



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)No.989 and 990 of 2019

and

C.M.P(MD)Nos.9031, 9033 & 9034 of 2019

1.The Project Director,
Kanyakumari District Rural,
Development Agencies,
Collectorate Complex,
Nagercoil,
Kanyakumari District.

2.The District Collector of
Kanyakumari District and
Chairman and DRDA
Collectorate Complex
Nagercoil,
Kanyakumari District.

... Appellants/
Respondents in both W.As

Vs.

1.S.Kalavathi

... 1st Respondent/writ Petitioner in
W.A. (MD) .No.989 of 2019

1.V.Kanagamani

... 1st Respondent/writ Petitioner in
W.A. (MD) .No.990 of 2019

2. The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai.

... 2nd Respondent/
Respondent in both W.As

(R-2 is impleaded as party respondent in these writ appeals, vide court order dated 24.10.2019 in W.A. (MD) .Nos.989 & 990/2019)

Prayer in W.A. (MD) .No.989 of 2019: Writ Appeal filed under Clause 15 of Letters Patent against the order passed by this Court dated 14.02.2019, passed in W.P. (MD) No.15808 of 2018.



Prayer in WP(MD). 15808 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus call for the records in connection with the impugned order in Proc.No.A1/1048/2017-2 dated 11.04.2017 passed by the 2nd respondent Collector Cum Chairman, District Rural Development Agency, Nagercoil and quash the same and pass an order to regularize the services of the petitioner from the date of her initial appointment and grant all monetary benefits and other benefits

Prayer in W.A. (MD) .No.990 of 2019: Writ Appeal filed under Clause 15 of Letters Patent against the order passed by this Court dated 14.02.2019, passed in W.P. (MD)No.15809 of 2018.

Prayer in WP(MD). 15809 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus call for the records in connection with the impugned order in Proc.No.A1 / 1048 / 2017-1 dated 11/04/2017 passed by the 2nd respondent collector Cum Chairman, District Rural Development Agency Kanyakumari District at Nagercoil and quash the same and pass an order to regularize the services of the petitioner from the date of her initial appointment and grant all monetary benefits and other benefits.

For Appellants : Mr.VR.Shanmuganathan
Special Government Pleader

For Respondents : Mr.S.Titus for R.1

* * * * *

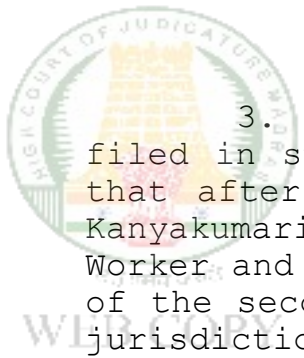
COMMON JUDGMENT

(Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**)

The official respondents in the writ petitions, filed by each of the first respondent herein, have filed these writ appeals.

2. The issue to be decided and adjudicated in these writ appeals is one and the same and therefore, both the writ appeals are disposed of by this common judgment.

W.A.(MD).No.989 of 2019 filed against W.P.(MD).No.15808 of 2018 filed by S.Kalavathi:

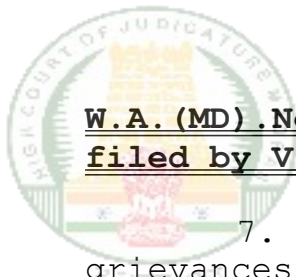


3. The first respondent/writ petitioner in the affidavit filed in support of the writ petition averred, among other things, that after studying primary education, she registered her name in Kanyakumari District Employment Office for the post of Sanitary Worker and the first appellant/first respondent with the concurrence of the second appellant/second respondent sent a requisition to the jurisdictional Employment Exchange to forward a list of persons registered with them for filling up the posts of Sanitary Workers on the basis of seniority and the name of the first respondent/writ petitioner was also forwarded. The first respondent in the writ petition, called her for interview and selected for the post of Sanitary Worker, vide Office Order dated 10.05.1988 and according to the petitioner, ever since from her date of appointment, she continues to render her services without any artificial brake.

4. It is also the case of the first respondent/writ petitioner that her duty time is between 08.00 a.m and 06.00 p.m and her services were also summoned during Saturdays and Sundays also and her duty includes cleaning the floors of the whole District Collector's Office Buildings, cleaning the dusts deposited in windows, doors, shelves, tables and on the record books and that apart, cleaning the washrooms of the District Collector's Office, Office of DRDA, office of the DRO, Office of the Chief Engineer, Office of the Highway Department chief, Office of the PRO, office of the DSO and all Office Staff toilets.

