



W.P.(MD).Nos.9124, 9125, 9126, 9127, 9128, 9129, 9130, 9131, 9132, 9133, 9134, 9135, 9136, 9137, 9138, 9139, 9140, 9141, 9142, 9143, 9144, 9145, 9148 and 9149 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :28.11.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.9124, 9125, 9126, 9127, 9128, 9129, 9130, 9131, 9132, 9133, 9134, 9135, 9136, 9137, 9138, 9139, 9140, 9141, 9142, 9143, 9144, 9145, 9148 and 9149 of 2013

and

M.P(MD).Nos.2, 2, 2, 2, 2, 2, 2, 2, 2, 2, 2, 2, 2, 1, 2, 2, 2, 2, 2, 2, 2 of 2013

W.P.(MD).No.9124 of 2013:

Madurai City Municipal Corporation,
Represented by its Commissioner,
Aringar Anna Maligai, Madurai.

... Petitioner

Vs.

1.The Inspector of Labour,
No.76, Keela Marat Street,
Madurai.

2.P.Manimurugesan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the proceedings of the first respondent made in Na.Ka.No.3182/2011, C.P.S.No.21 of 2011 dated 24.07.2012 and quash the same.

(In all Writ Petitions):

For Petitioners : Mr.Veera Kathiravan,
Additional Advocate General,
Assisted by,
Mr.R.Murali



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For R-1 : Mr.P.Thambi Durai,
Government Advocate.

For R-2 : Mr.G.Karthik,
For Mr.T.Lajapathiroy.

COMMON ORDER

These Writ Petitions have been filed challenging the order passed by the Labour Court officer dated 24.07.2012.

2. The petitioner is the Commissioner, Madurai City Municipal Corporation. The Avaniyapuram Municipality is a 3rd Grade Municipality comes under Tamil Nadu District Municipalities Act, 1920 and during October 2011, the Avaniyapuram Municipality area was merged with the Madurai Municipal Corporation. The erstwhile Avaniyapuram Municipality on experimental basis had implemented the Solid Waste Management System in certain parts of its Municipality limits. In respect of Municipal Wards 8 to 20, the said scheme was introduced. Under the scheme the “Solid Waste” will be collected at door step and would be segregating the same as organic waste and inorganic waste. The said scheme was implemented with the assistance of “Safai Karmacharies”. The then Municipality through its proceedings dated 27.02.2007 has given the solid waste management work to two Women Self



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Help Groups namely, “Kalpna Chawla Self Help Group” and “Jhansi Rani Self Help Group”. Totally, 13 Municipal Wards were given to the aforesaid Self Help Groups.

3. The Municipality had not engaged any individual in the solid waste management work but leased the work to the Self Help Groups only under certain conditions. The Self Help Groups through their members undertook the work of cleaning. The fixed charges were paid to the Self Help Groups only and not to any individuals. None of the members of Self Help Groups directly received any amount from the Municipality or Corporation. The second respondent and other 25 persons jointly made representations to regularize their service and filed W.P.(MD).No.5941 of 2011 and this Court vide order dated 24.06.2011 directed the Avaniyapuram Municipality to consider and pass orders. The Government through its proceedings dated 10.09.2011 has advised the Municipality that the member of Self Help Group are not entitled to be made permanent. The reason stated in the proceedings is that the post of Sweeper has to be filled up in terms of Tamil Nadu Municipalities Sanitary Workers Service Rules. Based on the advice of the Government, the Municipality through its proceedings dated 05.08.2011 has communicated their stand to the second respondent and other persons and rejected their request. The



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WEB COPY said order was not at all challenged by the second respondent and other persons. One of the co-worker has already filed W.P.(MD).No.11042 of 2011 and the same is pending.

4. The first respondent has passed an order invoking the Conferment of Permanent Status Act. The Municipality objected before the first respondent and submitted that they are not employed directly by the Municipality or by Corporation at any point of time. In spite of the same, the first respondent has passed an order directing the petitioner to regularize the service of the second respondent and other similarly placed persons. Without considering the objections submitted by the Municipality, the first respondent has allowed the claim petitions filed by the second respondents. Aggrieved over the same, the present Writ Petitions are filed.

5. The learned counsel appearing for the petitioner submitted that similarly placed persons had already filed W.P.(MD).No.12609 of 2011 and this Court vide order dated 07.06.2019 had rejected their claim and dismissed the Writ Petition. Some of the persons who have filed W.P.(MD).No.12609 of 2011 are also petitioners in the present writ petition.



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6. The learned counsel appearing for the second respondents submitted that the Hon'ble Division Bench in W.A.(MD).Nos.1163 of 2016 batch has also considered this issue in the case of Madurai Municipal Corporation itself and has granted regularization. By relying on the said judgment the second respondents submitted that they are entitled to regularization. The Hon'ble Division Bench has granted regularization and has also observed since the State and Central Government are welfare Governments, they are supposed to consider the regularization of the Sanitary Workers and Sweepers. By not regularizing the said workers the Government is following the unfair labour practice. But the learned counsel appearing for the petitioner submitted that the judgment cannot be relied on, since the persons covered under the judgment are Daily Wage Workers and they were directly employed by the Municipality and they are working in the Municipality. Moreover, against the said judgment, the Municipality has preferred Appeal before the Hon'ble Supreme Court and the same is pending.

7. Heard Mr.Veera Kathiravan, the Learned Additional Advocate General, assisted by, Mr.R.Murali, appearing for the petitioner and Mr.P.Thambi Durai, Learned Government Advocate for the first respondent and Mr.G.Karthik,



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Learned Counsel for Mr.T.Lajapathiroy, appearing for the second respondents and perused the records.

8. The admitted fact by both the petitioner and the second respondents is that the second respondents have formed Self Help Group under the name of Kalpna Chawla Self Help Group and Jhansi Rani Self Help Group. The Municipality has granted the said work ever year to these two groups under lease agreement. The concept of Self Help Group was formulated to grant self-employment to women folk. This can never be considered that the individual women were engaged individually by the Municipal Corporation. It is a scheme and any person working under any scheme can never seek either regularization or permanency. On this ground itself, the claim of the second respondents cannot be entertained.

9. The Labour Court Officer has categorically recorded that they are working under the scheme of Self Help Group. In such circumstances, the Labour Officer has erred in stating they are engaged by the Municipal Corporation and they are entitled to regularization. The Labour Officer ought to have considered the concept of Self Help Group and come to the conclusion.



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The Labour Officer has terribly erred in this case and this Court has no hesitation to set aside the order passed by the Labour Officer.

10. In such complicated question of facts, the Labour Officer has no power to entertain this Petition filed by the second respondents. The issue was considered by the Hon'ble Division Bench in the case of ***Superintending Engineer Vs Inspector of Labour reported in 2022 SCC Online MAD 1003***. The Hon'ble High Court has held that the power to consider such complicated questions lies only with the Labour Court and not Labour Officer under Permanency Act. On this angle also, the petitioner is entitled to the relief. Hence, the impugned orders are set aside.

11. If this kind of cases are entertained, it will lead to recognizing another method of recruitment. All Self Help Groups would seek regularization which will be against the constitutional mandate of public employment and hence, the claim of the second respondents cannot be allowed.



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12. In view of the above, the impugned orders are quashed and the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

28.11.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To
The Inspector of Labour,
No.76, Keela Marat Street,
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S.SRIMATHY, J.

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