

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 9584 & 9876 OF 2013

W.P. No. 9584 of 2013

P.Devarajulu

...Petitioner

- Vs -

1. The Secretary to Government
Municipal Administration & Water
Supply Department, Fort St. George
Chennai 600 009.
2. The Director of Municipal Administration
Chepauk, Chennai - 5.
3. The Commissioner
Alandur Municipality
Chennai - 16.
4. The Commissioner,
Pallavaram Municipality,
Chennai-44

...Respondents 1 to 4
in WP 9524 of 2013

W.P. No.9876 of 2013

1. B.Murali
2. P.Sivaji
3. G.Sekar
4. R.Duraisamy

...Petitioners

- Vs -

1. The Secretary to Government
Municipal Administration & Water
Supply Department, Fort St. George
Chennai 600 009.
2. The Director of Municipal Administration
Chepauk, Chennai - 5.

3. The Commissioner
Alandur Municipality
Chennai - 16.

...Respondents 1 to 3
in WP 9876 of 2013

W.P. No.9854 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the proceeding of the 3rd respondent dated 16.3.06 issued in Pro. Na.Ka. No.6031/97/H1 dated 16.3.06 and quash the same insofar as the petitioner is concerned and consequently direct the respondents to bring the petitioner into regular time scale of pay of Rs.2550-55-2660-60-3200 with effect from the date 1.11.02, the date of completion of three years of consolidated pay service as per G.O. Ms. No.71, Municipal Administration and Water Supply Department dated 5.5.98 with all consequential service and monetary benefits.

W.P. No.9876 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the proceeding of the 3rd respondent dated 16.3.06 issued in Pro. Na.Ka. No.6031/97/H1 dated 16.3.06 and quash the same insofar as the petitioner is concerned and consequently direct the respondents to bring the petitioner into regular time scale of pay of Rs.2550-55-2660-60-3200 with effect from their date of completion of three years of consolidated pay service as per G.O. Ms. No.71, Municipal Administration and Water Supply Department dated 5.5.98 with all consequential service and monetary benefits.

For Petitioners : Mr.A.Baskaran

For Respondents : Mr. S.Thangavel, Spl. GP for RR-1 & 2
in both petitions
Mr. P.Srinivas for R-3 in both petitions
Mr.R.Purushothaman for R-4 in WP 9584/13

COMMON ORDER

As the relief sought for in both the petitions are similar, they are disposed of by this common order.

2. The petitioners in both the writ petitions were appointed as Sanitary workers through employment exchange on a consolidated pay of Rs.1,000/- on various dates by the 3rd respondent and upon such appointment, the petitioners completed three years of satisfactory service. However, contrary to the various Government Orders, the petitioners were brought into regular time scale of pay only on 16.3.06.

3. It is the case of the petitioners that upon their appointment in the consolidated pay for one year it has to be extended for three years and at the end of three years they should have brought into the regular time scale of pay in the regular post as per G.O. Ms. No.71, Municipal Administration and Water Supply Department, dated 30.4.1997. It is the further case of the petitioners that subsequent to the lifting of ban on appointment vide G.O. Ms. No.60, Municipal Administration and Water Supply Department dated 23.6.06, the petitioners ought to have been brought into the regular time scale of pay on completion of three years of service on 1.11.02. Though proposals in this regard emanated from the 2nd respondent, the 3rd respondent has brought the petitioners into the regular time scale of pay only on 16.3.06 instead of 1.11.02.

4. It is the further submission of the petitioners that similarly placed persons have been brought into regular time scale of pay based on G.O. Ms. No.199, Municipal Administration and Water Supply Department dated 12.8.97 based on the orders of this Court in W.P. No.25620/06. The said order was challenged unsuccessfully upto the Supreme Court and the Hon'ble Supreme Court held that the relief granted therein would enure to those persons, who have not approached the court, but were similarly placed. In such circumstances, the petitioners submitted very many representations to the 2nd respondent to bring them into regular time scale of pay and since no orders have been passed on their representation, the petitioners were constrained to file the present petitions.

