, his service should be counted from the date of initial appointment, thereby, he is entitled to all service, monetary and other attendant benefits on attaining the age of superannuation. The respondents are directed to count his service from the date of his initial appointment and disburse all the benefits within a period of 12 weeks from the date of receipt of a copy of this order.

6. This Writ Petition is allowed with the above directions.
No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Bga

To

1. State of Tamil Nadu
Rep. by its Secretary
Municipal Admn., & Water Supply
(MC 3) Department
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2. The Director of Town Panchayat
Kuralagam, Chennai 600 108.
3. The Executive Officer
Sirumugai Town Panchayat
Sirumugai, Mettupalayam Taluk
Coimbatore District

+1cc to Mr.R.Janaki, Advocate, S.R.No. 8368
+1cc to Mr.R.Tangan, Advocate, S.R.No. 8415
+1cc to the Government Pleader, S.R.No. 9065

W.P.No.26482 of 2010

LN(CO)
GN(30/07/2020)

सत्यमेव जयते

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