

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P No.24552 of 2019

R.Senthtamilselvan

... Petitioner

Vs.

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

2.The Commissioner,
Municipal Administration & Water Supply Department,
Ezhilgam, Chepauk,
Chennai - 05.

3.The Regional Director,
Municipal Administration & Water Supply Department,
Vellore District.

4.The Commissioner/Executive Officer,
Kallakurichi Municipality/Town Panchayat,
Villupuram District.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to regularize the services of the petitioner with effect from 14.07.2000 (when all the other sanitary workers who were appointed along with the petitioner were regularized) instead of with effect from 01.03.2006 in the light of the Full Bench Judgment of this Court in Rev.Aplc.(MD)No.87 of 2014 in W.A.(MD)No.729 of 2013 dated 30.05.2017 and W.P.No.25039 of 2014 dated 25.07.2017 with all monetary and other attendant service benefits.

For Petitioner : M/s.Dakshayani Reddy for
M/s.P.Nethaji

For R1 to R3 : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For R4 : M/s.V.Jaya Prakash Narayanan,

ORDER

This Writ Petition has been filed for the issue of a Writ of Mandamus, directing the respondents to regularize the services of the petitioner with effect from 14.07.2000 and to grant him all other attendant benefits.

2.The case of the petitioner is that he was appointed as a Sanitary Worker on 05.05.1998 by proceedings of the Executive Officer of Kallakurichi, Special Grade Town Panchayat. The petitioner was working on a consolidated pay and his services were regularized with effect from the year 2006 based on G.O.Ms.No.21, dated 23.02.2006. The grievance of the petitioner is that he ought to have been regularized with effect from 14.07.2000, when the services of the other Sanitary workers, who were appointed along with the petitioner, was regularized.

3.Mr.Dakshayani Reddy, learned counsel appearing on behalf of the petitioner submitted that G.O.Ms.No.199, dated 12.08.1997 contemplated that the Sanitary workers, who had put in three years of service must be brought in the regular scale of pay and entitled to be considered for regularization. The learned counsel submitted that eighteen persons, who were appointed along with the petitioner as Sanitary Workers, were regularized by proceedings dated 14.07.2000. The learned counsel submitted that the name of the petitioner was left out from the list. Subsequently, there was a ban on recruitment for the period from 2001 to 2006. After the ban was lifted, regularization orders were issued by the 4th respondent by proceedings dated 27.02.2006, wherein the petitioner was regularized in service only with effect from 27.02.2006.

4.The learned counsel relied upon the order passed by this Court in the case of "Amul Versus The Secretary to Government of Tamil Nadu, Municipal Administration and Water Supply Department and others in W.P.No.25039 of 2014, dated 25.07.2017". The learned counsel submitted that this Court under similar circumstances, had allowed the Writ Petition and directed the regularization of service from the year 2000 onwards with all attendant benefits. The learned counsel also relied upon the order passed by this Court in the case of "N.Lilli Vasanthakumari Versus The Secretary to Government Municipal Administration and Water Supply Department and others in W.P.No.9129 of 2013, dated 12.04.2019", wherein this Court had relied upon the above order and has given similar directions. The learned counsel, therefore, submitted that the respondents must be directed to regularize the service of the petitioner from 14.07.2000 onwards.

5. Per Contra, M/s. Mr. P. S. Sivashanmugasundaram, learned Special Government Pleader appearing on behalf of the respondents 1 to 3, submitted that the petitioner was regularized in service by proceeding dated 27.02.2006. If the petitioner was aggrieved by the fact that she was not regularized from 2000 onwards, the petitioner ought to have challenged the proceedings dated 27.02.2006 and without challenging the same, the petitioner cannot maintain a Writ Petition before this Court by seeking for Mandamus. The learned counsel further submitted that the petitioner has placed reliance upon the Full Bench Judgment of this Court in the case of "Secretary to Government, Municipal Administration and Water Supply Department and others Versus V. Marisamy and others, reported in 2017 (3) CTC Page 673". The learned counsel submitted that this Judgment has been challenged before the Hon'ble Apex Court and the Hon'ble Apex Court has also granted stay of the operation of the order. The learned counsel, therefore, submitted that the petitioner is not entitled for the relief claimed by him based on the Full Bench Judgment, since it has been already been challenged and the Hon'ble Apex Court has granted stay. The learned counsel, therefore, submitted that there are absolutely no grounds to entertain this Writ Petition and the same is liable to be dismissed.

6. The learned counsel appearing on behalf of the 4th respondent, adopted the arguments made by the learned Special Government Pleader and also prayed for dismissal of the Writ Petition.

