



W.P.(MD)No.13638 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.09.2022

PRONOUNCED ON : 08.12.2022

CORAM

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

W.P.(MD)No.13638 of 2016

and

W.M.P.(MD)No.10186 of 2016

P.Nataraj

... Petitioner

vs.

- 1.The State of Tamil Nadu,
represented by its Secretary,
Department of Municipal Administration
and Water Supply,
St.George Fort, Chennai.
- 2.The Commissioner of Municipal Administration,
Office of the Commissioner of Municipal
Administration,
Chepauk, Chennai.
- 3.The Director of Local Fund Audit
(Municipal Pension),
Office of the Director of Local Fund Audit,
Kuralagam, 4th Floor,
Chennai-108.



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4.The Assistant Director of Local Fund Audit
(Municipal Pension),
Office of the Director of Local Fund Audit,
Kuralagam, 4th Floor,
Chennai-108.

5.The Commissioner,
Bodinayakkanoor Municipality,
Bodi, Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 4th respondent in his proceedings Moo.Mu.No. 12147/Na.o.cha(2)/2015, dated 29.05.2016 and to quash the same as illegal and consequentially, to direct the respondents to disburse the retirement benefits of the petitioner taking into consideration of the date of regularization as 10.03.2001 with all consequential benefits including the interest on delayed retirement benefits within the period that may be stipulated by this Court.

For Petitioner	: Mr.H.Mohammed Imran for M/s.Ajmal Associates
For R1 to R4	: M/s.D.Farjana Ghoushia Special Government Pleader
For R5	: Mr.M.Karuppasamy Pandian



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ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order passed by the 4th respondent dated 29.05.2016 and consequentially, to direct the respondents to disburse the retirement benefits of the petitioner taking into consideration of the date of regularization as 10.03.2001 with all consequential benefits including the interest on delayed retirement benefits within the period that may be stipulated by this Court.

2. The petitioner was initially appointed as NMR in the 5th respondent Municipality as Typist in the sanctioned post on consolidated pay vide order, dated 09.03.2000. Thereafter, the petitioner's service was regularized on 10.03.2000 and was brought under time scale of pay on 17.04.2001 by the 5th respondent vide his proceedings, dated 17.04.2001. Thereafter, the petitioner was promoted as Revenue Inspector on 08.04.2013 and retired on attaining the age of superannuation on 28.11.2014. The contention of the petitioner is that even though the petitioner was paid the benefits of encashment of earn leave and leave



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on private affairs, the petitioner was not paid with the pensionary benefits so far. Hence, the petitioner submitted repeated representations. Finally, the 4th respondent, vide proceedings, dated 10.04.2015, forwarded proposal to the 3rd respondent. However, no action was taken on the pension proposal. Subsequently, the 4th respondent, vide his impugned proceedings, dated 29.05.2016, has returned the proposal stating that the petitioner's services in the cadre of Typist should be regularized only on 23.02.2006 as per G.O.Ms.No.166, Municipal and Water Supply Department, dated 31.12.2014. The petitioner contended that his service was regularized on 10.03.2001 and was brought under Time Scale of Pay. Hence, the reason in the impugned order is unwarranted. The petitioner further contended that G.O.Ms.No.166, Municipal and Water Supply Department, dated 31.12.2014, was issued only in furtherance of the Hon'ble Full Bench Judgment of this Court made in the case of ***S.Dhanasekaran & 24 Others Vs Government of Tamil Nadu rep. by its Secretary & Others*** reported in ***2013 (6) CTC 593***. The said G.O. will apply only in respect of the persons whose service was not regularized whereas in the petitioner's service was already regularized. Hence,



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G.O.Ms.No.166, Municipal and Water Supply Department, dated 31.12.2014, has no application.

3.The petitioner referred to one Mr.Padhamanaban working in Ramanathapuram Municipality has got his service regularized with effect from 27.05.2000, vide G.O.Ms.No.465, Municipal Administration and Water Supply Department, dated 22.07.2015 and the said Padhamanaban, who is a similarly placed person like the petitioner. Moreover, the G.O.Ms.No.166, Municipal and Water Supply Department, dated 31.12.2014, has only prospective application and would not have retrospective effect, which would be evident from the last paragraph of G.O.Ms.No.166, Municipal and Water Supply Department, dated 31.12.2014. The petitioner further contended that his service was regularized as per G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999 and the G.O.Ms.No.125 is not the subject matter of Full Bench decision. The petitioner is neither governed by G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.06.1997 nor under



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G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006. These two G.O.s, were issued only in respect of sanitary workers, street light maintenance workers etc. Thus, the impugned order is wholly unreasonable and unwarranted. Hence, the petitioner prays to grant regularization with effect from 10.03.2001 and grant all monetary and pensionary benefits and pensionary benefits.

