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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.5556 of 2022

C.Kasi

... Petitioner

vs.

1.The Secretary to Govt of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai-9.

2. The Director of Town Panchayat,
Kuralagam Buildings, Chennai - 108.

3. The Assistant Director of Town Panchayat,
Vellore District.

4. The Executive Officer,
Vilapakkam First Grade Town Panchayat,
Vilapakkam, Vellore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the first and second respondent to consider and pass final order on the proposal of the 4th respondent dated 17.05.2017 in Na.Ka.No.12/2009 within the stipulated time by incorporating petitioner's son namely Thiru Sankar, instead of Thiru Panchanathan.

For Petitioner : Mr.P.L.Thirumoorthy

For Respondents : Mr.A.M.Ayyadurai, Govt.Advocate
for R1 and R2.

Mr.B.C.Durairaj, Addl.Govt.Pleader,
for R3 and R4.



O R D E R

This writ petition has been filed seeking to issue a Writ of Mandamus, directing the first and second respondent to consider and pass final order on the proposal of the 4th respondent dated 17.05.2017 in Na.Ka.No.12/2009 within the stipulated time by incorporating petitioner's son namely Thiru Sankar, instead of Thiru Panchanathan.

2. The case of the petitioner in brief:

The petitioner's husband namely Chakravarthi was an employee of the fourth respondent and he was initially engaged as NMR Sweeper on 01.10.1984 and after rendering 14 years continuous unblemished service, he was appointed as consolidate pay sweeper with effect from 01.01.1998, in terms of G.O.199 MAWSS Dept dated 12.08.1997. As per this Government Order, on completion of three year satisfactory consolidated pay service, the concerned employee would be brought under regular time scale. Pursuant to the said Government Order, several employees were brought under regular time scale. But the then Executive Officer had delayed to send the proposal to the Head office and hence, he was not brought under regular time scale of pay. Further more, since the general ban was imposed by Government of Tamilnadu in the month of November 2001, all regularization process was completely stopped in Town Panchayats till June 2006. In the meanwhile, while he was in service, he died on 27.03.2001, leaving behind the petitioner, his sons and daughter as legal heirs.

2.1. The petitioner sent applications dated 31.01.2002 and 01.04.2002 to the fourth respondent for settlement of retirement benefits and also seeking compassionate appointment to her son. But it was rejected by the fourth respondent on 17.05.2002, on the ground that the legal heirs of the deceased, who was working on consolidated pay, are not entitled to claim compassionate appointment and retirement benefits.

2.2. Thereafter, the petitioner filed W.P.No.11948 of 2014 seeking to bring the service of her husband under regular time scale, from the date on which he completed 3 years in the category of consolidated pay and to give employment to her son Panchanathan. The above writ petition was disposed of along with batch of writ petitions by the Division Bench of this court dated 01.09.2015, directing the authorities to bring the employees under regular time scale from the date on which they completed three years consolidated pay service. Based on the above order, the 4th respondent sent the proposal to the second



respondent on 17.05.2017 through the third respondent, seeking permission to grant regular time scale of pay and is pending before the government without any progress. Hence this writ petition.

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3. Heard the learned counsels appearing to both the parties.

4. The legal issue has already been decided by the Hon'ble Supreme Court of India in Civil Appeal No.8564 of 2015 between State of Madhya Pradesh & Others Vs. Amit Shrivastava dated 29.09.2020, wherein, it is held as follows.

"15. Insofar as providing succor is concerned, unfortunately, since the demise of the late father of the respondent, 11 years have passed and really speaking, the aspect of providing succor to the family immediately does not survive. We have still examined the matter in the conspectus of the applicable policy. It is not in question that the policy prevailing was one dated 18.08.2008. Clause 12.1 clearly proscribes work charge/contingency fund and daily wager employees from compassionate appointment. The gravamen of the submission of the respondent is based on the classification of his late father as a permanent employee on account of having worked for more than 15 years and the consequent regularization of his service.

16. In our view, the aforesaid plea misses the point of distinction between a work-charged employee, a permanent employee and a regular employee. The late father of the respondent was undoubtedly a work-charged employee and it is nobody's case that he has not been paid out of work-charged/ contingency fund. He attained the status of permanent employee on account of having completed 15 years of service, which 2 State of Gujarat & Ors. V. Arvindkumar T.Tiwari & Anr., (2012) 9 SCC 545 entitled him to certain benefits including pension and Krammonati. This will, however, not ipso facto give him the status of a regular employee.

17. In the aforesaid behalf, an analogy can be drawn with the Madhya Pradesh Industrial



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Employment (Standing Orders) Rules, 1963, under which employees can be classified as permanent, permanent seasonal, probationers, badlis, apprentices, temporary and fixed-term employment employees. A work-charged contingency employee can also be classified under any of the aforementioned categories and under the said Standing Orders, the classification as permanent can be granted even on the completion of 6 months service in a clear vacancy.

.....

21. Thus, the classification of the late father of the respondent as a permanent employee, and this distinction between a 'permanent' status and a 'regular' status appears to have been lost sight of in the impugned judgments.

5. In the light of the above said decision of the Hon'ble Supreme Court of India, the relief sought for by the petitioner in the present writ petition cannot be considered and the same is liable to be dismissed.

6. Accordingly, this writ petition stands dismissed.
No costs.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

mst

To

1. The Secretary to Govt of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai-9.
2. The Director of Town Panchayat,
Kuralagam Buildings, Chennai - 108.
3. The Assistant Director of Town Panchayat,
Vellore District.



4. The Executive Officer,
Vilapakkam First Grade Town Panchayat,
Vilapakkam, Vellore District.

+1cc to Mr.Thirumoorthy, Advocate SR.No.17189
+1cc to the Government Pleader, SR.No.17030

W.P.No.5556 of 2022

MG (CO)
CB (03/06/2022)