5. The first respondent, vide proceedings dated 22.06.1998 had given her consolidated pay since she has completed 10 years of continuous service. The petitioner also expressed her grievance that though the requirement of her work is continuous and that she had put in more than 30 years of continuous service, regularization has not been accorded and a representation made in this regard has failed to evoke any kind of response and therefore, she filed W.P. (MD).No.14543 of 2012, praying for a larger relief of regularization and vide order, dated 02.12.2016, a learned Single Judge of this Court had directed the concerned respondents to consider the representation of the first respondent/writ petitioner and pass appropriate orders.

6. However, the official respondents, without taking into consideration the relevant facts and circumstances, especially, the heart blemishless service done by the first respondent/writ petitioner for three decades, had rejected the said request on the ground that her employment is Part Time in nature and such employment cannot be regularized. The first respondent/writ petitioner relied upon a common judgment dated 23.06.2009 in W.A. (MD).Nos.151 and 225 of 2009 (***The Director of School Education (Elementary), College Road, Chennai-06 v. Ponnamma and Rajam***).



**W.A.(MD).No.990 of 2019 filed against W.P.(MD).No.15809 of 2018
filed by V.Kanagamani:**

7. The first respondent/writ petitioner had similar grievances as that of the first respondent in W.A.(MD).No.989 of 2019 and she would further aver that the jurisdictional Employment Exchange, vide communication, dated 18.11.1985 had forwarded her name and she was called for interview and got selected and appointment order to that effect was also given to her, vide order dated 29.11.1985 and she joined duty on 02.12.1985 and also performed the duty similar to that of the first respondent in W.A.(MD).No.989 of 2019.

8. The petitioner's representation for regularization of service has not been considered and therefore, she filed W.P.(MD).No.14544 of 2012, praying for a larger relief of regularization and vide order, dated 02.12.2016, a learned Single Judge of this Court had directed the official respondents to consider and dispose of the the said representation and pass appropriate orders. However, without properly considering facts and circumstances of the case, vide impugned order, dated 11.04.2017, her request was rejected on the ground that she was appointed as a Part Time Sweeper and hence, her services cannot be regularized. The matter in issue is also squarely covered by a common judgment dated 23.06.2009 passed in W.A.(MD).Nos.151 and 225 of 2009 (***The Director of School Education (Elementary), College Road, Chennai-06 v. Ponnamma and Rajam***)

9. The Additional District Collector of Kanyakumari District has filed separate counter affidavits in both the writ petitions and took a stand that Sweeper Post is only a part time post and not a regular post and as such, the petitioners are not entitled for regularization and the relevant Government Orders are applicable only to full time daily wage employees and hence, prayed for the dismissal of the writ petitions.

10. The learned Judge, vide common order dated 11.04.2017 in W.P.(MD).Nos.15808 and 15809 of 2019, had taken into consideration the judgment dated 27.03.2018 passed in W.A.(MD).No.193 of 2018 and having found that it is applicable to the facts and circumstances of the case projected by the first respondent/writ petitioner in each of the writ petitions, set aside the impugned orders with a further direction, directing the official respondents to pass appropriate orders, in the light of the judgment of the Division Bench of this Court dated 27.03.2018 passed in W.A.(MD).No.193 of 2018 and challenging the legality of the said order, these writ appeals have been preferred.

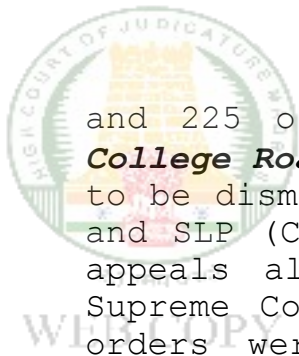
11. Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the appellants/official respondents made the following submissions:

