



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.58 of 2016

and

W.M.P (MD) Nos.65 and 66 of 2016

K.Senthil Kumar

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration &
Water Supply Department,
Fort St.George,
Chennai-9.

2.The Managing Director cum
Commissioner of Municipal Administration,
Ezhilagam, Chepauk,
Chennai-5.

3.The Regional Director,
Municipal Administration Department,
Thiruvananthapuram Road,
Palayamkottai, Tirunelveli-2.

4.The Commissioner,
Kayalpattinam Municipality,
Kayalpattinam,
Tuticorin District.

5.S.Hemanth Prabhu

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order passed by the second respondent in Na.Ka.No.33122/2014/H2-117, dated 29.12.2015 and quash the same in so far as the post of Work Inspector is concerned as illegal and arbitrary and consequently direct the respondents 1 to 4 to regularize the petitioner in the post of Works Inspector with effect from the date of initial appointment i.e., from 01.04.2005 in the light of the proposal sent by the fourth respondent in his proceedings in Na.Ka.No.110/2012/11, dated, 05.11.2012 and 24.01.2013 to the third respondent and the proposal sent by the third respondent in



his proceedings in Na.Ka.No.4700/2012/யு1, dated, 30.01.2013 to the second respondent and thereby grant all service and monetary benefits within the time limit that may be stipulated by this Court.

For Petitioner : Mr.V.Karthikeyan
for Mr.V.Perumal
For Respondents : Mr.S.Kameswaran
Government Advocate(Civil Side)
for R1 to R3
Mr.M.Rajarajan
for R4
Mr.M.S.Jeya Karthik
for R5

ORDER

The present writ petition has been filed to quash the impugned order passed by the second respondent in Na.Ka.No.33122/2014/H2-117, dated, 29.12.2015 in so far as the post of Work Inspector is concerned and consequently direct the respondents 1 to 4 to regularize the petitioner's service in the post of Work Inspector from the date of initial appointment i.e., from 01.04.2005.

2. The brief facts of the case are that the petitioner belongs to scheduled caste and has completed Diploma in Civil Engineering in April 1996 in first class. He worked as a Technical Assistant on daily wages from 08.08.1996 to 31.03.2005 in Thiruchendur Panchayat Union. The petitioner was paid salary at the rate fixed by the Public Work Department from 08.08.1996 to 30.09.1998 and has served without salary from 01.10.1998 to 31.03.2015. The petitioner was engaged as Technical Assistant by the fourth respondent on daily wages from 01.04.2005 and is working in the same post till date. The contention of the petitioner is that based on the phone message, dated, 06.07.2007 of the second respondent, the fourth respondent has submitted a report regarding the petitioner's service in his proceedings, dated, 10.07.2007. The first respondent has issued an order in G.O.Ms.No.73 Municipal Administration and Water Supply Department, dated, 20.05.2009 regularizing the services of 25 daily wages Technical Assistants in other Municipalities. The petitioner submitted his representation on 10.09.2012 to the second respondent with a request to absorb him in Kayalpattinam Municipality. On 07.09.2012, the second respondent had requested the third respondent to offer specific remarks on the representation of the petitioner. The third respondent instructed fourth respondent to submit report in this regard vide his proceedings, dated, 01.10.2012. The fourth respondent vide proceedings, dated,



05.11.2012 had submitted a detailed report with regard to the absorption of the petitioner on regular basis. Further report was called for by the third respondent. In the meanwhile, the first respondent has issued G.O. Ms. No. 30 Municipal Administration and Water Supply Department, dated, 13.02.2013 and sanctioned various post to 27 Municipalities including one post of Work Inspector to the fourth respondent's Municipality. Again the petitioner has submitted his representation based on the said Government Order on 22.02.2013 and 27.03.2013 thereby the petitioner would be appointed in the newly sanctioned post. However, the respondents have not considered the same. Hence, the present writ petition has been filed.

