

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.03.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.20403 OF 2011

B.Magesh

... Petitioner

Vs.

1. The Principal Secretary to Government of Tamil Nadu
Department of Home, Secretariat,
Fort St. George, Chennai 600 009.

2. The District Collector,
Coimbatore District,
At Coimbatore.

3. The Assistant Director,
Town Panchayat,
Coimbatore District, at Coimbatore.

4. The Executive Officer,
Thenkarai Town Panchayat
Mathipalayam, Coimbatore.

... Respondents

Prayer:

Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to regularise the services of the petitioner as Sweeper in the Special Time Scale of Pay as the 4th Respondent Town Panchayat within a stipulated time in accordance with the G.O.Ms.No.385 Finance (Salaries) Department dated 01.10.2010 on the file of the 1st Respondent.

For Petitioner : Mr.N.S.Sivakumar

For Respondents : Mr.K.Magesh
Special Government Pleader

ORDER

The prayer sought for herein is for a writ of mandamus directing the respondents to regularise the services of the

petitioner as Sweeper in the Special Time Scale of Pay at the fourth respondent Town Panchayat within a stipulated time in accordance with the G.O.Ms.No.385 Finance (Salaries) Department dated 01.10.2011 on the file of the first respondent.

2.It is the case of the petitioner that he has been temporarily or on daily wage basis had been working as Sweeper at the fourth respondent Town Panchayat for several years, despite the same, the petitioner since have not been absorbed or confirmed by posting in any substantive vacancy, the petitioner has approached this Court seeking with the aforesaid prayer.

3.When the case is taken up for final hearing, there is no representation for the petitioner. However, Mr.K.Magesh, learned Special Government Pleader appearing for the respondents, having relied upon the averments made in the counter affidavit filed by the fourth respondent being the contesting respondent, has submitted that, the petitioner has never been engaged or appointed directly in any substantive vacancy either on daily wage basis or temporary basis by the fourth respondent or any other respondents herein. However, the petitioner had been engaged by Self Help Group, for which, the Self Help Group will take the total salary or amount payable to the persons engaged by Self Help Group and that would be paid by the fourth respondent. Therefore, there is no direct employment between the petitioner and the fourth respondent. Therefore, the question of absorbing or regularising his service at the fourth respondent Town Panchayat does not arise. He would also submit that, since there are only four post of Sweepers sanctioned for the fourth respondent Town Panchayat and all the four post were filled up by regular employees and they are continuously working and therefore, no such substantive vacancy is available even to consider the candidature of the petitioner as claimed by him and moreover, since the petitioner is continuously being engaged by the Self Help Group called 'Semmozhi Magalir Self Help Group', in that capacity, he can continue and insofar as the fourth respondent is concerned, the petitioner is not a direct employee either on daily wage basis or temporary basis. Therefore, the prayer sought for by the petitioner cannot be granted, he contended.

4.I have considered the said submissions made by the learned Special Government Pleader appearing for the respondents.

5.In the counter affidavit filed by the fourth respondent, the following has been stated.

"4.As regard the averment made in para No.2 of the affidavit, it is submitted that the claim of petitioner that he has been continuously employed as

Sweeper on daily basis in the 4th respondent Town Panchayat from the year 2006, is denied as false and untrue. Perhaps, the petitioner was engaged through Self Help Group to attend solid waste management and other incidental and works of the 4th respondent. The petitioner was not appointed in any vacancy against the sanctioned post or appointed through regular recruitment process for public appointment. The Government passed G.O.Ms.No.385, Finance (P) Dept. dated 01.10.2010, to regularize the sanitary workers appointed on daily wages and continued as daily wage for more than ten years in the event of available vacancy in the Town Panchayat. Hence, the same is not applicable to the petitioner.

5. The petitioner was not engaged in any vacancy against sanctioned posts. He is working under Semmozhi Magalir SHG and the payment also transferred only to that SHG and the petitioner never paid any salary by the 4th respondent at any point of time."

6. Since the fourth respondent has categorically made the statement in the counter affidavit that, the petitioner has not been appointed or engaged by the fourth respondent and he continued to be a member of the Self Help group called Semmozhi Magalir Self Help Group and the payment payable to the Self Help Group is transferred to only that Self Help Group and the petitioner has never been paid as he has never been engaged by the fourth respondent.

7. In that view of the factual matrix, where the petitioner has not been appointed or engaged even on temporary or daily wage basis directly by the fourth respondent or any other respondent as a Sweeper or in any other capacity or in any other substantive vacancy in the fourth respondent Town Panchayat, the petitioner cannot seek any permanency or absorption from the fourth respondent.

8. Moreover, the petitioner is one of the member of the Self Help Group called Semmozhi Magalir and this has been accepted by the fourth respondent and therefore, the petitioner can continue in that capacity in Self Help Group and if at all any future vacancy arise, it is for the fourth respondent to decide as to how to fill up those vacancy, as the petitioner alone cannot be given priority when filling up the public appointment, as the same can be made as per the settled law i.e. only by inviting applications from open market, where if the petitioner, if at all is willing to make an application, he can do so, provided if any vacancy arise in future, for which, the fourth respondent or other respondents take any steps to fill up the same.

9. In that view of the matter, the prayer sought for herein cannot be accepted. Hence, the writ petition fails, accordingly it is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Principal Secretary to Government
of Tamil Nadu,
Department of Home, Secretariat,
Fort St. George,
Chennai 600 009.
2. The District Collector,
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At Coimbatore.
3. The Assistant Director,
Town Panchayat,
Coimbatore District, at Coimbatore.
4. The Executive Officer,
Thenkarai Town Panchayat
Mathipalayam, Coimbatore.

+1cc to Mr.K.Magesh, Advocate, S.R.No.19789

+1cc to Mr.N.S.Sivakumar, Advocate, S.R.No.19461

+1cc to the Government Pleader, S.R.No.19708

W.P.No.20403 of 2011

LN(CO)
CS/27/04/2021

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