<https://hcservices.ecourts.gov.in/hcservices/>



- ♦ The first respondent in W.A(MD).No.989 of 2019 was appointed temporarily in a non-sanctioned post and salary was paid out of contingent fund and insofar as the first respondent in W.A.(MD).No.990 of 2019 is concerned, her appointment order shows that she is a part-time sanitary worker and it was also a non-sanctioned post and as a matter of fact, they cannot seek for regularization.
- ♦ G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 is applicable to the regularization of services of daily wages employees, who have completed more than 10 years of service as on 01.01.2006. The said G.O has also been clarified in G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013.
- ♦ In ***State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another Vs. A.Singamuthu*** reported in (2017) 4 SCC 113, when the scope of G.O.Ms.No.22, dated 28.02.2006 and G.O.Ms.No.74, dated 27.06.2013 came up for consideration, taking into consideration the fact that though the services of Part Time Masalchis came to be regularized in terms of G.O.(Rt).No.84, Commercial Taxes and Registration (M2) Department, dated 18.06.2012, the Honourable Supreme Court held that they are entitled for monetary benefits only from the date of regularization and set aside the portion of the order in and by which they were granted the benefit from the date of completion of 10 years of service as erroneous.
- ♦ The judgment in W.A.(MD).No.193 of 2018, dated 27.03.2018 relied upon by the learned Single Judge has no application to the case on hand for the reason that it pertains to interpretation of Rule 114 of Tamil Nadu Pension Rules with regard to the counting of 50% of service for the purpose of pensionary benefits and that apart, the facts of the case also would disclose that the concerned private respondents had also produced certificates to the effect that they are employed on Part Time basis, whereas in the case on hand, one of the writ petitioners was appointed as a Sanitary Worker temporarily in a non-sanctioned post and another one was appointed as a Part Time Sanitary Worker in a non-sanctioned post and since both the writ petitioners were appointed as Sanitary Workers in the non-sanctioned posts, he prays for setting aside the impugned order.

12. Per contra, the learned counsel appearing for the private respondents has drawn the attention of this Court to the order of this Court dated 24.06.2008 made in ***W.P(MD).No.9727 of 2006 (Rajam Vs The Director of School Education (High School), College Road, Chennai-6 and two others)*** and it was also a case of regularization of services of Part-Time employee, where there was a positive direction and challenge made to the said order in W.A.(MD).Nos.151



and 225 of 2009 (**The Director of School Education (Elementary), College Road, Chennai-06 and two others Vs. Ponnamma and Rajam**) came to be dismissed on 23.06.2009, holding that it a case of absorption and SLP (Civil) CC.Nos.18508-18509/2009 preferred against that writ appeals also ended in dismissal on 11.02.2010 by the Honourable Supreme Court and there are very many similar orders and all the orders were complied with by passing Government Orders and by applying the principle of parity, this Court may sustain the impugned order passed by the learned Single Judge.

13. The learned counsel appearing for the private respondents has also placed reliance upon the following judgments:

(i) **Civil Appeal Nos.175 -176 of 2019, (Union of India and Others Vs. Sant Lal & Others etc.,) dated 08.01.2019;** (ii) **Civil Appeal Nos.9413 -9414 of 2019, (Rajnish Kumar Mishra and Others etc., Vs. State of Uttar Pradesh & Others etc.,), dated 13.12.2019;** and (iii) **Civil Appeal No.1570 of 2020, (ONGC Employees Mazdoor Sabha Vs The Executive Director Basin Manager, Oil & Natural Gas Corporation (India) Limited), dated 13.02.2020,**__wherein, those employees were directed to be reinstated forthwith with continuity of service for all the purposes including terminal benefits.

14. This Court has carefully considered the rival submissions and also perused the materials available on record.

15. The first respondent in W.A.(MD).No.989 of 2019 was appointed temporarily as a Sanitary Worker, vide proceedings of the first appellant, dated 10.05.1988 on temporary basis on consolidated pay of Rs.60/- per month. Likewise, the first respondent in W.A.(MD).No.990 of 2019 was appointed temporarily as a Part Time Sanitary Worker, vide proceedings of the first appellant, dated 29.11.1985 on consolidated pay of Rs.60/- per month.

16. Admittedly, their services have been continued without any artificial brake and even as on date, they continue to perform in their capacity and the consolidated pay granted to them has also been increased gradually. The persons, similarly placed, had approached the Court and pursuant to the positive orders, the School Education Department and the Revenue Department, had passed series of orders in G.O.Ms.No.100, dated 13.04.2010, G.O.Ms.No.123, dated 17.08.2011, G.O.Ms.No.40, dated 31.01.2012, G.O.Ms.No.111, dated 09.05.2012 and G.O.Ms.No.247, dated 03.10.2012.

17. It is also pertinent to point out at this juncture that those Government Orders came to be passed under the pain of contempt proceedings and the said Government Orders pertain to persons, who approached this Court and got the orders.

18. In the considered opinion of the Court, since the said orders are individual concerned, they cannot be made applicable ipso



facto, as the question of regularization depends upon facts and circumstances of each case.

