



W.P.(MD)No.16077 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 16077 of 2016

and

W.M.P.(MD)Nos. 11746, 11747 of 2016,

15411 to 15413 of 2018, 3769 & 3791 of 2022

Gurusamy (Died)

Kumarayi

....

Petitioner

[Petitioner is substituted as per order of this Court, dated 25.11.2022]

Vs.

1. The Principal Secretary,
Rural Development Department,
State of Tamil Nadu,
Secretariat, Fort Saint George,
Chennai.
2. The Director, (LF Audit),
Office of the Director of Local Fund Audit,
State of Tamil Nadu, 4th Floor, Chennai – 108.
3. The Executive Officer,
Sayalkudi Town Panchayat,
Sayalgudi Post, Ramanathapuram District.



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4. The Assistant Director of Town Panchayaths,
Department of Town Panchayats,
Sivagangai Region,
Sivagangai District.

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Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records connection with Moo.Mu.No.12508/Paa.O.Cha(2)/2016, dated 08.07.2016 on the file of the 2nd respondent and quash the same as illegal, consequently to direct the 2nd and 3rd respondents to pay pension and all retirement benefits to the wife of Gurusamy (Late) by name Kumarayi, and daughters of Gurusamy (late) by name Surammal, Panchavarnam and Vaill from the date of the retirement of Gurusamy (late) on 30.06.2008 with interest and to pay family pension to wife of the (late) Gurusamy by the name Kumarayi within the time stipulated by this Court.

[Prayer is amended by Order of this Court, dated 25.11.2022]

For Petitioner : Mr.R.Alagumani

For Respondents : M/s.Farjana Ghoushia,
Special Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned order passed by the 2nd respondent in Moo.Mu.No.12508/Paa.O.Cha(2)/2016, dated 08.07.2016 and for consequential direction to the 2nd and 3rd respondents to pay pension and



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all retirement benefits to the wife of Late Gurusamy namely Kumarayi, and daughters of Late Gurusamy namely Surammal, Panchavarnam and Valli from the date of the retirement of Late Gurusamy on 30.06.2008 with interest and to pay family pension to the wife of Late Gurusamy, within the time stipulated by this Court.

2. During the pendency of this writ petition, the petitioner Gurusamy died on 12.12.2017 and hence the wife of the deceased petitioner has filed an amendment petition to amend the prayer in W.M.P.(MD)No.3791 of 2022 and also had filed amendment petition in W.M.P.(MD)No.15412 of 2018. The petition which has been filed in the year 2018, the wife of the deceased employee was shown as legal heir. However, in the amendment petition filed in the year 2022, the daughters were also shown as legal heirs along with the wife of the deceased. Hence this Court is closing the petition filed in W.M.P.(MD)No.15412 of 2018 and the petition filed in W.M.P.(MD)No.3791 of 2022 is allowed.

3. Likewise the wife of the deceased has also filed an application in W.M.P(MD)No.15411 of 2018 to substitute herself in the place of the deceased



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employee. Again, the wife of the deceased has filed an another petition in W.M.P. (MDNo.3769 of 2022 to substitute the herself in the place of the deceased employee. Hence the petition filed in W.M.P(MD)No.15411 of 2018 is closed and the petition filed in W.M.P.(MDNo.3769 of 2022 is allowed.

4. The brief facts as stated in the affidavit is that the deceased petitioner / Gurusamy was appointed as Sanitary worker, as fulltime daily wage from 14.11.1984 in Sayalkudi Town Panchayat Office and had worked upto 31.05.1998. From 01.06.1998 to 28.05.1999 the petitioner had worked as full time Sanitary worker on consolidated payment. The petitioner's service was regularized in Na.Ka.No.65/2000 dated 09.08.2000 by the 3rd respondent with effect from 28.05.1999 and time scale of pay was granted until his retirement on 30.06.2008. The petitioner has submitted an application to grant retirement benefits and pension. The respondents have raised an objection that the petitioner has completed only 9 years one month of service and denied pension but sanctioned his gratuity on 11.04.2012.



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5. The contention of the petitioner is that the respondents ought to take 50% of the daily wage service as per G.O.No.408, Finance (Pension) Department, dated 25.08.2009 and grant pensionary benefits. Subsequently, the pension proposal was submitted on 22.04.2016 and the same was rejected by the 2nd respondent, vide impugned order, dated 08.07.2016, wherein it is stated that the petitioner has not been completed 10 years of service. Aggrieved over the same, the present writ petition has been filed.

