



WEB COPY

W.A(MD)No.438 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **13.06.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.438 of 2022

P.Krishnan

... Appellant/Petitioner

Vs.

1.The Principal Secretary to Government of Tamilnadu,
Municipal Administration and Water Supply Department,
Secretariat,
Fort St. George,
Chennai.

2.The Director,
Directorate of Town Panchayat,
Kuralagam,
Chennai.

3.The Assistant Director(Town Panchayat),
Tirunelveli Zone,
Tirunelveli District.

4.The Executive Officer,
Kalugumalai Town Panchayat,
Thoothukudi District.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court dated 09.03.2022 in W.P(MD)No.3326 of 2019.

Prayer in WP(MD) . 3326 OF 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to calling for the records of the 4th respondent herein in his proceedings in A.VU.No.60/2011 dated 28.06.2018 quash the same and to direct the Respondents to regularise the petitioners service from the date of 19.06.2001 with all benefits and back wages

For Appellant

:Mr.G.Chandrasekar

For Respondents

:Mr.S.P.Maharajan,

Special Government Pleader



JUDGMENT

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

The writ appeal is filed by the writ petitioner in W.P(MD)No.3326 of 2019, aggrieved by the order of the learned single Judge, dated 09.03.2022.

2. The brief facts necessary for the disposal of this writ appeal are as follows:

(i) The writ petitioner was working as Sweeper in the fourth respondent Panchayat. Initially, he was appointed on consolidated pay as per G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.08.1997. The writ petitioner states that he is expected to be regularized after completion of three years as per G.O.Ms.No.199, dated 12.08.1997. Though the petitioner was appointed and was serving till 11.02.2002, it is admitted by the petitioner himself that he could not report duty with effect from 12.02.2002 to 31.07.2006 as he was suffering from mental illness. As the respondents treated him as a person in unauthorised absent, when he reported back after taking treatment, the petitioner could not join duty. Hence, the petitioner submitted a representation on 07.02.2005 to the fourth respondent for joining and thereafter, he filed a writ petition in the year 2011 in W.P(MD)No.1687 of 2011, for issuance of a Writ of Mandamus to direct the respondents to permit him to join duty as Sweeper in the fourth respondent Panchayat. The said writ petition was allowed by order dated 09.01.2014 in the following lines:

"4.The said letter has not been produced either by the petitioner or by the respondents. However, it is an admitted case that the petitioner has not been referred to the Medical Board by the respondents. The only point which permit me to grant a partial relief to the writ petitioner is that a person by name Mary, who was absent from 01.02.2002 to 21.12.2004 was reinstated in service, after producing the Medical Certificate from the Medical Officer, Tirunelveli, for her illness and the respondents permitted her to join duty. Since the petitioner is admittedly suffering from mental illness, he can be considered. He must be in a position to safeguard himself. The respondent contended that in case this Court is giving a direction for employment, the petitioner should not be given any wages for the past period, as it would be a premium to the petitioner to get wages without work. The respondent also contended that unless the petitioner completes the continuous period of five years of service, the said person cannot be brought into the time scale of pay.



5.Taking note of the above, I direct the respondent to consider the case of the petitioner to continue his service as Sweeper, but without backwages, for the period of his absence. The petitioner will not be entitled to any benefits for the period of absence, till he is reinstated. However, the period of absence may be taken only for the purpose of pensionary benefits, if he is otherwise eligible. The second respondent is directed to complete the said exercise within a period of 12 weeks from the date of receipt of a copy of this order. There will be no order as to costs. However, it is made clear that it is open to the respondents to send the petitioner to the Medical Board to ascertain the correctness of the statement of the petitioner regarding his mental ill-health."

(ii) The order of the learned single Judge was challenged by the respondents in W.A(MD)No.307 of 2016. The said writ appeal was also dismissed. While the writ appeal was dismissed, the Honourable Division Bench has passed an order in the following lines:

"15.Perusal of the impugned order, made in W.P (MD)No.1687 of 2011 dated 09.01.2014, also makes it clear that before the Writ Court, a contention has been made, by the appellants, that in the event of this Court, granting any direction, for employment, the respondent should not be given any wages, for the past period, and taking note of G.O.Ms.No.199, Municipal Administration (Town Panchayat-II) Department, dated 12.08.1997, a further contention, has also been made, that unless the respondent completes a continuous period of five years of service, he should not be brought to the time scale of pay. Giving due consideration to the case of both parties, the Writ Court has directed the appellants, to consider the case of the respondent, for continuation of his service as Sweeper, but without backwages for the period of absence and also categorically held, that the respondent will not be entitled to any benefits, for the period of absence, till he is reinstated. Writ Court has further ordered that the period of absence, may be taken, only for the purpose of pensionary benefits, if he is otherwise eligible.

