

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.5254 OF 2015

1.G.Muruganantham
2.C.Srinivasan
3.M.Prakasam

... Petitioners

Vs.

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai 600 009.

2. The Commissioner
of Municipal Administration,
Chepauk, Chennai - 600 005.

3. The Regional Director of Municipal
Administration, Kagithapattarai,
Sarathy Nagar,
Vellore District.

4. The Commissioner,
Vellore City Municipal Corporation,
Vellore District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to consider and pass order on the representation on 09.01.2015 made by the petitioners regarding regularizations of their service from the date of completion of 3 years service in the post of Sanitary Workers and to promote them to the post of Sanitary Supervisor within the time to be stipulated by this Hon'ble Court.

For Petitioners : Mr.R.Chandrasekaran

For Respondents : Mr.S.Thangavel for R1 to R3
Special Government Pleader
M/s.P.Shanthi for R4

O R D E R

The petitioners have filed this writ petition seeking issuance of Writ of Mandamus directing the respondents to consider and pass orders on the representation on 09.01.2015 made by the petitioners regarding regularizations of their service from the date of completion of 3 years service in the post of Sanitary Workers and to promote them to the post of Sanitary Supervisor within the time to be stipulated by this Court.

2.The case of the petitioners is that they were initially appointed as Sanitary Worker on consolidated pay basis. According to the petitioners, their services ought to have been regularized on completion of three years service, however, their services were regularized belatedly. Further, they are fully eligible for promotion to the post of Sanitary Supervisor, but the respondents have not taken any steps to promote them. In this regard, the petitioners made representation to the respondents and since there is no response, have filed this writ petition.

3.The learned counsel appearing for the petitioners would submit that the issue involved in this writ petition is covered by the decisions of this Court reported in 2013 (6) CTC 593 [S.Dhanasekaran Vs. Government of Tamil Nadu] and 2017 (3) CTC 673 [Secretary to Government, Municipal Administration and Water Supply Department and others Vs. V.Marisamy and others] and would further submit that the decision of this Court reported in 2013 (6) CTC 593 [S.Dhanasekaran Vs. Government of Tamil Nadu] has also been followed by the Madurai Bench of this Court in the order dated 07.04.2015 made in W.A.(MD) No.230 of 2015 [M.Sankaran Vs. The Secretary, Department of Municipal Administration Water Supply and others].

4.It is useful to extract hereunder the relevant portions of the decision of the Madurai Bench of this Court made in the order dated 07.04.2015 in W.A.(MD) No.230 of 2015 [M.Sankaran Vs. The Secretary, Department of Municipal Administration Water Supply and others]:

"2.After advertng to the facts and submissions, a learned single Judge placing reliance on the Full Bench decision of this Court in S.DHANASEKRAN v. GOVERNMENT OF TAMIL NADU reported in 2013 (6) CTC 593, held that regularization of the appellant with effect from 01.06.2006, cannot be given from the date of appointment i.e. 24.08.2001, as claimed by the appellant.

4.The Hon'ble Full Bench has considered the Government Orders in G.O.Ms.Nos.101 71 and 21, Municipal Administration and Water Supply Department, dated 30.04.1997, 05.05.1998 and 23.02.2006 respectively, and taking note of the divergent views expressed by the two Hon'ble Division Benches, ultimately, at paragraph 27 held as follows:-

27.In our considered view, in the case of sanitary workers, who were appointed against the newly created posts in pursuance of G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.06.1997, their regularisation is governed by G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006. Such a regularisation, as per the said G.O., should take effect only from the date of G.O. and not from the date on which they had completed three years of service from the date of their initial appointment. Following are the reasons for our conclusion.

(a)As we have already pointed out, appointments of the petitioners and the appellants herein, were not made as per the Tamil Nadu Municipal Corporations Basic Service Rules, 1996. As per the said Rules, sanitary workers can be appointed only by direct recruitment, in time scale of pay. There is no provision in the Rules to appoint sanitary workers on consolidated pay. Therefore, there can be no doubt that the petitioners and the appellants herein, who were all appointed, not as per the Tamil Nadu Municipal Corporations Basic Service Rules, 1996, but, outside the scope of the said Rules, however, governed by the Orders issued by the Government in G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997.

