



W.A.(MD) No.255 of 2019
and W.P.(MD) No.23033 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
08.04.2021	21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.255 of 2019
and
C.M.P. (MD) No.2029 of 2019
Against WP(MD).12407 of 2014
and
W.P. (MD) No.23033 of 2019
and
W.M.P. (MD) No.19783 of 2019

W.A. (MD) No.255 of 2019:

The Commissioner
Bodinayakkanur Municipality
Bodinayakkanur

... Appellant/3rd Respondent

-vs-

1.V.Sivan

2.The Principal Secretary to Government
Municipal Administration and
Water Supply Department
Fort St.George
Chennai-9

3.The Commissioner of Municipal Administration
and Water Supply Department
Chepauk
Chennai-5

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 09.02.2018, passed in W.P.(MD) No.12407 of 2014, on the file of this Court.

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



Prayer in WP(MD). 12407/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned order dated 24.12.2013 passed by the 3rd respondent an dquash the same and consequently directing the respondents to regularize the petitioner s service with all monetary and attendant benefits in pursuant to the order of this Honourable Court dated 17.12.1999 made in W.P. No. 14737 of 1992, within a time stipulated by this Honourable Court.

For Appellant : Mr.M.Karuppasamy Pandian

For Respondents : Mr.J.Parekh Kumar for R1
Mr.A.Karthick
Government Advocate for R2 & R3

W.P. (MD) No.23033 of 2019:

V.Sivan ... Petitioner

-vs-

1.The Commissioner
Municipal Administration and
Water Supply Department
No.75, Santhome High Road
Chennai-600 028

2.The Commissioner
Bodinayakanur Municipality
Bodinayakanur
Theni District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents to promote the petitioner as Revenue Assistant in the office of the second respondent based on the petitioner's representation dated 06.09.2019.

For Petitioner : Mr.C.Ganesh Kumar

For Respondents : Mr.A.Karthick
Government Advocate for R1
Mr.M.Karuppasamy Pandian for R2



C O M M O N J U D G M E N T

T.S.SIVAGNANAM, J.

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The writ appeal in W.A.(MD) No.255 of 2019 has been filed by the Commissioner, Bodinayakkanur Municipality, the third respondent in W.P.(MD) No.12407 of 2014 filed by Mr.V.Sivan, who is the writ petitioner in W.P.(MD) No.23033 of 2019, against the order dated 09.02.2018 passed in W.P.(MD) No.12407 of 2014.

2. In this Judgment / Order, the parties shall be referred as the "writ petitioner" and "appellant - Municipality".

3. The writ petitioner filed W.P.(MD) No.12407 of 2014 praying for a writ of certiorarified mandamus to quash the order dated 24.12.2013, passed by the appellant - Municipality and to direct the appellant - Municipality and the official respondents in the writ appeal to regularise his services with all monetary and attendant benefits in pursuant to the order, dated 17.12.1999, passed in W.P.No.14737 of 1992.

4. In W.P.(MD) No.23033 of 2019, the writ petitioner prays for a writ of mandamus directing the official respondents to promote him as Revenue Assistant in the office of the appellant - Municipality based on his representation dated 06.09.2019.

5. Considering the relief sought for in both cases, a decision in W.A.(MD) No.255 of 2019 would be required to be rendered first as it will have a direct bearing on the relief sought for in W.P.(MD) No.23033 of 2019.

6. We have elaborately heard Mr.M.Karuppasamy Pandian, learned counsel appearing for the appellant - Municipality / Department and Mr.J.Parekh Kumar and Mr.C.Ganesh Kumar, learned counsel appearing for the writ petitioner and Mr.A.Karthick, learned Government Advocate appearing for the official respondents.

7. The writ petitioner challenged the order passed by the appellant - Municipality, dated 24.12.2013, by which the request made by him to regularise his services from 01.03.1988 was rejected on the ground that during the relevant time, the writ petitioner was on consolidate wage basis and his services were rightly regularised from 23.02.2006. The writ petitioner placed reliance on the order and direction issued in a batch of cases in W.P.Nos.14737 of 1992 etc. batch, dated 17.12.1999, wherein certain directions were issued for considering the cases of



Municipal employees, who have completed 240 days of continuous service to be reinstated with all backwages and benefits.