3. The fourth respondent filed a counter denying all averments made in the affidavit filed by the petitioner and has stated that there is no record to show that the petitioner was engaged as Technical Assistant on daily wages in Tiruchendur Panchayat Union from 08.08.1996 to 31.03.1998. There is also no record to show that the petitioner has served without salary from 01.10.1998 to 31.03.2005. The contention of the respondents is that the petitioner was engaged by a contractor on work basis and the wages have been disbursed to the petitioner only for the works he has been engaged. So far as G.O.Ms.No.73 is concerned, this is only for those who had worked until 29.11.2001 in III Grade Municipality. Since the petitioner has not worked in any Municipality in the relevant time, the said Government Order is not applicable to the petitioner. The petitioner's representation was only forwarded to the second respondent and the same is pending with the second respondent. The Government alone has power to consider the claim of the petitioner. The fifth respondent was appointed as Work Inspector based on the orders of the Court on 29.12.2015. Thereafter, the resolution was passed by the Municipality on 06.01.2016 and he was appointed on 13.01.2016. The applications submitted by the petitioner has been forwarded to the Commissioner through RDMA. The petitioner ought to be approach the RDMA and the fourth respondent cannot grant any appointment order to the petitioner.

4. Heard V.Karthikeyan, learned counsel appearing for the petitioner and Mr.S.Kameswaran, learned Government Advocate(Civil Side) appearing for R1 to R3 and Mr.M.Rajarajan, learned counsel appearing for the 4th respondent and Mr.M.S.Jeya Karthik, learned counsel appearing for the 5th respondent.

5. When the case was taken up for hearing, the learned counsel for the fifth respondent submitted that the fifth respondent died on 03.10.2020. If any terminal benefits are pending, the official respondents may be directed to pay the amount to the legal heirs of the fifth respondent.



6. The learned counsel appearing for the petitioner submitted that the petitioner had worked in the fourth respondent Municipality from 1996 to 1998. The said contention was refused by the fourth respondent stating that he had worked under some private contractor. The petitioner referred a letter issued by the Thiruchendur Panchayat Union, wherein it is stated that the petitioner has worked as Technical Assistant. During the month of August 1996 the petitioner has worked for 21 days and payment was made through voucher. Likewise the petitioner had worked for 4 days in April 1997 and was paid payment through voucher. On perusing the same, this Court is of the considered opinion that the petitioner was paid based on the work basis and the petitioner is not working as employee of the Municipality, but serving as a contractor. For each and every month the amount had differed. However, it is seen that the Commissioner of the Municipality has given certificate to the petitioner stating that the petitioner has worked in the Municipality on daily wages as Technical Assistant from 01.04.2005 onwards. Based on the certificate and on other relevant records, the respondents 3 and 4 had already submitted their proceedings before the second respondent and the second respondent has not considered the said proceedings. The learned counsel for the petitioner had submitted that since the fifth respondent has passed away, he pleaded his prayer as Mandamus may be considered.

7. Therefore, this Court is of the considered opinion that the respondents ought to consider the case of the petitioner and hence the 1st respondent is directed to consider the recommendation proceedings of the respondents 3 and 4 and in the light of Government Order and grant regularization of service to the petitioner in the post of 5th respondent. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. The petitioner is continuing his service till now and the respondents should not disturb the petitioner's employment while considering the petitioner's regularization.

8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

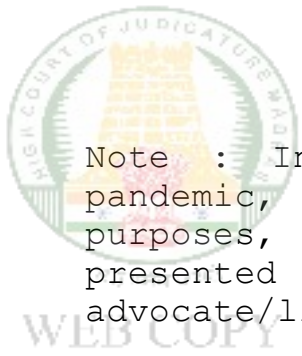
Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary to Government,
Municipal Administration &
Water Supply Department,
Fort St.George, Chennai-9.
 - 2.The Managing Director cum
Commissioner of Municipal Administration,
Ezhilagam, Chepauk, Chennai-5.
 - 3.The Regional Director,
Municipal Administration Department,
Thiruvananthapuram Road,
Palayamkottai, Tirunelveli-2.
 - 4.The Commissioner,
Kayalpattinam Municipality,
Kayalpattinam, Tuticorin District.
- +1 CC to M/s.V.KARTHIKEYAN, Advocate (SR-18289[F] dated 12/04/2022)
- +1 CC to M/s.M. RAJARAJAN, Advocate (SR-18548[F] dated 13/04/2022)
- +1 CC to M/s.SPL.GP. (SR-18567[F] dated 13/04/2022)

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USK/01.06.2022/5P/8C