



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19287 of 2021

&

W.M.P Nos.20596 & 20598 of 2021

(Through Video Conferencing)

S.Mariappan

...Petitioner

Vs

- 1.The Commissioner,
Nagapattinam Municipality,
Maraimalai Nagar, Nagapattinam - 611 001.
- 2.The Executive Officer,
Velankanni Town Panchayat,
Velankanni, Nagapattinam District.
- 3.The Speical Executive Officer,
Velankanni Town Panchayat,
Velankanni, Nagapattinam District.

...Respondents

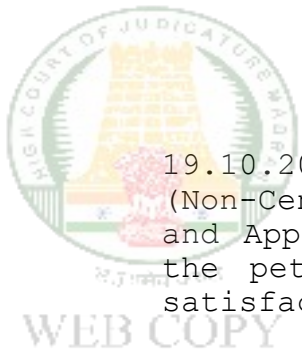
Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the proceedings in Na.Ka.No.375/2007 A1 dated 27.05.2009 of the third respondent and quash the same, consequently directing the respondents to reinstate the petitioner in service with full back wages, all consequential, attendant benefits including arrears of salary with interest.

For Petitioner	: Mr.S.Saravanan
For R1 & R2	: Mr.L.S.M.Hasan Fizal Government Advocate
For R3	: S.Arumugam Government Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

2. The petitioner was appointed as a sanitary worker in the year 1991. After serving for about 30 years the petitioner had taken leave without intimating the respondents and his whereabouts were not known. Now the petitioner wants to re-join duty. The second respondent issued a Show Cause Notice dated



19.10.2007 under the provisions of the Tamil Nadu Municipal (Non-Centralized Regular) Public Health Establishment Discipline and Appeal Rules, 1977 to show cause as to why the services of the petitioner should be terminated/dispensed with in absence of satisfactory reply/valid reasons.

3. Pursuant to the above Show Cause Notice, the petitioner has been discharged from service. It is the case of the petitioner that the aforesaid Rule has been struck down as ultra vires by the Tamil Nadu Administrative Tribunal. The learned counsel for the petitioner submits that the procedure for imposing penalty in the aforesaid rule has been struck down and Government Orders have been issued pursuant to implement the same in G.O.Ms.Nos. 153 and 154, Personnel & Administrative Reforms (F.R.III) Department dated 08.08.2000.

4. The impugned order dismissing and terminating the petitioner from service is challenged primarily on the ground that it is based on non est provision which is not in existence.

5. The learned Government Advocate for the first and second respondents submits that the impugned order was passed on 27.05.2009 and the petitioner had not come at an earlier point of time against the impugned order. Therefore, the writ petition was liable to be dismissed for laches. It appears that the petitioner also has an alternate remedy by way of an appeal before the Appointing Authority.

6. Considering the same, the writ petition filed by the petitioner is dismissed with liberty to file an appeal before the Appointing Authority. The Appointing Authority shall dispose the appeal provided the petitioner, files such an appeal within a period of thirty days from the date of receipt of this order. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb/nst
To

1. The Commissioner,
Nagapattinam Municipality,
Maraimalai Nagar, Nagapattinam - 611 001.



2. The Executive Officer,
Velankanni Town Panchayat,
Velankanni, Nagapattinam District.

3. The Special Executive Officer,
Velankanni Town Panchayat,
Velankanni, Nagapattinam District.

+1 CC to Ms.D.Geetha, Advocate, Sr.No. 46384.

+1 CC to The Government Pleader, Sr.No. 46918.

W.P.No.19287 of 2021

and

W.M.P Nos.20596 & 20598 of 2021

AK-II(CO)

LS(05/10/2021)