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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-06-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.1614 of 2014

S.Thirumoorthy

..Petitioner

vs.

1. The Secretary to Government,  
Municipal Administration and Water Supply  
Department,  
State of Tamil Nadu,  
Fort St. George,  
Chennai - 600 009.

2. The Commissioner of Municipal Administration,  
Chepauk,  
Chennai - 600 005.

3. The Commissioner,  
Pollachi Municipality,  
Pollachi - 642 001,  
Coimbatore District.

..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to third respondent's proceedings Na.Ka.No.H1/11539/99/H1 dated 26.05.2006 and quash the same in so far as regularisation of the service of the petitioner is concerned from the date of order and consequently direct the respondents herein to regularise the service of the petitioner in time scale of pay after completion of one year service from the date of his appointment made pursuant to and in accordance with G.O.Ms.No.71 M.A. & W.S. Department, dated 05.05.1998 with all attendant benefits.

For Petitioner : Ms.S.Parameshwari for  
Mr.M.Muthappan.

For Respondents-1 and 2 : Mr.L.S.M.Hasan Fizal,  
Additional Government Pleader.

For Respondent-3 : Ms.Selvi George



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## O R D E R

The order granting regular time scale of pay to the writ petitioner with effect from 23.02.2006 in proceedings dated 26.05.2006, is under challenge in the present writ petition.

2. The writ petitioner was appointed as Badli Sanitary worker in the third respondent-Municipality in the year 1986 through Employment Exchange. The petitioner states that he was initially appointed as consolidated pay employee as per G.O.Ms.No.71, dated 05.05.1998. The petitioner was continued in service for more than 10 years. Though the petitioner is eligible for regularisation, it was not granted and the time scale was also denied. In the meantime, the first respondent issued G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006 to regularise the services of the employees who had worked on the consolidated pay and NMR on daily wages in Municipalities, Corporation and Grade-III Municipalities. The third respondent in proceedings dated 26.05.2006, regularised the services of the writ petitioner and brought the writ petitioner in regular time scale of pay from the date of order on 26.05.2006. Thus, the petitioner is constrained to move the present writ petition.

3. The learned counsel for the petitioner mainly contended that the writ petitioner was initially appointed as temporary employee on 10.11.1999. Therefore, he is entitled to be regularised from the date of initial appointment. However, the benefit of regularisation and regular time scale of pay was granted to the petitioner only with effect from 23.02.2006, which is not in accordance with law.

4. The learned Additional Government Pleader appearing on behalf of respondents 1 and 2 objected the said contention of the learned counsel for the petitioner by stating that the temporary employees who were not appointed in accordance with the Recruitment Rules in force, are not eligible for regularisation. The Government took a decision by taking a sympathetic view and granted the benefit of regularisation to all the employees who were temporarily appointed and working for more than 10 years and therefore, such a concession cannot be granted with retrospective effect, which would cause financial implication to the State Exchequer.

5. Regularisation or permanent absorption cannot be claimed as a matter of right. The benefit of regularisation is to be granted strictly in accordance with the Rules in force. Persons appointed irregularly or illegally are not entitled for the benefit of regularisation or permanent absorption.



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6. During the relevant period of time, the Government had taken a decision and granted the benefit of regularisation considering the length of service rendered by those temporary employees who were not appointed in accordance with the Rules in force. Therefore, the concession extended to those employees cannot be further extended for the purpose of granting retrospective regularisation from the date of initial appointment. The Government itself has extended the benefit of regularisation in respect of those temporary employees on completion of their 10 years of service and regular time scale of pay was granted from the date of issuance of Government Order in force. In view of the fact that the benefit of regularisation and time scale of pay was granted by way of concession, the Court cannot extend such a concession by granting retrospective regularisation and in the event of granting any such relief that would result in huge monetary loss to the State Exchequer and therefore, the claim of the writ petitioner cannot be considered in this writ petition.

7. Beyond the merits involved in the present case, the order impugned regularising the services of the writ petitioner and granting the time scale of pay was issued by the third respondent in proceedings dated 26.05.2006 and the present writ petition was filed on 08.01.2014 i.e., after a lapse of about 8 years from the date of passing of the impugned order. Thus, the writ petition is liable to be dismissed on the ground of laches also.

8. The Hon'ble Full Bench of this Court in the case of Secretary to Government, Municipal Administration and Water Supply Department vs. V.Marisamy [2017 (3) CTC 673], rejected the claim of the employees for retrospective regularisation. However, the Full Bench in Review Petition allowed the claim of the employees for retrospective regularisation. It is brought to the notice of this Court that the said judgment of the Full Bench in Review Petition was taken by way of an appeal before the Hon'ble Supreme Court of India in SLP No.21935 of 2017 dated 15.09.2017 and an interim stay was granted. The said appeal is pending before the Apex Court. In view of the interim stay granted by the Hon'ble Supreme Court of India, the benefit of the order passed by the Full Bench in Review Petition cannot be extended to the writ petitioner. Further, the writ petition itself has been filed after a lapse of about 8 years.

9. Under these circumstances, if at all the benefits are extended by the Hon'ble Supreme Court of India in the pending appeal, it is for the petitioner to approach the Competent Authorities thereafter. Thus, it is made clear that the relief as such sought for in the present writ petition, cannot be granted as the issues are subjudiced before the Hon'ble Supreme



Court of India. The petitioner is at liberty to approach the authorities after disposal of the appeal by the Hon'ble Supreme Court of India.

10. With the abovesaid observations, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Secretary to Government,  
Municipal Administration and Water Supply Department,  
State of Tamil Nadu,  
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Chennai - 600 009.
2. The Commissioner of Municipal Administration,  
Chepauk,  
Chennai - 600 005.
3. The Commissioner,  
Pollachi Municipality,  
Pollachi - 642 001,  
Coimbatore District.

+1cc to Mr.M.Muthappan, Advocate SR. No. 32521

WP 1614 of 2014

SVI (CO)  
PR (15/06/2022)