5. Learned counsel appearing for the petitioners reiterated the contentions as raised in the grounds filed in support of the writ petitions. It is the vehement contention of the learned counsel for the petitioners that though G.O. Ms. No.71 has granted the regular time scale of pay to persons similarly situated as the petitioners, however, to the detriment of the petitioners, the said Government Order has not been given effect to insofar as the petitioners are concerned. The petitioners ought to have been brought into the regular time scale of pay on their completion of three years service and not with effect from 23.2.06, which is per se impermissible and unsustainable and deserves interference at the hands of this Court.

6. Learned counsel appearing for the 3rd respondent submits that the issue raised in the present petitions is squarely covered by the judgment of the Full Bench of this Court in Dhanasekaran - Vs - State of T.N. (2013 (6) CTC 593) and a review petition was filed against the said decision, which was allowed. Against the order passed in the review petition, the Hon'ble Supreme Court has granted stay of the said order and the same is pending. It is the further contention of the learned

counsel for the 3rd respondent that in the present case, the petitioners are not entitled to claim the benefit under G.O. Ms. No.71 as the said Government Order stood superceded by the subsequent G.O. Ms. No.21, which has mandated that the persons, who were appointed on daily wages in the Corporations, Municipalities and Town Panchayats and who were working prior to 1.10.96 in the said establishments would be entitled for regularisation. The petitioners were not in employment on the crucial date as mandated in G.O. Ms. No.21 and, therefore, once G.O. Ms. No.71 is rescinded by G.O. Ms. No.21, the cut off date as prescribed under G.O. Ms. No.21 would be crucial and on the said date, the petitioners having not been in employment, they were regularised on and from the date of the government order, which is the correct and justifiable course adopted by the respondents. Therefore, it is prayed that this Court may dismiss both the petitions.

7. This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

8. The facts in issue are not in dispute. The petitioner has taken umbrage under G.O. Ms. No.71 dated 5.5.98 and contends that since they were in employment on the said date and have satisfactorily completed three years of service, they are entitled to be regularised from the date on which they completed three years of satisfactory service. Though such a contention, on the face of it looks attractive, but the same could not be accepted for the simple reason that the ban on appointments was lifted only on 23.6.06 vide G.O. Ms. No.60, Municipal Administration and Water Supply Department. Therefore, no regularisation could be granted to such of those persons who have been in employment, even if they have completed the prescribed period of service. In the case on hand, on the basis of the above government order, the service of the petitioners cannot be regularised prior to 23.6.06 on the basis of G.O. Ms. No.60.

9. Even otherwise, the service of the petitioners cannot be regularised as prayed for, as the Government Order, viz., G.O. Ms. No.71, on which much stress has been laid by the petitioners to contend that their services should be regularised on and from the date of completion of three years satisfactory service stood rescinded vide G.O. Ms. No.21 dated 23.2.06. Therefore, the petitioners would stand covered only under G.O. Ms. No.21 and not under G.O. Ms. No.71 as claimed for by the petitioners. If this Court is to accept the stand of the petitioners that they will be covered by G.O. Ms. No.71, then it would be against the spirit of G.O. Ms. No.60, as the period when ban on appointments

was in force cannot be given a go by to the benefit of the petitioners.

10. The respondents, on proper appreciation of the various Government Orders, have come to the right conclusion that the petitioners would be entitled only to the benefit of G.O. Ms. No.21 and not G.O. Ms. No.71 and, accordingly, they would be entitled for regularisation only from 23.6.06, is legally sustainable and does not call for any interference.

11. For the reasons aforesaid, these petitions, being devoid of merits, are accordingly dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Government
Municipal Administration & Water
Supply Department, Fort St. George
Chennai 600 009.
2. The Director of Municipal Administration
Chepauk, Chennai - 5.
3. The Commissioner
Alandur Municipality, Chennai - 16.
4. The Commissioner
Pallavaram Municipality
Chennai - 44.

WEB COPY

W.P. NOS. 9584 &
9876 OF 2013

MG(CO)
KKV/06/08/2020