

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.21342 of 2013

- 1.B. Kumar
- 2.E. Hariharasubramani,
- 3.S. Hemavathi
- 4.R. Gunasekaran
- 5.L. Ambikapathy
- 6.D. Kasthuri
- 7.P. Muthulakshmi
- 8.S. Lalitha
- 9.N. Balambal
- 10.D. Rani
- 11.T. Girijabai
- 12.K. Gajalakshmi
- 13.G. Renuka
14. Tasneem Jamal
- 15.S. Kalavathi
- 16.N.V. Dhanalakshmi
- 17.K. Lakshmi
- 18.R. Chandra
- 19.R. Prema
- 20.G. Sarojini
- 21.R. Kalyani
- 22.K. Nagarathinam
- 23.J. Maria Stelia
- 24.S. Prema
- 25.E.W. Santhakumari
- 26.R. Lakshmi Kantham
- 27.A. Kanthimathi
28. Anserbe
- 29.P. Kalavathy
- 30.K. Sarasu
- 31.R. Stella
- 32.K. Nagavalli
- 33.V.P. Santhakumari
- 34.V. Mahalakshmi
- 35.P.R. Vijayalakshmi
- 36.R. Rajammal
- 37.R. Gurusamy
- 38.B.T. Munaiah
- 39.M. Muthulakshmi
40. C. Rajakmmal
- 41.V. Kanniappan
42. Qamar Jehan
- 43.K. Padmalochini

44.P.N. Prabavathy
45.K. Rajamani
46.G. Moganam
47.P. Neelavathi
48.R. Thangam
49.V.P. Srinivasan
50.S. Janaki
51.L. Subramani

...Petitioners

Vs

1.The Government of Tamil Nadu
Represented by its Secretary to Government,
Municipal Administration & Water Supply Department,
Fort. St. George,
Chennai-600 003.

2.The Commissioner,
Corporation of Chennai,
Ribbon Buildings,
Chennai-600 003.

3.The Assistant Commissioner,
General Department,
Corporation of Chennai,
Ribbon Buildings,
Chennai-600 003.

... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to grant pensionary benefits to the petitioners by taking into account their service as Section Writers from February 1983 to the date of the Government Order viz., G.O.(Ms).No.56 MA & WS Department dated 13.03.1992 absorbing the petitioners as Junior Assistants in the 2nd respondent Corporation.

For Petitioner : Mr.K.S. Viswanathan

For Respondent-1 : Mr.S. Thangavel
Special Government Pleader

For Respondents 2&3 : Mr.Nagarajan

ORDER

This writ petition has been filed by the writ petitioners seeking a direction to the respondents to grant pensionary benefits to them by taking into account their services as "Section Writers" from February 1983 to the date of the Government Order viz., G.O.(Ms).No.56, Municipal Administration and Water Supply Department,

dated 13.03.1992, absorbing the petitioners as "Junior Assistants" in the 2nd respondent Corporation.

2. The writ petitioners were originally appointed as "Section Writers" in the Revenue Department on daily wages basis by the Corporation of Chennai on 21.02.1983. On 08.05.1986, the services of the writ petitioners and several other "Section Writers" (117) were terminated from the service. The writ petitioners and others have filed W.P.No.4467 of 1986, challenging the order of termination was passed by the second respondent/The Commissioner in RDC.No.M1/4958/83, dated 03.07.1986 and subsequently, the above writ petition was dismissed by this Court by directing the respondent corporation to consider the case of the writ petitioners (117) sympathetically and absorb them into the services of the Corporation. Aggrieved by the order of dismissal of the writ petition, the writ petitioners and others filed W.A.No.656 of 1986 before this Court and the same was also dismissed by order dated 10.07.1986. Challenging the said dismissal order, the writ petitioners had filed S.L.P.(Civil)No.11743 & 12409 of 1986 before the Hon'ble Supreme Court by order dated 08.05.1987 and the Special Leave Petitions were disposed of. Pursuant to the order dated 08.05.1987, the writ petitioners were directed to be re-instated in the services of the Corporation of Chennai in the light of the order passed by the Hon'ble Supreme Court.

3. Claiming equal pay on par with the Junior Assistants and yet another writ petition was filed in W.P.No.6595 of 1987. The aforesaid writ petition was rejected by order dated 07.04.1989 by this Court directing the Government to constitute a Committee for absorption of petitioners permanently in the Corporation of Chennai. Challenging the aforesaid rejection order, the writ petitioners filed in Writ Appeal No.349 of 1990 and the same was allowed by order dated 03.09.1991.

4. Subsequent to the order passed by the Hon'ble Division Bench of this Court, the Government has passed the Government Order in G.O.(Ms)No.56, Municipal Administration and Water Supply Department by accepting the recommendation of the Committee and ordering creation of 103 temporary posts of Junior Assistants for absorption of 103 Section Writers on 13.03.1992. Now, the writ petitioners had made a representation to the authority concerned requesting to regularize their service from the date of original appointment i.e. on 21.02.1983 in the light of the Government Order passed in G.O.(Ms)No.135, Municipal Administration and Water Supply Department dated 10.03.2004, granting pensionary benefits to staff of the Malaria Department. However, the said representation was

not considered by the respondents and hence, the petitioners have come forward with the present writ petition before this Court.