19. In **State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another Vs. A.Singamuthu** (cited supra), there was a positive order in favour of the respondent therein, namely, A.Singamuthu to grant regularization from the date of completion of 10 years of service with salary and other benefits, where he was appointed as a Part Time Masalchi and it is relevant to extract hereunder the following:

"8. Part-time or casual employment is meant to serve the exigencies of administration. It is a settled principle of law that continuance in service for long period on part-time or temporary basis confers no right to seek regularisation in service. The person who is engaged on temporary or casual basis is well aware of the nature of his employment and he consciously accepted the same at the time of seeking employment. Generally, while directing that temporary or part-time appointments be regularised or made permanent, the courts are swayed by the long period of service rendered by the employees. However, this may not be always a correct approach to adopt especially when the scheme of regularisation is missing from the rule book and regularisation casts huge financial implications on public exchequer.

In the said decision, the scope of G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 as well as G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, had also been taken into consideration and it was held in the said decision that in the light of the fact that the respondent was only a Part Time Masalchi, the question of applying G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 does not arise. Insofar as Part Time Masalchis working in the Revenue Department for more than 10 years are concerned, the Commissioner, Commercial Taxes and Registration Department, took a decision to regularize their services from the date of issuance of the Government Order. The Hon'ble Supreme Court, in the said decision having found that the said Government Orders are applicable only to Full-Time-daily-wage employees, who have completed ten years of continuous service as on 01.01.2006 and not to Part Time employees, set aside the impugned order and allowed the appeal.

20. In **School Education Department, Chennai v. R.Govindaswamy** reported in **(2014) 4 Supreme Court Cases 769**, the case once again pertains to Part Time Sweepers, where regularization of services has been ordered and therefore, the Government preferred Special Leave Petitions before the Honourable Supreme Court and those issues were entertained and converted as Civil Appeals. The



Honourable Supreme Court has posed a question whether the services of Part Time Sweepers to be regularized, as directed by the High Court and having taken note of the earlier decisions, found that the matter in issue is squarely covered by a decision reported in **(2011) 2 SCC 429 (State of Rajasthan Vs. Daya Lal)** and set aside the said judgment and in the light of the said judgment, there cannot be any positive direction for regularization of Part Time employees by the Courts and however, if the concerned official respondents want to take a call and pass orders for regularization of services of even part time employees, the Courts have nothing to say, unless the legality of the said orders are challenged on tenable grounds.

21. The judgments relied on by the learned counsel appearing for the first respondent/writ petitioners have no application to the case on hand for the reason that they pertain to casual workers and that apart, a scheme of regularization was operative only from the date of issuance of the Government Order.

22. Now, coming to the case on hand, after the impugned orders are passed, the second appellant, vide Lr.No.D7/8530/2019, dated 02.05.2019, sent a communication to the Directorate of Rural Development and Panchayat Raj Department, Panagal Building, Saidapet, Chennai - 15, making a positive recommendation to obtain orders regarding the regularization of the respective writ petitioners in light of the legal opinion given by the learned Additional Government Pleader.

23. It is very pertinent to point out at this juncture that though the services of the writ petitioners are temporary/part-time in nature and the consolidated pay is said to have been paid out of the Contingent Funds, the fact remains that their requirement is perennial and continuous in nature and their presence is required almost throughout the day/year for doing sanitary work of cleaning and dusting of the premises.

24. It is also to be noted at this juncture that so far, the writ petitioners have rendered nearly more than 30 years of continuous service without any blemish or stigma and in the light of the recommendation made by the second respondent and also in the light of the observations made in this judgment, the concerned authorities/official respondents shall pass appropriate orders in accordance with law. It is further made clear that if any positive order is passed regularising the services of the private respondents/writ petitioners, the actual monetary benefits shall be from the date of Government Orders and further for the purpose of pension and other benefits, it should be notionally calculated from the date of regularization. This judgment is being passed in the peculiar circumstances of the case and as such, it cannot be cited as a precedent for regularization of Part-Time employees or for



salary or remuneration of the said employees, which is paid out of Contingent Fund.

25. In the result, both the writ appeals are dismissed, subject to the above observations. The appellants/official respondents are directed to act on the letter of the second appellant, vide Lr.No.D7/8530/2019, dated 02.05.2019 and pass appropriate orders as expeditiously as possibly and not later than 12 weeks from the date of receipt of a copy of this judgment. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petitions are also dismissed.

Sd/-

Deputy Registrar (Accounts)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

VS

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai.
- 2.The Project Director,
Kanyakumari District Rural,
Development Agencies,
Collectorate Complex,
Nagercoil,
Kanyakumari District.



3.The District Collector of
Kanyakumari District and
Chairman and DRDA
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W.A(MD)No.989 and 990 of 2019
and

C.M.P (MD) Nos.9034, 9031 & 9033 of 2019
31.07.2020

VB (18.08.2020) 10P 4C