



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
23.01.2020	28.01.2020

CORAM:

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

**W.A.(MD) No.1519 of 2019
and
C.M.P.(MD) No.12208 of 2019**

- 1.The District Collector
Madurai District
Madurai
- 2.The Assistant Director (Panchayat)
Madurai District, Madurai
- 3.The Block Development Officer
(Village Panchayat)
Madurai West Panchayat Union
Thallakulam, Madurai District
- 4.The President
Samayanallur Village Panchayat
Samayanallur
Madurai District

Rajeswari

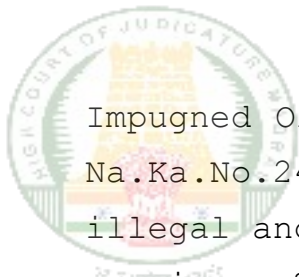
-vs-

... Appellants
... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 18.03.2019, passed in W.P.(MD) No.389 of 2019, on the file of this Court.

Prayer in WP(MD). 389/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus, to call for the records pertaining to the



Impugned Order issued by the 1st Respondent vide his Proceedings in Na.Ka.No.24468/2016/Vu.Va.8 dated 29.07.2016 and quash the same as illegal and consequently direct the 1st Respondent to regularize the service of the Petitioner on completion of 3 years of service Sanitary Worker in the 4th Respondent Panchayat w.e.f. from 02.04.2002 from the initial date of appointment on 02.04.1999 in terms of full Bench order of this Court reported in 2017(3) CTC 673 with all attendant and monetary benefits.

For Appellants : Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondent : Mr.M.Poun Raj

J U D G M E N T

T.RAVINDRAN, J.

Aggrieved over the order, dated 18.03.2019, passed in W.P. (MD) No.389 of 2019, the writ appeal has been preferred by the appellants / respondents.

2. Writ petition in W.P.(MD) No.389 of 2019 has been preferred by the respondent to issue a writ of certiorarified mandamus to call for the records pertaining to the order, dated 29.07.2016, passed by the first appellant, to quash the same as illegal and consequently, to direct the first appellant to regularize her service on completion of three years of the service as Sanitary Worker in the fourth respondent Panchayat with effect from 02.04.2002 from the initial date of appointment on 02.04.1999 in terms of the Full Bench Judgment of this Court in the case of **Secretary to Government, Municipal Administration and Water Supply Department vs. V.Marisamy**, reported in **2017 (3) CTC 673** with all attendant and monetary benefits.

3. Briefly stated, according to the respondent, she has joined as Sanitary Worker-cum-Panchayat Assistant Clerk on 02.04.1999 with the fourth respondent Panchayat on consolidated pay basis and she had been reverted back twice and she is entitled to have her service regularized with time scale of pay on completion of the requisite period of service and as she had been in continuous service as Sweeper, according to her, in terms of the Judgment of the Full Bench of this Court cited supra, her service should be regularized and also putforth the case that since she has been appointed as Panchayat Assistant Clerk and her representation, with reference to the same, had been rejected by the first appellant vide order dated 29.07.2016 and accordingly, seeking appropriate reliefs, she has laid the writ petition.



4. The appellants resisted the respondent's case contending that the first respondent had been appointed as Sweeper on 02.04.1999, on the basis of the consolidated pay and the Government, vide G.O.Ms.No.385, Finance (Pay) Department, dated 01.10.2010, called for the proposals to bring the consolidated pay individuals into the time scale of pay and following the same, the Government, vide G.O.Ms.No.39 (Rural Development and Panchayat Raj (E5) Department, dated 07.05.2013, issued orders to bring the respondent into the time scale of pay in the cadre of Sweeper and the respondent is also working as Sweeper in the time scale of pay and her claim that she should be appointed as Panchayat Assistant Clerk is not sustainable and therefore, sought for the dismissal of the writ petition.

5. On a consideration of the pleas putforth and the submissions made by the respective parties, the learned Single Judge, vide order dated 18.03.2019, was pleased to set aside the order passed by the first appellant and directed the appellants to consider the case of the respondent seeking to regularize her service, in the light of the decision rendered by the Full Bench of this Court cited supra and settle the benefits due to her, within a period of eight weeks from the date of receipt of a copy of the order. Impugning the same, the writ appeal has been preferred by the appellants / respondents.

6. From the materials available on record as well as the pleas and the submissions putforth by the respective parties, it is found that earlier the respondent has laid a writ petition in W.P. (MD) No.3221 of 2015 to issue a writ of mandamus directing the first appellant to consider her representation, dated 10.02.2015 and to regularize her service. This Court, by order dated 06.04.2016, in the abovesaid writ petition, directed the first appellant to consider the respondent's representation, dated 10.02.2015 and to pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of the order.