4. The 3rd and 4th respondents have filed a counter affidavit wherein it is stated that the letter No. Moo.Mu.12147/MPV (2)/2015, dated 29.05.2016, of the 4th respondent, has inadvertently mentioned G.O.Ms.No.166, Municipal and Water Supply Department, dated 31.12.2014 which infact not relevant to this petition. As far as the averments that one Mr.Padmanaban, who is similarly placed person was granted regularization, the said Padmanaban was granted regularization based on the order of this Court, which specifically directed the Government to regularize his service. The G.O.Ms. No.21, (Municipal Administration and Water Supply Department), dated 23.02.2006, is relevant to



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this petition. As per Rule 3 of the Tamil Nadu Municipal General Service Rule, 1970, the appointment of Typist should be made by Direct Recruitments, or as specified in the G.O.Ms.No.125 Municipal Administration And Water Supply Department), dated 27.05.1999, permitting the Municipal Commissioner to approve the Nominal Muster Roll (NMRs) on daily wages working in the Corporation (Except Chennai), Municipalities and erstwhile Town Panchayats for those who are working prior to 01.10.1996. But thereafter, in the clause 2 of the G.O.Ms.No.21, Municipal Administrative and Water Supply Department, dated 23.02.2006, it has been mentioned those orders issued in aforesaid G.O.125, Municipal Administration and Water Supply Department, dated 27.05.1999, were kept in abeyance due to a general ban order for recruitment of entry level posts. As such the regularization of the services of the petitioner with effect from 10.03.2000 as recorded in the service register is in violation of G.O.Ms.No.21, Municipal Administrative and Water Supply Department, dated 23.02.2006. The appointment of the petitioner was not made as per the Tamil Nadu Municipal Service Rules. As per the said rules, Typist can be appointed only by Direct



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recruitment in time scale of pay. There is no provision in the Rule to appoint Typist on consolidated pay and therefore, the petitioner was not appointed as per Tamil Nadu Municipal Service Rules. Hence, the petitioner cannot claim any regularization dehors G.O.Ms.No.21, Municipal Administrative and Water Supply Department, dated 23.02.2006. It is also submitted by the 3rd and 4th respondents that, vide letter, dated 10.03.2017, clarification was sought from the Commissioner of Municipal Administration to state who are all eligible to get pension. In turn, it was directed to seek clarification from the Government on this aspect of regularization of employees. Therefore, without the regularization order from the Government, the Local Fund Audit cannot disburse pensionary benefits to the petitioner. Therefore, the 3rd and 4th respondents prayed to dismiss the writ petition.

5. The 5th respondent has filed counter affidavit for himself as well as for respondents 1 and 2. The 5th respondent submitted that the petitioner was appointed as NMR on daily wages and the said appointment was made as per



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G.O.No.125, Municipality Administration Department, dated 27.05.1999, issued by the 1st respondent. On the basis of the said G.O., the 5th respondent issued proceedings, dated 09.04.2000, whereby, the petitioner was appointed as a Typist on consolidate pay in the transferred vacancy of one Kannan and a salary was fixed as Rs.2000/- per month for one year and thereafter, his services would be regularized, by fixing time scale of pay. It is an admitted that he was promoted as Revenue Inspector on 08.04.2013 and thereafter, retired on 30.11.2014. In fact, the 5th respondent submitted the pension proposal to the 4th respondent. However, the same was returned with an objection that the proposal is against G.O.Ms.No.166 Municipality Administration Department, dated 31.12.2014. It is further submitted that the writ petitioner were regularized only from 23.02.2006 and not from 10.03.2001. The Deputy Director, Local Fund Audit, Chennai, vide his proceedings, dated 29.05.2016, stated that any person who were appointed based on G.O.Ms.No.101, Municipality Administration Department, dated 30.04.1997, G.O.Ms.No.71, Municipality Administration Department, dated 05.05.1998, G.O.Ms.No.125, Municipality Administration Department, dated



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27.05.1999 and G.O.No.21, Municipality Administration Department, dated 23.02.2006, such employees service shall be regularized only with effect from 23.02.2006. Therefore, the petitioner's regularization from 10.03.2001 is not in accordance to any G.O.s. Therefore, the petitioner is not entitled to pension. Hence, the respondents prayed to dismiss the writ petition.