16.Going through the material on record and the challenge to the impugned order, we are of the view that there is no manifest illegality in the impugned order. made in W.P(MD)No.1687 of 2011, dated 09.01.2014, warranting interference. Accordingly, the writ appeal is dismissed. No costs. Consequently, C.M.P(MD)No.1758 of



2016 is closed."

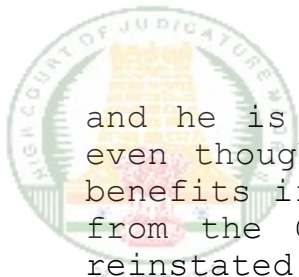
(iii) The grievance of the writ petitioner is that the fourth respondent did not consider his case for regularization of service from the date of completion of three years as directed by this Court. It is also the case of the writ petitioner that he is entitled to be regularized with effect from 29.01.2001 on completion of three years. However, the fourth respondent by proceedings dated 28.06.2018 appointed the writ petitioner on consolidated pay of Rs.1089/- per month. However, the order of appointment on consolidated pay was subject to the order of regularization that may be passed by the Government and that the petitioner will be entitled to all monetary benefits only on the basis of the order of the Government that may be passed regarding regularization of the petitioner. Challenging the said order, the petitioner filed the present writ petition in W.P(MD)No.3326 of 2019.

(iv) The learned single Judge accepting the case of the respondents that the writ petitioner cannot be reinstated as a permanent employee as though he has required number of service, has not obtained an order of regularization from the Government as he was unauthorisedly absent with effect from 12.02.2002. Holding that the writ petitioner did not work for more than 16 years and the period of absence was not regularised and there was no order of regularization, the learned single Judge dismissed the writ petition with the observation that it will be open to the writ petitioner to approach the competent authority for submission of proposal if he is eligible for grant of regularization. Against the said order, the above writ appeal has been preferred by the writ petitioner.

3. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

4. This Court is unable to find any irregularity in the order of the learned single Judge except the last portion by which the writ petitioner was again asked to approach the competent authority with the proposal for regularization.

5. Going by the factual events, this Court is able to see that there is no regularization order by the Government in favour of the appellant/writ petitioner so far. When the writ petitioner was working, he is entitled to be considered for regularization, upon completion of three years and it is for the Government to take a call subject to the other conditions. So long as the Government has not passed an order of regularisation and the writ petitioner did not report duty for a long time, the order in the earlier writ petition cannot be understood that the petitioner is deemed to be in service as a regular employee and entitled to time scale of pay. As per the direction in the earlier writ petition, the writ petitioner



and he is not entitled to the benefits for the period of absence even though the period of absence will be taken for the pensionary benefits if he is otherwise eligible. Without an order or direction from the Government for regularisation, the petitioner cannot be reinstated on regular time scale of pay by presuming that there is a proceeding by the Government regularising the services of the petitioner. Hence, this Court is unable to interfere with the order of the learned single Judge dismissing the writ petition. However, it is not necessary for the appellant/writ petitioner to approach the Government or any person once again, as he has already made representation for regularisation and such representation can be forwarded to the Government to be considered in accordance with G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.08.1997. The Government shall pass appropriate orders on the question of regularisation. Depending upon the order of Government on the question of regularisation, the petitioner may be eligible to get all monetary benefits that would follow as indicated in the order of the learned single Judge in the earlier writ petition which was confirmed by the Honourable Division Bench.

6. The first respondent is directed to consider and pass appropriate orders, within a period of twelve weeks from the date of receipt of a copy of this order. The first respondent shall pass appropriate orders keeping in mind the directions of this Court in the earlier writ petition in W.P(MD)No.1687 of 2011 dated 09.01.2014 and the order of the Honourable Division Bench in W.A(MD)No.307 of 2016, dated 15.02.2016.

With the above direction, the writ appeal is disposed of. No Costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

pm

To

1.The Principal Secretary to Government of Tamilnadu,
Municipal Administration and Water Supply Department,
Secretariat,
Fort St. George, Chennai.

2.The Director,
Directorate of Town Panchayat, Kuralagam,
Chennai.



3.The Assistant Director(Town Panchayat),
Tirunelveli Zone, Tirunelveli District.

4.The Executive Officer, Kalugumalai Town Panchayat,
Thoothukudi District.

+1 CC to M/s.SPL.GP (SR-25589[F] dated 14/06/2022)

+1 CC to M/s.G. CHANDRA SEKAR, Advocate (SR-25736[F] dated
15/06/2022)

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13.06.2022

RD(24.06.2022) 6P 7C