



IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated 02.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.26380 of 2009 and
M.P.No.1 of 2009

R. Raja ... Petitioner

Vs.

1. Commissioner, Salem Municipal Corporation,
Salem.

2. Assistant Commissioner,
Salem Corporation, Ward No.4,
Kodalampatty.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the second respondent, in his proceedings Na,Ka.No.M7/2278/2001 dated 24.09.2001 and quash the same and direct the respondents to reinstate the petitioner in service and confer all the consequential benefits.

For petitioner : Mr.P.Ganesan
for M/s C.S.Associates

For respondents : Mr.K.Sridhar for R1

Mr.G.Sankaran for R2.

ORDER

This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the second respondent, in his proceedings Na.Ka.No.M7/2278/2001 dated 24.09.2001 and quash the same and direct the respondents to reinstate the petitioner in service and confer all the consequential benefits.

2. The case of the petitioner in brief:

The petitioner was selected through Employment Exchange and was appointed as Sanitary Worker in the respondent



Corporation on 31.03.2000, under regular vacancy, on consolidated pay. The petitioner was placed under suspension on 24.09.2001 by the second respondent's proceedings dated 24.09.2001. On enquiry, it was replied by the respondents that a criminal case in Crime No.1182 of 2001 on the file of Kondalmapatty Police Station was pending against the petitioner and his mother, and charge sheet was filed for the offence under Section 498A and 304 B. The petitioner made a representation to the second respondent to revoke the suspension order and to reinstate him in service. But it was not considered. Subsequently, the criminal case in S.C.No.30/2005 was ended in acquittal by judgment dated 11.12.2007. Again he made representation on 12.05.2008 along with the order of acquittal to reinstate him in service. But the respondents have not revoked the suspension order. Hence this writ petition.

3. The contentions of the respondents in brief:

The petitioner was appointed on consolidated pay and the appointment itself was on temporary basis. As per G.O.Ms.No.21 dated 23.02.2006, the NMRs, who have been continuously employed till the year 2006, have been brought into time scale of pay with regularization of service with effect from 23.02.2006, based on the eligibility and assessment of merit. But the petitioner was engaged beyond 2001 and there is no provision in Corporation Service Rules or Government Orders to regularize a person, who was not engaged as NMR from 2001 onwards. Therefore, there is no scope for re-appointment, as the petitioner was on consolidated pay. Further, the petitioner was not made eligible for regular service, in the absence of continuity of service on consolidated pay. Hence the above G.O. is not applicable to the petitioner and the writ petition is not maintainable.

4. The learned counsel appearing for the petitioner submitted that, the above said criminal case in S.C.No.30/2005 was ended in acquittal on 11.12.2007. Though the petitioner made representations, the respondents have not revoked the suspension order and permitted the petitioner to continue his service as Sanitary Worker and include his name for promotion to the post of driver. He further submitted that, no Subsistence Allowance was paid to the petitioner, during the suspension period and therefore, the suspension order may be revoked and consequently, the respondents may be directed to reinstate the petitioner in service and to pay the Subsistence Allowance for the suspension period.

5. The learned counsel appearing for the respondents submitted that, since the petitioner was appointed on consolidated pay and his appointment was only on temporary basis, he is not entitled for Subsistence Allowance, which has been specifically mentioned in the impugned suspension order. he further submitted that the NMRS have been regularized as



per G.O.Ms.No.21 dated 23.02.2006, since they were continuously employed on the date of Government order. But the petitioner was engaged after 2001 only on consolidated pay and not as NMR and hence, there is no provision in Corporation Service Rules or Government Orders to regularize a person, who was not engaged as NMR from 2001 onwards. Hence this writ petition is liable to be dismissed.

6. Heard the learned counsel appearing for both the parties and I have perused the materials on record.

7. It is not the disputed facts that the petitioner was appointed on consolidated pay as sanitary worker under the respondent Corporation and his appointment was purely on temporary basis. However, since a criminal case was pending against the petitioner, the respondents have issued suspension order vide proceedings dated 24.09.2001. The contention of the petitioner is that he is entitled for Subsistence Allowance from the date of issuing suspension order. It is to be noted that till today, no final order has been passed in the disciplinary proceedings, either revoking the order of suspension, or removing the petitioner from service. It is an admitted fact that the petitioner was engaged as a consolidated employee on the date of suspension order issued. In such circumstances, the respondents ought to have passed final order by taking note of the judgement passed in the criminal case against the petitioner. Though the petitioner made representations before the respondents, they were placing the petitioner under suspension all these years, without passing any final order. Therefore, the petitioner is certainly entitled for Subsistence Allowance during the period of suspension.

8. At this juncture, the learned counsel appearing for the respondents Corporation submitted that, similarly placed persons, who worked at the time of suspension order, were regularized by virtue of G.O.Ms.No.21 dated 23.02.2006. However, according to the respondent, there is no Rule or Provisions to grant Subsistence Allowance to the petitioner.

9. The learned counsel appearing for the petitioner submitted that, if the petitioner's request is considered by the respondent Corporation for reinstatement of service, the petitioner will not insist upon the Subsistence Allowance and back wages for all these years of suspension period.

10. Subsequent to the suspension order, the respondent has not passed any final order, despite notice being serviced to them. Therefore, considering the submissions made by the counsel for the petitioner that the petitioner is insisting only upon the reinstatement of service, by giving up his right of Back wages and Subsistence Allowance; and also taking into account the fact that similarly placed persons, working in the respondent Corporation at the time of passing suspension order



were regularised by the respondent; and further there is a delay and failure on the part of respondent to take final decision; this court is of the view that the respondent Corporation has to take positive decision on the representation of the petitioner to reinstate him in service as a fresh recruit. In such event, the Writ petitioner is not entitled for any back wages and Subsistence Allowance.

11. Accordingly, it is ordered as follows.

i) The petitioner shall make representation, afresh, before the respondent Corporation, within two weeks from the date of receipt of copy of this order.

2. On such representation being made by the petitioner, the respondent Corporation shall consider the petitioner's representation to reinstate him and to regularise his service on par with the similarly placed persons, as per G.O.Ms.No.21 dated 23.02.2006, as a special case, within 12 weeks from the date of receipt of a copy of this order.

12. With the above directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mst
To

1. The Commissioner, Salem Municipal Corporation,
Salem.

2. Assistant Commissioner,
Salem Corporation, Ward No.4,
Kodalampatty.

+1 cc to Mr.G.Sankaran, Advocate Sr.NO. 6651

W.P.No.26380 of 2009

PMK (CO)
A.SK(25/03/2022)