6. Heard Mr.H.Mohammed Imran, learned Counsel appearing for the petitioner, M/s.D.Farjana Ghousia, learned Special Government Pleader appearing for respondents 1 to 4 and Mr.M.Karuppasamy Pandian, learned Counsel appearing for 5th respondent and perused the records placed before this Court.

7. The G.O.Ms.No.125, Municipality Administration Department, dated 27.05.1999 was issued in order to regularize the NMR's who were appointed without creation of new posts, in order to meet out the exigencies and who were



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in service for more than 10 years. The posts that were sought to be regularized in the G.O.Ms.No.125 is those NMR's other than the NMR's working in Public Health, Vehicle Driver, Street Light Maintenance and Water Supply Services. The said G.O. was issued directing the concerned Municipalities, Corporations, etc., to send the list of existing NMR's in order to regularize. Pending consideration, the Government issued G.O.Ms.No.212, dated 29.11.2001, banning recruitment to all posts. Subsequently, the ban was lifted through G.O.Ms.No.14, dated 07.02.2006. After lifting the ban, G.O.Ms.No.21 Municipal Administration and Water Supply Department dated 23.02.2006 was issued for considering for regularization, if the conditions prescribed thereunder are fulfilled.

8. The contention of the 5th respondent is that the petitioner was appointed under G.O.Ms.No.125 is erroneous. The said G.O. is issued to regularize already existing NMR's who have put in service for the past 10 years. But the petitioner was appointed on 09.03.2000 and was regularized on 10.03.2000 and was brought under time scale of pay on 17.04.2001. But the said G.O.Ms.No.125 was issued to



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regularize the NMR's appointed prior to 27.05.1999. Since the petitioner's appointment is after the G.O.Ms.No.125 i.e. on 09.03.2000, hence the said G.O.Ms.No.125 is not applicable to the present case. In such circumstances, the contention of the fifth respondent that the petitioner was appointment under the said G.O. is erroneous.

9. The 5th respondent had not followed the proper recruitment process while appointing the petitioner on 09.03.2000, but in order to meet out the exigency circumstances, has appointed the petitioner. Subsequently the 5th respondent had regularized the petitioner and brought under time scale of pay on 17.04.2001, thereafter promoted as Revenue Inspector on 08.04.2013. Interestingly the petitioner retired on attaining the age of superannuation on 28.11.2014. The 5th respondent ought to have placed the proposal before the 1st respondent to regularize the service of the petitioner, since the petitioner's initial appointment is not through recruitment process but the 5th respondent miserably failed to do so. This has given a legitimate explanation to the petitioner that the petitioner would



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be regularized. The ban for recruitment is only from 29.11.2001. But the petitioner was appointed on 09.03.2000 and was regularized on 17.04.2001, both are prior to the ban. In such circumstances, the respondents cannot be allowed to state that there was ban in recruitment. Even according to the counter affidavit filed by the respondents 3 and 4, the 2nd respondent Commissioner ought to have placed the petitioner before the Government and obtained necessary clarification or ratification, which the 2nd respondent failed to do. The failures of the respondents cannot put the petitioner in a disadvantageous position. The petitioner has rendered service from 2000 onwards and the petitioner should gain under the principles of legitimate explanation. Therefore, the 1st respondent is directed to pass necessary orders of ratification / regularization from the date of appointment i.e. 09.03.2000 by granting exemption, if any rule has been violated. Thereafter grant all consequential monetary benefits, pensionary benefits and other benefits that are applicable to the petitioner. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. It is made clear this order shall not be referred as precedent, since this order



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is passed based on the peculiar facts and circumstances of the case.

10. With the above said observation, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

Index : Yes / No

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Internet : Yes

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To

- 1.The Secretary to Government,
State of Tamil Nadu,
Department of Municipal Administration
and Water Supply,
St.George Fort, Chennai.
- 2.The Commissioner of Municipal Administration,
Office of the Commissioner of Municipal
Administration,
Chepauk, Chennai.
- 3.The Director of Local Fund Audit
(Municipal Pension),
Office of the Director of Local Fund Audit,
Kuralagam, 4th Floor,
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- 4.The Assistant Director of Local Fund Audit
(Municipal Pension),
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