7. This Court has carefully considered the submissions made on either side and materials available on record.

8. It is seen from the records that the petitioner was appointed as a Sanitary Worker on 05.05.1998 by proceedings of the Executive Officer of Kallakurichi Special Grade Town Panchayat. Apart from the petitioner, others were also appointed under the same proceedings. Eighteen persons, who were appointed along with the petitioner sought for regularization of their service and the Executive Officer of the Kallakurichi Special Grade Town Panchayat by proceedings dated 14.07.2000 regularized the services of those eighteen persons. It is clear from the said proceedings that those eighteen persons were also appointed along with the petitioner and the reference made to the appointment order makes it very clear. The petitioner had made a similar request, since his name did not find place in the regularization order dated 14.07.2000.

9. The representation made by the petitioner could not be taken into consideration, since there was a ban order imposed in the year 2001 for filling up any vacancies. This continued till

the year 2006. Ultimately by proceedings dated 27.02.2006, the petitioner was regularized in service with effect from 01.03.2006. The grievance that is expressed by the petitioner is that he should also have been regularized from 14.07.2000 and he should have been treated on par with the eighteen persons, who joined along with the petitioner.

10. At this juncture, it will be relevant to place reliance on the Judgment relied upon by the learned counsel for the petitioner.

11. In the Judgment in Amul Versus The Secretary to Government of Tamil Nadu, Municipal Administration and Water Supply Department and others in W.P.No.25039 of 2014, dated 25.07.2017, referred supra, this Court has held as follows:-

"Writ petition has been filed seeking for issuance of a Mandamus, to direct the respondents to regularize the services of the petitioner by bringing her in the time scale of pay with effect from the date of completion of 3 years of service viz., with effect from 20.11.2000 as provided under G.O.Ms.No.199, (MAWS Department) dated 12.08.1997 and in the light of the judgment passed by this Court in W.P.No.25620 of 2006 dated 17.09.2008 and W.A.No.47 of 2010 dated 23.06.2010 with all consequential and attendant benefits.

2. The petitioner was appointed as Sanitary worker on 20.11.1997, in pursuance of G.O.Ms.No.199, MAWS Department, dated 12.08.1997. As per the said Government order, the persons would be initially appointed on a consolidated pay for a maximum period of three years and on completion of three years, they will be brought under regular time scale of pay. In the instant case, however, the petitioner was appointed on 20.11.1997 and having continuously worked for a period of 3 years as on 20.11.2000, she was not brought in the regular time scale as per the provisions of the above said Government Order.

3. According to the petitioner, she has been continued on consolidated pay from the year 1997 to till date. The petitioner submitted number of representations to the competent authority for bringing her under regular time scale on completion of three years on consolidated pay. According to the petitioner, a proposal was also sent by the third respondent for bringing her under regular time scale of pay on 07.01.2014. But ultimately, the same did

not fructify and no order has been passed in favour of the petitioner. Therefore, the petitioner was constrained to approach this Court seeking for the relief as stated supra.

4.Mr.N.Balamuralikrishnan, learned counsel for the petitioner would submit that as per G.O.Ms.No.199, MAWS Department, dated 12.08.1997, several similarly placed employees were brought under regular time scale, but the petitioner alone was left out depriving the benefits under the said Government Order. In fact, the learned counsel drew the attention of this Court to the order passed by this court in W.P.No.25620 of 2006 dated 17.09.2008, in and by which, this Court has allowed similar claims on the date of completion of three years of service. The said order passed by the learned Single Judge has been affirmed in W.A.No.47 of 2010 dated 23.06.2010. In the said case, the claim of the petitioners was that of regularisation of their services with effect from the date of completion of three years of service on consolidated pay, since the services of those petitioners were regularized at much later point of time. The learned counsel also brought to the attention of this court to the proceedings of the third respondent dated 07.01.2014, in which, it is clearly stated that the name of the petitioner was left out while granting the benefits of regularization in spite of other similarly placed employees.

5.Upon notice, Mr.R.A.S.Senthilvel, learned Additional Government Pleader filed counter affidavit. In the counter, an attempt has been made to distinguish the case of the petitioner and others for application of the benefit under G.O.Ms.No.199, MAWS Department, dated 12.08.1997.

6.This Court is unable to appreciate as to how the present case of the petitioner is different from the other similarly placed persons, both in terms of application of G.O.Ms.No.199, MAWS Department, dated 12.08.1997 and in terms of the earlier directions issued by the learned Single Judge of this Court, which was affirmed in the writ appeal as stated above.

7.In the said circumstances, this Court is of the clear view that the case of the petitioner is squarely covered under G.O.Ms.No.199, MAWS

Department, dated 12.08.1997 and also in the light of the judgment passed by the learned Single Judge of this Court in W.P.No.25620 of 2006 dated 17.09.2008 and in W.A.No.47 of 2010 dated 23.06.2010.