(b)As we have already pointed out, as per G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997, new posts of sanitary workers were all created, on need basis. The said Government Order permitted filling-up of such newly created posts, through Employment Exchanges, on consolidated pay. That is how the petitioners and the appellants herein came to be appointed.

(c)As per Clause 4(6) of G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997, the said appointment was initially for a period of one year, which could be extended upto three years. As we have already extracted, as per Clause 4(6), on completion of three years, the Government would decide whether to regularise the services of such employees, so as to bring them into regular time scale of pay. Therefore, as per this Government Order, it is fallacious to contend that on completion of three years from the date of initial appointment, such appointed sanitary workers shall be regularised.

(d)As narrated above, the Government thereafter examined the question of regularisation only in the year 2006 and accordingly issued G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006. The said Government Order directs that the regularisation shall be from the date of issue of the Government Order, namely 23.02.2006.

(e)Thus, a conjoint reading of G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997 and G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2005, would go to clearly show that on completion of three years of service from the date of initial appointment, the Government had an option to examine the question of regularisation, which the Government did only in 2006 and it is the wisdom of the Government to give regularisation from any date. (Vide judgment of the Supreme Court in K.Madalaimuthu and S.Dhanasekaran & 24 Others vs Government Of Tamilnadu on 29 November, 2013 another vs. State of T.N. And others - (2006) 6 SCC 558). Unless such date fixed by the Government, giving effect to the regularisation, is proved to be arbitrary and violative of Article 14 of the Constitution of India or any other constitutional provision, it cannot be held, in vacuum, that the said norms prescribed in G.O.Ms.No.21 for the purpose of regularisation is either illegal or unconstitutional. Therefore, we

have no hesitation to hold that regularisation of such sanitary workers, who are governed by G.O.Ms.Nos.101, 71 and 21, Municipal Administration and Water Supply Department, dated 30.04.1997, 05.05.1998 and 23.02.2006, respectively, shall be only from 23.02.2006. The contrary view expressed elsewhere in the judgments referred to above, in our respectful view, are not correct.

5. At paragraph 28, the Full Bench answered the questions and held as follows:-

"28. In view of the foregoing discussions, we answer the question referred to us as follows:

(i) The view taken in W.P.(MD)Nos.4170 and 4171 of 2011, dated 02.04.2013, has got nothing to do with the sanitary workers, working in Municipalities and Municipal Corporations, who are governed by G.O.Ms.Nos.101, 71 and 21, Municipal Administration and Water Supply Department, dated 30.04.1997, 05.05.1998 and 23.02.2006, respectively. Therefore, we have not examined the correctness of the views expressed in W.P.(MD)Nos.4170 and 4171 of 2011.

(ii) The view expressed in W.A.(MD) No.729/2013 is not the correct legal position in respect of sanitary workers who are governed by G.O.Ms.Nos.101, 71 and 21, Municipal Administration and Water Supply Department, dated 30.04.1997, 05.05.1998 and 23.02.2006, respectively and accordingly, we, with respect, overrule the same.

(iii) Those sanitary workers, who were appointed as per G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997 or absorbed as per G.O.Ms.No.71, Municipal Administration and Water Supply Department, dated 05.05.1998, are all governed by G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006, in respect of their regularisation in service and such regularisation shall take effect only from 23.02.2006 and not from the date on which

they had completed three years of service from the date of their initial entry into service.

6. In the light of the Full Bench decision in S.DHANASEKRAN v. GOVERNMENT OF TAMIL NADU (2013 (6) CTC 593), we find no reason to interfere with the order made in the Writ Court. Accordingly, the Writ Appeal is dismissed. No costs.

5. This writ petition stands disposed of in terms with the decision of the Madurai Bench of this Court made in the order dated 07.04.2015 in W.A.(MD) No.230 of 2015 [M.Sankaran Vs. The Secretary, Department of Municipal Administration Water Supply and others]. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pri

To

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai 600 009.
2. The Commissioner
of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Regional Director of Municipal
Administration, Kagithapatturai,
Sarathy Nagar, Vellore District.
4. The Commissioner,
Vellore City Municipal Corporation,
Vellore District.

+1cc to Government Pleader, in Sr.No.40734

W.P.No.5254 of 2015

MP(CO)
CS/10/02/2021