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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3833 of 2014

MP.No.1 of 2014

1.G.Tamilmani

2.D.Baskar

...Petitioners

-Vs-

1. The Secretary to Government,
Municipal Administration and Water Supply
Department, Fort St.George, Chennai 9.

2. The Director of Municipal Administration,
Chepauk, Chennai 5.

3. The Commissioner,
Pallavaram Municipality, Chennai 44.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the third respondent in his Pro.Na.Ka.No.6888/2012/C1 dated 22.01.2014 and consequently recovery order in his Pro.Na.Ka.No.6888/2012/C1 dated 27.01.2014 and quash the same.

For Petitioners : Mr.A.Baskaran

For Respondents : M/s.S.Anitha (for R.1 & R.2)
Special Government Pleader
Mr.P.Srinivas (for R.3)

ORDER

The order of the recovery dated 22.01.2014 is under challenge in the present writ petition.

2. The petitioners were employed as Wiremen Helper on daily wages basis (NMR) in the Pallavaram Municipality. The initial appointment of the petitioners were made on consolidated pay



basis. They continued in service for several years. Subsequently, the service of the writ petitioners were regularized based on the G.O issued in G.O.Ms.No.21 of Municipal Administration and Water Supply Department dated 23.03.2006.

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3. The grievance of the writ petitioners is that though their services were regularized pursuant to the G.O and Orders of the Court from the date of their initial appointment and benefits are also settled, now, the respondents has issued impugned order to recover the arrears already paid to the employees.

4. The learned counsel for the petitioner made a submission that the benefits were granted pursuant to orders passed by this Court in W.P.No.17025 of 2012 dated 30.07.2012. Thus, the recovery order impugned without issuing show cause notice is liable to be set aside. It is contended that the said order of this Court reached finality.

5. The learned counsel for the respondent / municipality objected the said contention by stating that the issues regarding the regularization of the service of these temporary employees from the date of initial appointment as consolidated employees are now sub-judice before the Hon'ble Supreme Court of India. Initially the Hon'ble Full Bench of this Court rejected the claim of these temporary employees. Subsequently, in a Review Application filed by the employees, the Hon'ble Full Bench reviewed its own judgment in Review Application (MD) No.87 of 2014 and granted benefit of regularization from the date of initial appointment as temporary employees.

6. The learned counsel for the respondent / municipality made a submission that the said Full Bench judgment was taken by way of appeal before the Hon'ble Supreme Court of India in SLP Nos.21249 of 2017 and 22176 of 2017 and the Hon'ble Supreme Court of India granted interim stay of the judgment of Hon'ble Full Bench passed in Review Application on 15.09.2017. The stay granted is in force and the appeal is sub-judice before the Hon'ble Apex Court of India. Therefore, the rights of the employees are to be crystallized only after the disposal of the appeal by the Hon'ble Supreme Court of India.

7. In these circumstances, any order in the present writ petition would cause prejudice to either of the parties. The rights of the employees to be crystallized by the Hon'ble Apex Court of India in the pending appeal. The respondents have issued the impugned order based on the fact that the petitioners are not entitled for the arrears of pay as they are not liable for retrospective regularization from the date of expiry of 3 years from the consolidated pay service.



8. In view of the fact that the issues are sub-judice before the Hon'ble Supreme Court of India, the rights of the petitioners are to be decided only after the disposal of the Special Leave Petition. Thus, it is made clear that the decision to be taken by the Hon'ble Apex Court is to be made applicable to the petitioners and also for the purpose of extending the benefit of regularization and for grant of consequential benefits. Till the time the appeal is disposed of by the Hon'ble Supreme Court of India, the proposed recovery alone shall be kept in abeyance.

9. With the above observations, the writ petition stands disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mrm

To

1. The Secretary to Government,
Municipal Administration and Water Supply
Department, Fort St.George, Chennai 9.
2. The Director of Municipal Administration,
Chepauk, Chennai 5.
3. The Commissioner,
Pallavaram Municipality, Chennai 44.

+1cc to Mr.A.Baskaran, Advocate, S.R.No.33266

+1cc to the Government Pleader, S.R.No.33629

W.P.No.3833 of 2014
M.P.No.1 of 2014

PL (CO)
UMA (21/06/2022)