8.In the above circumstances, this court has no hesitation to allow the writ petition as prayed for. Therefore, there shall be a direction to the respondents to bring the petitioner under regular time scale of pay with effect from the date of completion of her three years of service on consolidated pay and on such benefit, the petitioner is entitled to other attendant and consequential benefits that may flow from such order. The said exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order."

12.It will also be relevant to rely upon the Judgment of this Court in the case of N.Lilli Vasanthakumari Versus The Secretary to Government, Municipal Administration and Water Supply Department and others in W.P.No.9129 of 2013, dated 12.04.2019, referred supra, the relevant portions in the Judgment is extracted here under:-

"6.The petitioner states that the issue raised in the Writ Petition is squarely covered by the judgment dated 03.08.2012 passed by this Court in W.P.No.20605 of 2012. The facts in W.P.No.20605 of 2012 is reproduced as under:-

The petitioner has filed the above writ petition praying for a Writ of Certiorarified Mandamus to quash the proceedings dated 28.07.2006 of the third respondent in so far as the petitioner is concerned and consequently direct the respondents to extend the benefit of the G.O.Ms.No.570, Municipal Administration and Water Supply Department dated 15.11.2010 to the petitioner by bringing him into regular time scale of pay from the date of completion of the one year of service in the consolidated pay services i.e., (23.10.2002) in the light of G.O.Ms.No.199, Municipal Administration and Water Supply Department dated 12.08.1997 and G.O.Ms.No.84, Municipal Administration and Water Supply Department dated 21.05.1998 and the orders of this Court passed in W.P.No.25620 of 2006 dated 17.09.2008 and the judgment of the

Division Bench dated 23.06.2010 passed in W.A.No.47 of 2010 with all consequential service and monetary benefits.

2. According to the petitioner, he was appointed as Sweeper on daily wage basis in the third respondent Town Panchayat on 01.11.1984. Subsequently, three posts of Wireman was sanctioned by the second respondent in his proceedings dated 13.10.1999 in which the petitioner was accommodated on 15.03.2000 for a consolidated pay of Rs.1,700/- per month and he also completed three years of satisfactory service on 14.03.2003. As per the various Government Orders issued by the Government, his services have to be regularised with effect from the date on which he completed three years of service, but, he was brought under regular time scale of pay by the third respondent only from 23.06.2006 instead of 14.03.2003.

7. The said order has quoted another judgment dated 17.09.2008 passed in W.P.No.25620 of 2006. Relevant portion of the order in W.P.No.25620 of 2006, which has been extracted in W.P.No.20605 of 2012 reads thus:-

"4. G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.08.1997 could not be given effect due to the policy decision of the Government not to fill up any post except in Police, Medical and Teacher as per the G.O. Ms.212, P & AR Department dated 29.11.2001 with effect from 29.11.2001. Further, there were instructions from the Government vide proceedings dated 29.7.2002, which directed to keep in abeyance the regularizations of sanitary workers due to financial crunch faced by many of the Town Panchayats. The petitioners could not be regularized in service with effect from 2001 mainly due to the ban orders of the Government for filling up of the vacancies. The petitioners have miserably failed to bring notice about G.O.Ms.No.21, Municipal Administration and Water Supply (MC3) Department, dated 23.2.2006, which was issued for regularization of services of workers on consolidated pay and NMRs on daily wages. In

view of the policy decision of the Government and in view of the financial constraint the services of the petitioners could not be regularized with effect from March 2001.

5.Mr.V.Vijay Shankar, learned counsel appearing for the petitioners and Mr.K.Elango, learned Special Government Pleader appearing for the respondents have made their submissions based on the above pleadings.

6.It is not in dispute that the petitioners were appointed as sanitary works initially on consolidated basis in Palladam Municipality in pursuant to G.O.Ms.No.199, Municipal Administration and Water Supply Department dated 12.8.1997. As per the said G.O., the sanitary workers shall be regularized on completion of three years of service. The petitioners, who have been appointed on 27.3.1998 as per the said G.O. ought to have been regularized by 27.3.2001. The reason for not regularizing their services as per the counter affidavit of the respondents is that there was a ban for recruitment except in Police, Medical and Teachers service and hence the services of the petitioners could not be regularized. The ban imposed could only be for a new appointment and the petitioners, who have been already appointed prior to the ban imposed by the Government cannot be denied regularization of their services citing the said ban. All the petitioners have already been appointed and it is not as if new posts are being created or new appointments are made. Hence the contention raised by the learned Special Government Pleader appearing for the respondents that the services of the petitioners could not be regularized in view of the ban imposed by the Government cannot be accepted.

