



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.3326 of 2019

WEB COPY

P.Krishnan

... 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

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call 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 petitioner's service from the date of 19.06.2001 with all benefits and back wages.

For Petitioner : Mr.G.Chandrasekar

For Respondents : Mr.D.S.Nedunchezhan,
Government Advocate

O R D E R

The order impugned dated 28.06.2018 states that pursuant to the orders passed by this Court in W.P.(MD) No.1687 of 2011, dated 09.01.2014, W.A.(MD) No.307 of 2016 dated 15.02.2016 and Contempt Petition (MD) No.176 of 2018 dated 12.03.2018, the petitioner was absorbed as consolidated pay employee and consolidated salary of Rs.1,089/- was fixed. Conditions are also imposed in the said orders. On completion of three years of consolidated pay services, the petitioner will be absorbed in the time scale of pay as per



G.O.Ms.No.199, Panchayat Administration and Water Distribution Department, dated 12.08.1997 and based on the Government Order, the service benefits will be paid to the writ petitioner.

2. Though the learned counsel for the petitioner claims it is a reinstatement, the order also states that the petitioner was absorbed based on the orders of this Court as cited above.

3. Re-absorption/reinstatement was made on the same post in which the petitioner was working prior to his unauthorized absence in the year 2002. The fact remains that the petitioner remained absent unauthorizedly from the year 2002 and several litigations were filed and pursuant to the orders of this Court, he was re-absorbed in the same position as consolidated pay employee, which is now under question.

4. The learned counsel for the petitioner made a submission that the petitioner was initially appointed as consolidated pay employee. However, the Government has regularised the services of all such similarly placed consolidated pay employees by passing an order in the year 2015 in G.O.Ms.No.142, Municipal Administration and Water Supply Department dated 23.09.2015. Accordingly, the other similarly placed persons were brought under the regular scale of pay and the said benefit is denied to the writ petitioner.

5. The learned counsel for the petitioner is of an opinion that the rights of the petitioner for regularisation had already been crystallized and therefore, the order impugned, absorbing the petitioner as consolidated pay employee, is erroneous. The petitioner ought to have been reinstated as permanent employee as per the orders of the Court and based on the Government Order passed in the year 2015.

6. The learned Government Advocate, appearing on behalf of the respondents, relying on the counter affidavit filed by the 4th respondent, made a submission that the petitioner was found not eligible as per the Government Order, in view of the fact that he has not complied with the conditions of continuous service in the consolidated pay. The learned Additional Government Pleader further made a submission that no doubt the Government passed an order granting regular time scale of pay to the consolidated pay employees. However, the case of the petitioner is factually different and para 8 of the counter provides the reason for the denial of benefit of regularisation to the petitioner, which reads as under:-

"8. As regards the averment made in para No.8 of the affidavit, it is submitted that the persons appointed under G.O.Ms.No.199, Municipal Administration and Water Supply (TP-2) Dept., dated



12.08.97, till the declaration of general ban for new recruitment from 29.11.2001, and continued to work under consolidated pay, were regularised in service with approval of Government, after lifting the ban in the year 2006. Subsequently, their regularization was effected from the date of completion of three years, they were appointed on consolidated pay. Hence, the petitioner who was absent from duty claiming mentally and physically unfit to join duty from the year 2002 to 2006, could not equate himself with employees who were regularised in service, with approval of Government, as they had completed three years on consolidated pay and continued in service till the date of approval of Government regularizing their services. The petitioner was reinstated under Na.Ka.No.60/2011, dated 28.06.2018, as Sweeper on consolidated pay of Rs.1089/-, what he was receiving while deserting the job, with conditions as stipulated under G.O.Ms.No.199, dated 12.08.1997. The 4th respondent could not send any proposal for approval from the Government with a sanctioned post, for regularization of service of petitioner in Time Scale of Pay, as the order of reinstatement under Na.Ka.No.60/2011, dated 28.06.2018 is challenged in this writ petition."

However, the 4th respondent also has not sent any proposal for approval of the Government.

7.The learned counsel for the petitioner is of an opinion that the order passed in W.P.(MD) No.1687 of 2011 is clear about the rights of the petitioner and the said order was confirmed and contempt petition was also filed. Thus, as per the orders of this Court, the petitioner must be reinstated only as a permanent employee and thus, absorbing the petitioner as a consolidated pay employee is in violation of the orders of this Court.

8.Let us now consider the orders passed in the writ petition and in the subsequent proceedings. The operative portion of the order dated 09.01.2014 passed in W.P.(MD) No.1687 of 2011 reads as under:-

"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."

9.The order reveals that the petitioner was unauthorizedly absent from the year 2002 on account of certain mental illness. Even in para 5 of the order, a direction was issued to the respondents therein to consider the case of the petitioner to continue the petitioner's services as Sweeper, but without backwages. The period of absence may be taken only for the purpose of pensionary benefits, if he is otherwise eligible. The 2nd respondent therein was directed to complete the said exercise within a period of twelve weeks. The respondents therein were given liberty to send the petitioner to the Medical Board to ascertain the mental ill-health of the petitioner.