5. Counter affidavit has been filed by the third respondent/The Assistant Commissioner, General Department, Corporation of Chennai, wherein, it is stated that as per the Government Order in G.O.(Ms)No.135, Municipal Administration and Water Supply Department, dated 10.03.2004 mentioned by the petitioners, the concession of pensionary benefits has been given to the staff attached to National Malaria eradication project and National Filaria Eradication project only and even the other staff of Health Department is not eligible for the above concession. But in the case of Section Writers, it is clearly stated in the G.O.Ms.No.56, M.A. & W.S. Department, dated 13.03.1992, that their appointment in the post of Junior Assistants and Clerical Attendants is only as fresh entrants. Therefore, the claim of the writ petitioners on par with that of the above Health Department Staff is neither reasonable nor acceptable.

6. He further submitted that the representation of the writ petitioners requesting for inclusion of their temporary service for calculation of pension purpose had already been referred to Local Fund Audit for its concurrence. The Local Fund Audit has stated that the period of 50% of the total services rendered on temporary basis may be included with regular service for the purpose of calculation of pension only, as per G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 on production of valid documentary evidence for attendance etc., But the petitioners did not furnish the required particulars to the Authority concerned till date. Hence, the contention of the petitioners for not taking any action in the matter is totally false. Therefore, the respondent prays to dismiss the above writ petition.

7. Heard Mr.K.S. Viswananthan, learned counsel appearing for the writ petitioners as well as Mr.S. Thangavel, learned Special Government Pleader appearing for the first respondent and Mr.Nagarajan, learned counsel appearing for the second and third respondents and perused the materials available on record before this court.

8. The request of the writ petitioners for inclusion of their temporary services had already been referred to the Local Fund Audit whereby it is decided by the Local Fund Audit that the period of 50% of the total services rendered on temporary basis may be included with regular service for the purpose of calculation of pension only, as per Government Order in G.O.(Ms)No.408, Finance (Pension)

Department, dated 25.08.2009, on production of valid documentary evidence for attendance etc. However, till date the writ petitioners did not placing the required particulars to the authority concerned.

9. Therefore, in the light of the aforesaid statement made in the counter affidavit by the third respondent and also in the light of the decision rendered by the Full Bench of this Court in the case of The Government of Tamil Nadu v. R. Kaliyamoorthy reported in 2019 (5) LW 673, the Writ Appeal No.158 of 2016 batch etc., by order dated 29.08.2018, the writ petition is disposed of with the following directions:-

(i) The writ petitioners are directed to make a fresh representation to the third respondent within a period of two weeks from the date of receipt of a copy of this order, if no such representation already made by the writ petitioners on 21.09.2012.

(ii) The third respondent is directed to consider the writ petitioners representation, in the light of the aforesaid statement made in para No.3 of the counter affidavit and pass appropriate orders on merits and in accordance with law within a period of twelve weeks (12) and thereafter, by verifying their past services from their date of original appointment. No cost.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

To

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1.The Secretary,
Government of Tamil Nadu
Municipal Administration & Water Supply Department,
Fort. St. George, Chennai-600 003.

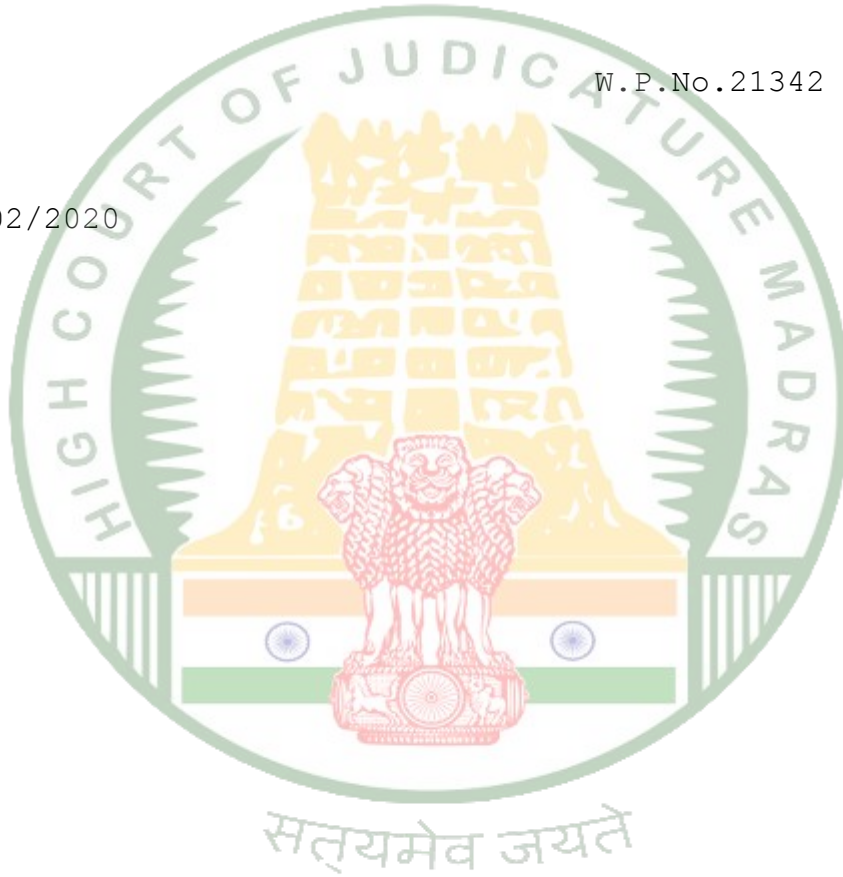
2.The Commissioner,
Corporation of Chennai,
Ribbon Buildings, Chennai-600 003.

3.The Assistant Commissioner,
General Department, Corporation of Chennai,
Ribbon Buildings, Chennai-600 003.

+1cc to Mr.V.Suthakar, Advocate Sr.4265
+1cc to the Government pleader Sr.3948

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