



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.4627 of 2011

and

M.P.No.1 of 2011

M. Shanmugam

..Petitioner

Vs.

1.The Secretary to Government
Municipal Administration
and Water Supply Department,
State of Tamil Nadu,
Chennai - 600 009.

2.The Commissioner of Municipal
Administration,
Chepauk, Chennai - 5.

3.The Regional Director of
Municipal Administration,
Vellore - 12.

4.The Commissioner
Ambur Municipality
Ambur, Vellore District.

..Respondents

Prayer : Petition filed under Article 226 of the Constitution of the India praying to issue a writ of mandamus, directing the respondents to regularize the petitioner's service from the date of initial appointment and fix the regular time scale pay from the year 1998 (i.e., after 10 years of the initial appointment) and pay the all arrears of pay and grant all other service benefits and other monetary benefits.

For Petitioner : Mr.M. Muthappan

For Respondents: Mr. P. Chinnadurai, for R1 to R3
Additional Government Pleader
Mr. Thirugnanam, for R4



O R D E R

This writ petition has been filed for issuance of writ of mandamus, directing the respondents to regularize the petitioner's service from the date of initial appointment and fix the regular time scale pay from the year 1998 (i.e., after 10 years of the initial appointment) and pay the all arrears and grant all other service benefits and other monetary benefits.

2. The petitioner was appointed as a Gang Mazdoor by the fourth respondent in the year 1983 and then, he was appointed as Office Ward Chowan in the scale of Rs.18/- per month and thereafter, he was appointed as Watchman cum Feeder to cattle. Even though the vacancy arose due to the retirement of an individual, he was continued in the same post from 29.07.1988. The fourth respondent has sent recommendation for his regularization in the year 2006 onwards. However, it was rejected in view of G.O.Ms.No.1644 dated 12.10.1979. Even thereafter, the fourth respondent recommended the case of the petitioner for regularization. Aggrieved over the same, the petitioner has approached this Court in the year 2011 and was retired from service with effect from 31.07.2015.

3. The first and second respondents have filed a counter denying the claim of the petitioner that in G.O.Ms.1644, dated 12.10.2079 Government has issued orders that the vacancies in the posts of Contingency and work charged staff on NMR should not be filled up after 01.10.1979 and no new posts should be created. Thereafter, on the basis of the above said G.O., the request of the petitioner was rejected by the 3rd respondent vide letter No.12394/99, dated 13.11.2000 and letter No.10065/2002, dated 16.10.2002 since the appointment was made contrary to the above Government Order and the petitioner has not challenged the said orders. The appointment of the petitioner is in violation of the instruction issued by the Government and therefore, the petitioner is not entitled to regularization or any other orders.

4. Considering the rival submissions

5. Admittedly, the petitioner was engaged as Gang Mazdoor from 1983. However, he was posted as Watchman cum Feeder to cattle with effect from 29.07.1988. The Government in G.O.Ms.No.258, Municipal Administration and Water Supply Department dated 15.03.1988 had taken a decision to bring the contingent workers into regular service on completion of 10



years of service after condoning the break in service of 180 days and given powers to the heads of the department to regularise them. Thereafter, by G.O.Ms.No.125, Municipal Administration and Water Supply Department dated 27.05.1999 considering the work load and the requirement of the regular staff for sanitation work, maintenance work, drivers for water supply directed the daily wage employees will brought under the time scale of pay. This arrangement was continued in G.O.Ms.No.21, Water Supply department dated 23.02.2006 wherein 6058 employees on consolidated pay and NMRs on daily wages working in Municipalities and Municipal Corporation (Except Chennai) and 674 employees on consolidated pay and NMRs on daily wages working in Grade-III Municipalities were directed to be brought on regular time of scale pay, who had completed 10 years of service on their respective Municipalities as on 01.10.1996. Thereafter, by G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006, a direction was issued to regularize the service of working in all cadre as on 01.01.2006 in regularization of rules.

5. In similar circumstances, those employees who have to be in 10 years of service or even less, who have approached the High Court were directed to be regularized and those orders were implemented by the Government.

6. In the instant case, the petitioner was engaged as daily wagger with effect from 1983. Even assuming he was appointed in the cadre of Watchman cum Feeder in the year 1988, he had completed 10 years of service on 29.07.1998. In that circumstances, the G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006, is very much available for considering the case of the petitioner. In the factual circumstances, I find the petitioner had put in more than 27 years of service from the date of his original appointment. Therefore, he should have been regularized on completion of 10 years of service. Non regularization of service of the petitioner, contrary to the Government orders referred above is highly arbitrary and illegal. The rejection said to have been passed in the year 2002 is without application of mind by not extending the benefits of extent Government orders. In that view of the matter, a direction is issued to the respondent to regularize the service of the petitioner by extending the benefits given to the similarly placed employees in the light of the Government Orders with effect from his date of initial appointment as Gang Mazdoor or atleast from the date 29.07.1988 on which he was appointed as Watchman cum feeder.



It is submitted by the fourth respondent that the petitioner has retired from service on attaining the age of superannuation on 31.07.2015. In that event, a direction is given to the respondents to disburse all monetary benefits available to him on the date of regularisation as ordered above, within a period of 12 weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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and Water Supply Department,
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Vellore - 12.
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Ambur Municipality
Ambur, Vellore District.
- +1 CC to Mr.M. Muthappan, Advocate sr 9584.
+1 CC to Mr.R. Thirugnanam, Advocate sr 9727
+1 Cc to Govt. Pleader sr 10440.

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GJ(CO)
SP(07/12/2020)