

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.288 and 598 of 2020
and C.M.P.Nos.4724 and 8314 of 2020

1. The Govt. of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration & Water
Supply (TP) Dept., Fort St. George,
Chennai 600 009.
2. The Director of Town Panchayats,
Kuralagam Building, Chennai 600 108.
3. The Assistant Director of Town
Panchayats, Nagercoil Region,
Kanyakumari District.
4. The Executive Officer,
Marungoor Town Panchayat,
Marungoor Post, Agastheeswaram Taluk,
Kanyakumari District 629 402. .. Appellants in
both WAs.

-vs-

S. Chenthil .. Respondent in
both WAs.

Appeals filed under Clause 15 of the Letters Patent against
the order dated 24.09.2019 passed in Review Application No.183
of 2019 and against the order dated 05.06.2017 passed in
W.P.No.13736 of 2017 on the file of this Court.

Prayer in Review Application:

To review the order dated 5.6.2017 made in W.P.No.
13736/2017 passed by this court as set aside the same.

Prayer in WP No.13736 of 2017:

Praying for issuance of a Writ of Mandamus directing the respondents 2 and 3 to create one post of driver for one vehicle the vehicle purchased by the 4th respondent town panchayat for removal of garbage based on the proposal submitted by the 4th respondent to his proceedings Na.Ka. No.212/ 2013 dated 08.2.2014 and Na. Ka. No.176/2016 dated 28.12.2016 from the date of the issue of G.O. Ms. No.37 Municipal Administration and Water Supply Department (T.P. dated 1.2.2011 so as enable the petitioner to get time scale pay from 1.2.2011 after adjusting the consolidated pay paid to the petitioner.

For Appellants : Mr.V.Jayaprakash Narayanan
State Govt. Pleader

For Respondent : Mr.P.Ebanezer Paul

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Heard learned State Government Pleader for the appellants and the learned counsel for the sole respondent. These two appeals have been filed, one against the judgment dated 05.06.2017 and the other against the order passed on the review application in the same proceedings on 24.09.2019.

2.Learned State Government Pleader for the appellants has urged that the learned Single Judge has omitted to consider the judgment of a Division Bench dated 26.03.2018 in respect of identical ten appeals, which were disposed of by a common judgment holding that the nature of the mandamus issued by the learned Single Judge was uncalled for, but, at the same time, modified the judgment to the effect that the authorities may consider and do the needful in accordance with law. The judgment delivered by the Division Bench dated 26.03.2018 in W.A.No.587 of 2018 and other connected appeals is extracted hereunder:-

"Heard the learned Special Government Pleader appearing for the appellants and Mr.V.Krishnamurthy, learned counsel, who takes notice on behalf of the respondents.

2. The writ appeals have been filed by the State challenging the correctness of the order passed by the learned Single Judge in giving a direction to the appellants to create one post.

3. Though notice was issued and the respondent is represented by a counsel, so far, no counter is filed. The order passed by the learned Single Judge is to the effect that since already a proposal has been forwarded by the fourth respondent therein, one post of Driver for one vehicle has to be created so as to regularize the services of the writ petitioners. So far as the direction is concerned, it appears that it is totally uncalled for because of the fact that nature of appointment has not been examined and it is only contractual in nature. Moreover, a mandamus cannot be issued in case of appointment and to regularization of services. However, the authorities may consider, if they find that it so warrants and do the needful in accordance with law. The order passed by the learned Single Judge is modified with the above observation and the writ appeals are disposed of. No costs. The connected miscellaneous petitions are closed.

3.The second argument of the learned counsel for the appellant is that the learned Single Judge could not have given any direction for creation of a post and then reiterating it in the judgment in the review application dated 24.04.2019.

4.The third contention is that the respondent petitioner cannot seek appointment as a matter of right inasmuch as the proposals on which reliance has been placed by the respondent do not create any right much less a legitimate expectation for consideration of appointment on regular basis.

5.On the other hand, learned counsel for the respondent petitioner has re-asserted that the relevant Government Orders that have been placed on record clearly make out a case for extending the benefits of regular appointment to the answering respondent and the similarly situate employees and therefore, the learned Single Judge was fully justified in proceeding to issue the mandamus as prayed for including the direction for creation of a post.

6.We have considered the submissions at length and we find that there were proposals made, but the same did not crystallize ultimately on the claim as staked by the respondent or any other similarly situate employee. The respondent is claiming himself to be serving the cause of the concerned Town Panchayat as a driver and his services are still required in order to operate the vehicles for the purpose for which the proposals are already on record. In such circumstances, the resistance put forth by the appellants in not offering employment or giving the requisite sanction for appointment of the answering respondent

against such post is absolutely unjustified and violative of Article 14 and 16 of the Constitution of India.