7.Yet another reason that has been stated by the respondents is that due to financial crunch, such regularization could not be made. Again this cannot be the reason for refusing the regularization of the petitioners in service. The petitioners have been appointed in pursuant to G.O.Ms.No.199, referred to above, wherein it is specifically

provided that after the completion of three years, their services should be regularized. In view of the said fact, the said contention of the learned Special Government Pleader appearing for the respondents cannot also be accepted.

8. Further more as rightly pointed out by the learned counsel appearing for the petitioners G.O.Ms.No.21, Municipal Administration and Water Supply (MC3) Department dated 23.2.2006 referred to by the respondents, does not refer about G.O.Ms.No.199 Municipal Administration and Water Supply (MC3) Department dated 12.8.1997.

Thus, the respondents cannot be permitted to say that the services of the petitioners could be regularized only as per G.O.Ms.No.21 Municipal Administration and Water Supply (MC3) Department, dated 23.2.2006 cannot also be accepted.

9. Considering the above facts and circumstances, I am of the considered view that refusal to regularize the services of the petitioners with effect from 27.3.2001 is totally erroneous. In the result, the impugned proceedings of the third respondent dated 27.2.2006 directing the regularization of the services of the petitioners only with effect from 23.2.2006 is required to be set aside and accordingly set aside and the writ petition stands allowed."

8. It is further noted that the order in W.P.No.25620 of 2006 was taken up in an appeal in W.A.No.47 of 2010 and the Hon'ble Division Bench has affirmed the order in W.P.No.25620 of 2006. The order of the Hon'ble Division Bench was taken up before the Hon'ble Supreme Court in S.L.P (Civil) No.26605 of 2010, which was dismissed by an order dated 27.09.2010.

9. Taking note of these facts, the learned single Judge in W.P.No.20605 of 2012 has concluded by observations as under:-

9. In the above circumstances, the impugned order dated 28.07.2006 of the third respondent in so far as it restricts the date of regularization of the petitioners from

23.06.2006 is not set aside and the writ petition is allowed. The respondents are directed to regularise the services of the petitioner in the third respondent Town Panchayat, from the date of completion of one year of contingent service in terms of G.O.Ms.No.199, Municipal Administration and Water Supply (MC3) Department, dated 12.08.1997 and G.O.Ms.No.84 Municipal Administration and Water Supply Department dated 21.05.1998, with all monetary benefits. The respondents can very well verify the dates of completion of service of the petitioner and grant relief. Necessary order is directed to be passed by the respondents within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. However, there is no order as to costs.

10. In view of the above judgment, the petitioner is therefore, entitled to the same relief, which has been given to the petitioner in W.P.No.20605 of 2012. Accordingly, this Writ Petition stands allowed."

13. It is clear from the above Judgments that this Court had taken into consideration the impact of G.O.Ms.No.199 dated 12.08.1997 and also the impact of G.O.Ms.No.212 dated 29.11.2001. This Court had categorically held that the orders passed in W.P.No.25620 of 2006, was taken on appeal in W.A.No.47 of 2010 and the said appeal was dismissed and it was further confirmed by the Hon'ble Supreme Court by order dated 27.09.2010. Therefore, the orders passed in the case of persons, who were similarly placed like that of the petitioner, has become final and therefore, the petitioner must also be extended the same benefit.

14. The contention made by the learned Special Government Pleader that only a mandamus has been filed in this case and the proceedings dated 27.02.2006 has not been challenged, is also liable to be rejected. In the orders referred supra, the concerned petitioners had only filed petitions seeking for the relief of mandamus and this Court had also granted relief. After all the persons concerned are sanitary workers and they wanted them to be treated on par with similarly placed persons.

15. In the considered view of this Court, the petitioner ought to have been regularized with effect from 14.07.2000

onwards, since the persons who joined along with the petitioner were regularized from the said date. The petitioner cannot be treated differently and he cannot be deprived all the benefits that were given to his co-employees.

16. In the result, this Writ Petition is allowed and there shall be a direction to the 4th respondent to regularize the services of the petitioner with effect from 14.07.2000 and grant him with all attendant benefits. An order to this effect shall be passed by the 4th respondent, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner,
Municipal Administration & Water Supply Department,
Ezhilgam, Chepauk,
Chennai - 05.
3. The Regional Director,
Municipal Administration & Water Supply Department,
Vellore District.
4. The Commissioner/Executive Officer,
Kallakurichi Municipality/Town Panchayat,
Villupuram District.

+1cc to Mr.P.Nethaji, Advocate Sr.2100
+1cc to Mr.V.Jayaprakash Narayanan, Advocate Sr.2814
+1cc to the Government Pleader Sr.2742

W.P No.24552 of 2019

vba[co]
srg 13/01/2020