7. On a perusal of the respondent's representation, dated 10.02.2015, it is found that as contended by the appellants, the respondent had only sought for appointment as Panchayat Assistant Clerk and the same having been considered by the first appellant and orders had been passed by the first appellant, on 29.07.2016, declining her request to appoint her as Panchayat Assistant Clerk. Considering the abovesaid order in toto, particularly, finding that the respondent lacks the requisite educational qualification to appoint her as Panchayat Assistant Clerk and also the fact that such a post is not existing as on date, in such view of the matter, it is found that in our considered opinion, no interference is warranted to disturb the impugned order, dated 29.07.2016, passed by the first appellant, declining the request of the respondent to appoint her as

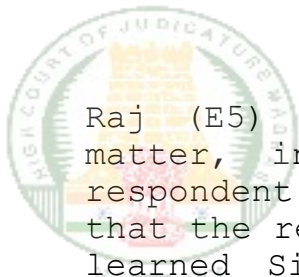


Panchayat Assistant Clerk.

8. However, in the present writ petition, though the respondent has sought for a writ of certiorarified mandamus seeking to quash the order, dated 29.07.2016, passed by the first appellant, however, without any nexus to the abovesaid subject, she had also sought for regularization of her service as Sweeper with effect from the date of the joining the service on 02.04.1999 in terms of the Judgment of the Full Bench of this Court cited supra, with all attendant and monetary benefits. As rightly putforth by the learned Special Government Pleader appearing for the appellants, the second limb of the relief sought for by the appellants has no nexus whatsoever with the first limb of the relief sought for by the respondent. As abovenoted, as regards the first limb of the relief sought for the respondent seeking to quash the order, dated 29.07.2016, passed by the first appellant, the same does not merit acceptance.

9. As regards the relief sought for by the respondent seeking to regularize her service in terms of the Judgment rendered by the Full Bench of this Court cited supra, in the abovesaid decision, the Full Bench has taken into consideration the Government Orders in G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997 and G.O.Ms.No.71, Municipal Administration and Water Supply Department, dated 05.05.1998, pertaining to the Municipal Administration and accordingly, directed that the service of the persons employed as Sanitary Workers and covered by the abovesaid Government Orders, be regularized after the completion of the respective period under consolidated pay basis as specified in the abovesaid Government Orders from the date of their initial appointment. There is no quarrel about the abovesaid proposition of law laid down by the Full Bench of this Court.

10. Insofar as the present case is concerned, as rightly putforth by the learned Special Government Pleader, when it is not in dispute that the respondent had been inducted into the service as Sweeper on 02.04.1999 on consolidated pay basis and further, when it is noted that proposals had been called for by the Government to bring the consolidated pay individuals into the time scale of pay, vide G.O.Ms.No.385, Finance (Pay) Department, dated 01.10.2010, and following the same, when the Government had issued G.O.Ms.No.39, Rural Development and Panchayat Raj (E5) Department, dated 07.05.2013, to bring the respondent into the time scale of pay in the cadre of Sweeper and the respondent is also working as Sweeper in the time scale of pay and the respondent having not putforth any challenge to the abovesaid Government Order in any manner and considering the position that the respondent had already been brought into the time scale of pay in the cadre of Sweeper as per the conditions laid down in G.O.Ms.No.385, Finance (Pay) Department, dated 01.10.2010 and G.O.Ms.No.39, Rural Development and Panchayat



Raj (E5) Department, dated 07.05.2013 and in such view of the matter, in the absence of any challenge on the part of the respondent to the abovesaid Government Orders, in all, it is found that the respondent cannot be granted the reliefs prayed for and the learned Single Judge has failed to consider the import of the Government Orders in G.O.Ms.No.385, Finance (Pay) Department, dated 01.10.2010 and G.O.Ms.No.39, Rural Development and Panchayat Raj (E5) Department, dated 07.05.2013 applicable to the case of the respondent and when the respondent had accepted the abovesaid position and working in the time scale of pay as per the abovesaid Government Orders and when the Government Orders involved in the Full Bench decision cited supra are found to be not applicable to the case of the respondent, in such view of the matter, we are unable to accept the reasonings of the learned Single Judge in directing the appellants to regularize the service of the respondent in terms of the Judgment rendered by the Full Bench cited supra as directed by him.

11. The learned counsel appearing for the respondent, in support of his contentions, placed reliance upon the decision in the case of ***State of Punjab and others vs. Jagjit Singh and others***, reported in (2017) 1 SCC 148 and the order of this Court, dated 29.01.2019, passed in W.A.(MD) No.1584 of 2018 [***The Principal Secretary, School Education Department, Secretariat, Fort St.George, Chennai vs. School Education Department, Scavengers Welfare Association, represented by its Secretary***]. The principles of law outlined in the above cited decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

12. In the light of the abovesaid reasonings, the impugned order, dated 18.03.2019, passed in W.P.(MD) No.389 of 2019, is liable to be set aside.

13. Accordingly, the writ appeal is allowed and the impugned order, dated 18.03.2019, passed in W.P.(MD) No.389 of 2019, is set aside. Consequently, the writ petition in W.P.(MD) No.389 of 2019 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



krk

+1 CC to M/s.M.POUNRAJ, Advocate (SR-3599[F] dated 29/01/2020)

+1 CC to M/s.SPL.GP (SR-3746[F] dated 29/01/2020)

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W.A. (MD) No.1519 of 2019

and

C.M.P. (MD) No.12208 of 2019

28.01.2020

KK/SAR/07.02.2020/6P-3C/