7. In the said background and the submissions raised, we find that the learned Single Judge instead of having determined any conclusive rights ought to have issued a mandamus for the consideration of any such claim and it was open to the respondent petitioner to establish his rights based on the relevant Government Orders which was obligatory on the part of the appellants to consider the same and pass appropriate orders. But, at the same time, in our opinion, no direction for creation of a post could have been given, which should have been left to be decided by the Government keeping in view the nature of the proposals as also the requirement of the Town Panchayats.

8. We, therefore, agree with the conclusion drawn by the learned Division Bench in its judgment dated 26.03.2018 and we, accordingly, modify the impugned judgment dated 05.06.2017 as well as the order on the Review Application dated 24.09.2019 and direct that the appellants shall consider the claim of the respondent petitioner in the light of the Government orders on which reliance has been placed by the said respondent and in accordance with law and also keeping in view the requirement and the purpose of the post for the Town Panchayats, which itself is a public cause and pass an appropriate order in accordance with law.

9. Learned State Government Pleader states that the appellants may be granted at least three months time to take a decision and intimate the respondent accordingly. We accept the said prayer and direct that the appellants shall take a decision after applying their mind to the relevant factors and and inform the respondent of the outcome of the same within three months.

The Writ Appeals are, accordingly, disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Municipal Administration & Water
Supply (TP) Dept., Fort St. George,
Chennai 600 009.

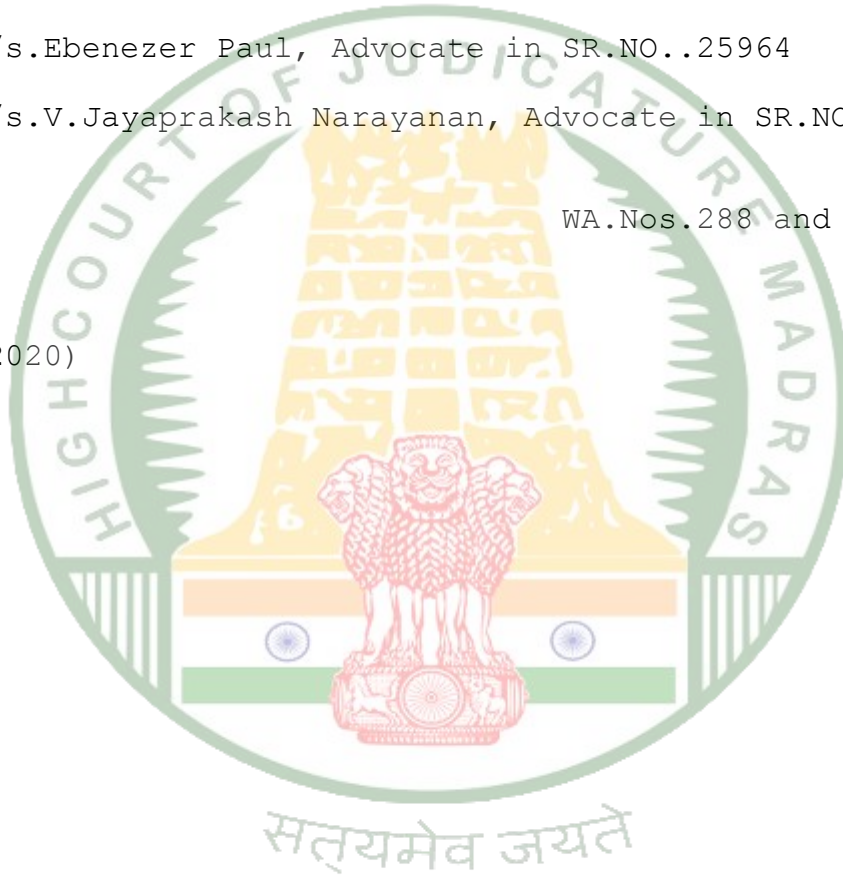
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Marungoor Post, Agastheeswaram Taluk,
Kanyakumari District 629 402.

+1cc to M/s.Ebenezer Paul, Advocate in SR.NO..25964

+2cc to M/s.V.Jayaprakash Narayanan, Advocate in SR.NO..25989

WA.Nos.288 and 598 of 2020

RSV(CO)
RV(09/10/2020)



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