10.Perusal of the order reveals that there was no direction to regularise the services and bring the petitioner under the regular establishment as regular employee. The direction issued is only to consider the case of the writ petitioner to continue his service. Continuance of service indicates that the petitioner must be allowed to continue in the same position and regularisation is to be granted only if the petitioner is eligible in accordance with the rules in force. Therefore, there is no direction from this Court to regularise the services of the writ petitioner as a permanent employee. However, the order passed in the writ petition was confirmed in W.A.(MD) No.307 of 2016. The Hon'ble Division Bench again directed the appellants to consider the case of the petitioner for continuation of his service as Sweeper, but without backwages for the period of absence. Even the Hon'ble Division Bench has not directed the authorities to regularise the service of the writ petitioner, considering the fact that he was unauthorizedly absent for several years and therefore, direction was issued to reinstate the petitioner only as a consolidated pay employee and not as a permanent employee. The contempt petition was closed granting liberty to the petitioner to challenge the order of reinstatement dated 28.06.2018, which is now challenged in the present writ petition.

11.The contention of the learned counsel for the petitioner is that as per the Government Orders issued, the petitioner is entitled to be reinstated as a permanent employee. However, the respondents have reinstated only as a consolidated pay employee.



12. On perusal of the order passed in the writ petition as well as the judgment passed in the writ appeal, this Court is of the opinion that the Court has not issued any direction to the authorities to regularize the services of the writ petitioner. The eligibility for regularisation is to be considered independently with reference to the service records. The petitioner was unauthorizedly absent for several years and the Court has directed to reinstate the petitioner in the post of Sweeper however, not directed the authorities to permanently absorb the petitioner, which is to be done in accordance with the service rules in force.

13. Regularisation or permanent absorption cannot be granted in violation of the rules in force. Regularisation is to be granted only if an employee is eligible in accordance with the rules and by following the guidelines issued by the Government. The case of the petitioner, during the relevant point of time, was not considered, as he remained unauthorizedly absent and thereafter, the petitioner states that he was not permitted to join duty. However, the fact remains that the petitioner remained absent from the year 2002. Thereafter, he filed the writ petition in the year 2011 and writ appeal in the year 2016 and contempt petition in the year 2018. The petitioner was reinstated as consolidated pay employee. Therefore, regularisation cannot be claimed as a matter of right. Regularisation is to be granted only if an employee satisfies the conditions stipulated in the Rules. Though a scheme of regularisation was issued by the Government, the case of the petitioner was not considered on account of the fact that he was not fulfilling the conditions during the relevant point of time and remained unauthorizedly absent.

14. As pointed out earlier, this Court has not directed the respondents to regularise the services of the writ petitioner. Mere observation regarding the Government Orders would be insufficient to quash the order of reinstatement absorbing the petitioner as consolidated pay employee. No doubt, if at all the petitioner is eligible as of now for regularisation in accordance with the Government Orders, that is to be processed by the competent authorities in the manner known to law. However, Courts cannot grant regularisation by issuing a direction to an employee, as it involves examination of service records with reference to the relevant rules in force. That exactly the reason why this Court directed the respondents to consider the case of the writ petitioner and the authorities, pursuant to the order of reinstatement, granted reinstatement in the original post of consolidated pay. If at all the petitioner is otherwise eligible for regularisation, the proposal is to be processed in the manner known to law and High Court cannot issue any direction to regularise the services without verifying the service records and the applicable rules for grant of regularisation in respect of the consolidated pay employees.



15.The Courts are expected to be cautious in granting a direction to regularise the services of the consolidated pay employee/daily wages employee, in view of the judgment of the Hon'ble Supreme Court of India in the case of **Secretary, State of Karnataka vs. Umadevi** reported in **(2006) 4 SCC 1**. The Hon'ble Supreme Court in unequivocal terms held that regularisation or permanent absorption cannot be granted in a routine manner. All appointments are to be made strictly in accordance with the rules in force. However, certain concessions were granted in respect of the employees appointed long back.

16.The Hon'ble Supreme Court in the case of **Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and Others** reported in **(2014) 4 SCC 769**, in unequivocal terms held that High Court cannot issue direction to grant regularisation and the relevant paragraph is extracted hereunder:-

"8.This Court in *State of Rajasthan v. Daya Lal* [*State of Rajasthan v. Daya Lal*, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340 : AIR 2011 SC 1193] has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under



cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.""

17. In the present case, as rightly pointed out by the petitioner, similarly placed employees were regularised during the relevant point of time and unfortunately, the petitioner remained unauthorizedly absent and the absence continued for longer time more specifically, for about 16 years. Though the petitioner claims that the unauthorized absence is only for a limited period and thereafter, the petitioner was not permitted to join duty, the fact remains that the petitioner was not in service for about 16 years. In view of the fact that this Court has not directed the authorities to grant regularisation and further as per the Constitution Bench



judgment cited supra, Courts cannot issue an order of direction to regularise the services of the temporary employees and it is for the authorities to look into the matter regarding eligibility and other criteria for the purpose of grant of regularisation, this Court is of the opinion that as per the direction issued by this Court, the petitioner was reinstated in his original position as consolidated pay employee and it is left open to the petitioner to approach the competent authority for submission of proposal, if he is otherwise eligible for grant of regularisation.

18. With the observations, this Writ Petitions stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Principal Secretary to Government of Tamilnadu,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George, Chennai.
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Tirunelveli District.
4. The Executive Officer,
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kThoothukudi District.

+1 CC to M/s.SPL GP (SR-11189[F] dated 10/03/2022)

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