6. The 2nd respondent has filed counter and stated that the deceased petitioner was working as Sanitary worker in the 3rd respondent office for a period from 14.11.1984 to 31.05.1998. In the meantime, certain posts were exclusively created on consolidated pay in G.O.Ms.No.199 Municipal Administration and Water Supply Department, dated 12.08.1997 and G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1998, for the Town Panchayat employees, who had been working on daily wages before 31.12.1996. As per the norms stipulated in these Government orders, those employees were



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appointed in the newly created posts should service in the said post for 1 year/2 years/3 years of service as the case may be, in consolidated pay, and after completion of the required spell in the consolidated pay, they should be brought under time scale of pay. Based on the above said Government orders, the petitioner was appointed as Sanitary worker, under consolidated pay and thereafter brought under time scale of pay with effect from 29.05.1999 by the 3rd respondent proceedings in RC.No.65/2000, dated 09.08.2000. All consolidated pay, NMR and daily wage employees, who have been governed by the G.O.Ms.Nos.84 and 199, were ordered to be brought into time scale of pay, with effect from 23.06.2006 as per G.O.Ms.No.60, Rural Development and Panchayat Raj Department, dated 23.06.2006. A clarification was issued by the Government, regarding regularization of employees in Municipalities and Corporation, vide Government Order No.166, Municipal Administration and Water Supply (ME-3) Department, dated 31.12.2014 as per Judgment rendered by the Full Bench of this Court, reported in **2013(6)CTC 593, dated 29.11.2013**, stating that the date of regularization shall be 23.06.2006. The petitioner has attained superannuation on 30.06.2008. Since the petitioner has not completed 10 years of service, he is not entitled for get pension. The petitioner is not entitled to calculate 50% of service



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since the petitioner was absorbed after 01.04.2003. Therefore, the respondents prayed to dismiss the writ petition.

7. Heard Mr.R.Alagumani, learned counsel appearing for the petitioner and M/s.Farjana Ghousia, learned Special Government Pleader, appearing for the respondents.

8. Admittedly, the petitioner was appointed as Sanitary worker daily wage employee in the 3rd respondent Town Panchayat. The petitioner was brought under consolidated pay, based on the G.OMs.Nos.84 and 199. After one year, the petitioner was brought in the time scale of pay from 29.05.1999 by the 3rd respondent vide proceedings, dated 09.08.2000.

9. The 3rd respondent cannot be grant regularization to the petitioner, because regularization should be granted by the 1st respondent alone. The 3rd respondent is not empowered to grant any regularization.



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10. The issue of regularization was subsequently considered by the G.O.Ms.No.60, Rural Development and Panchayat Raj Department, dated 23.06.2006, wherein, it is stated that all the sanitary workers were granted regularization from 23.06.2006.

11. The issue of granting regularization and the date of granting regularization was decided by the Hon'ble Full Bench of this Court in the case of S. Dhanasekaran and 24 others in W.P.(MD)No.1083 of 2012 vide order order, dated 29.11.2013, wherein it is held as under:

(iii) Those sanitary workers, who were appointed as per G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997 or absorbed as per G.O.Ms.No.71, Municipal Administration and Water Supply Department, dated 05.05.1998, are all governed by G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006, in respect of their regularisation in service and such regularisation shall take effect only from 23.02.2006 and not from the date on which they had completed three years of service from the date of their initial entry into service.



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12. Subsequently, a review application was also filed against the said order in Rev. Appl. No. 87 of 2014 and the Hon'ble Full Bench has held,

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28. In the present case, by virtue of G.O.Ms.No.101 dated 30.04.1997 and G.O.Ms.No.71 dated 05.05.1998, the right to be considered for regularization on completion of the mandatory period had already accrued to the petitioners on the date of their appointment. The only condition is to be satisfied is the required number of days, of course without blemish. Therefore, any subsequent Government Order cannot take away the fundamental right of the petitioners to be considered for appointment.

29. In the result, Rev.Aplc.No.87 of 2014 is dismissed and Rev.Appl.Nos.223 and 254 of 2015 are allowed on the following terms:

a) Persons employed as sanitary workers and covered by G.O.Ms.No.101 dated 30.04.1997 and G.O. Ms.No.71 dated 05.05.98 are entitled to be regularized after the completion of the respective period under consolidated pay as specified in the Government Orders from the date of their initial appointment.

b) Any orders passed by any Municipality regularizing the service based on G.O.Ms.No.21



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dated 23.02.2006, Full Bench Judgment dated 29.11.2013 and G.O.Ms.No.166 dated 31.12.2014 shall be recalled and appropriate orders shall be passed as held above.

13. Against the order passed in the review application, the government had preferred SLP (C) No. of 2017 Diary No. 21654 of 2017 in Secretary to Government, Municipal Administration and Water Supply Department & Anr. Vs. V. Marisamy & others arising out of the impugned order dated 30.05.2017 in R.A.No.87 of 2014 in W.A.No.729 of 2013 and there is an interim stay as on date.

14. Since the issue is pending before the Hon'ble Supreme Court, this Court is of the considered opinion that the claim of the petitioner can be considered only if the issue is decided. Therefore the respondents are directed to consider the case of the petitioner, after the disposal of the aforesaid SLP.



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15. With the above directions, this Writ Petition is disposed. No Costs. Consequently, W.M.P.(MD)Nos.3769 & 3791 of 2022 are allowed and other miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

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**Order made in
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