8. The question would be whether based on the said decision, can the services of the writ petitioner be regularised with retrospective effect as demanded by him i.e. from 01.03.1988. It is not in dispute that the writ petitioner was appointed on consolidated wage basis of Rs.1,700/- per month in the office of the appellant - Municipality and he was posted to take care of the drinking water maintenance. The Government, taking note of all the issues probably to alleviate the grievances of such employees on consolidated wage, by G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999, brought such employees into regular time scale of pay after completion of one year. The learned Writ Court had allowed the writ petition, by order dated 09.02.2018 and subsequently, the matter was posted under the caption for being mentioned and the Court allowed the writ petition by issuing certain additional reasons. These two orderes are impugned in this writ appeal.

9. Firstly, it is to be pointed out that the writ petitioner was brought into regular time scale of pay with effect from 23.02.2006, as per G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006. The admitted fact, as noted by the learned Writ Court, is that the writ petitioner did not challenge the said Government Order, but accepted it without demur and was granted all consequential benefits pursuant to being brought into regular time scale of pay with effect from 23.02.2006. The objections raised by the appellant - Municipality in this regard were rejected by the learned Writ Court as being a technical objection. We are not agreeable with the said finding as it is a very valid objection especially when the employee has accepted the terms and conditions of the Government Order and became an employee of the appellant - Municipality in a regular time scale of pay and thereafter, he would be estopped from questioning the date from which he was brought under regular time scale of pay and seeking for an anterior date. Further, the writ petitioner has not gone through the recruitment process. Rather, he is a backdoor entrant having been employed on consolidate wage basis and therefore, it would not lie in the mouth of the writ petitioner to contend that he should be brought into the regular time scale of pay much earlier. Regularisation of services of such irregularly and illegally appointed persons has been deprecated by the Honourable Supreme Court. In any event, regularisation of service is a concession extended by the Government and therefore, there is no vested right on the part of the writ petitioner to state that he should be regularised from a particular date.



10. Further, the learned Government Advocate appearing for the official respondents submitted that the decision of the Honourable Full Bench of this Court in Rev.Aplc.(MD) No.87 of 2014 in W.A.(MD) No.729 of 2013, dated 30.05.2017, has been stayed by the Honourable Supreme Court.

11. Be that as it may, we are fully convinced that the writ petitioner was not entitled for any remedy considering the facts and circumstances of the case and he having accepted the terms and conditions imposed in G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006. Further, we also take note of the order issued by the appellant - Municipality engaging the services of the writ petitioner on consolidate wage of Rs.1,700/- per month and the order clearly states that he is not entitled to any backwages on account of such engagement on consolidate wage basis. These conditions were accepted by the writ petitioner.

12. For the above reasons, we find that the Writ Court ought not to have granted the relief sought for by the writ petitioner. Consequently, the writ appeal is liable to be allowed.

13. The claim of the writ petitioner in W.P.(MD) No.23033 of 2019 is based upon the claim, which is the subject matter of W.A.No.255 of 2019 filed by the appellant - Municipality. Since we are to allow the writ appeal, no relief can be granted in W.P.(MD) No.23033 of 2019 and the same is liable to be dismissed.

14. In the result,

- (i) W.A.(MD) No.255 of 2019 is allowed and the order dated 09.02.2018, passed in W.P.(MD) No.12407 of 2014 is set aside. Consequently, W.P.(MD) No.12407 of 2014 is dismissed.
- (ii) W.P.(MD) No.23033 of 2019 is dismissed.
- (iii) No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

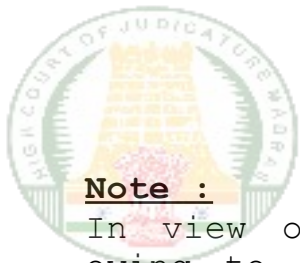
Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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Note :

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

To:

- 1.The Principal Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai-9.
 - 2.The Commissioner of Municipal Administration
and Water Supply Department,
Chepauk, Chennai-5.
 - 3.The Commissioner,
Municipal Administration and
Water Supply Department,
No.75, Santhome High Road,
Chennai-600 028.
- +1 CC to M/s.SPL GP (SR-17152, 17149[F] dated 22/04/2021)
- +1 CC to M/s.J.PAREKH KUMAR, Advocate (SR-17250[F] dated 23/04/2021)
- +1 CC to M/s.C.GANESH KUMAR, Advocate (SR-16874[F] dated 21/04/2021)

COMMON JUDGMENT IN
W.A. (MD) No.255 of 2019
and C.M.P. (MD) No.2029 of 2019
and W.P. (MD) No.23033 of 2019
and W.M.P. (MD) No.19783 of 2019
21.04.2021

vr (CO)
TR(05.05.2021) 6P 7C