



W.P(MD)No.20818 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.20818 of 2017

M.Mariappan,

: Petitioner

Vs

1. The Commissioner,
(Municipal Administration),
Chepauk,
Chennai - 05

2. The Commissioner,
Tirunelveli Corporation,
Tirunelveli - 627 001

: Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the second respondent in Na.Ka.No.C3/12744/2010, dated 22.03.2017 and quash the same and further directing the respondents to regularize the petitioner's service as per G.O.Ms.No.341, dated 24.07.2007, passed by the Municipal Administration



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and Water Supply Department.

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For Petitioner : Mr.A.Jayaramachandran

For Respondents : Mr.C.Baskaran

Government Advocate (Civil Side)

ORDER

This writ petition had been filed for issuance of Certiorarified Mandamus, to quash the impugned order passed by the second respondent in Na.Ka.No.C3/12744/2010, dated 22.03.2017 and to direct the respondents to regularize the petitioner's service as per G.O.Ms.No. 341, dated 24.07.2007, passed by the Municipal Administration and Water Supply Department.

2. The brief facts of the case are that the petitioner hails from poor Adi Dravidar family. He was appointed as daily wage employee in the second respondent Corporation on 06.02.1996. The petitioner was implicated in a criminal case as eighth accused for the alleged offences under Section 395 read with 10(b) IPC by the Inspector of Police, Railway Police Station, Tirunelveli. The petitioner was convicted in the criminal case in S.C.No.212 of 2005, dated 26.03.2007. The petitioner preferred a criminal appeal in



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CrI.A.No.217 of 2007 before the Madras High Court. In the meanwhile, the petitioner was placed under suspension. In the meanwhile, the Department had passed the G.O.Ms.No.341, dated 24.07.2007, through which, 79 Daily Wage workers as unskilled workers and the petitioner's name is in the regularization list. In the criminal appeal, vide judgment dated 22.10.2010, the petitioner was acquitted. Therefore, the petitioner submitted a representation to the first respondent along with the acquittal order to grant regularization as per G.O.Ms.No.341. Since the same was not considered, the petitioner filed a petition in W.P.(MD)No. 17016 of 2014 and this Court dismissed the same. Aggrieved over the same, the petitioner preferred an Appeal in W.A(MD)No.92 of 2015. The Hon'ble Division Bench allowed the writ appeal and directed the respondents therein to consider and pass orders. Based on the judgment, the present impugned order came to be passed. The respondents declined to regularize the service of the petitioner by stating that the petitioner has absented unauthorizedly and hence the petitioner is not entitled for regularization.

3. The respondents have filed counter reiterating the same reason as stated in the impugned order. Since the petitioner has unauthorizedly



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absented for more than thirteen years, the respondents claimed that the petitioner's case cannot be considered for regularization.

4. Heard Mr.A.Jayaramachandran, the learned counsel appearing for the petitioner and Mr.C.Baskaran, Government Advocate (Civil Side) for the respondents and perused the records.

5. The learned Counsel appearing for the respondents submitted that the petitioner was unauthorizedly absented for 13 years, which includes the period of suspension and conviction and the petitioner claims to regularize the said period after acquittal.

6. As per the fundamental rules, whenever an employee is acquitted in a criminal case, then the employee is entitled to regularize for the period where the employee was out of employment due to pendency of a criminal case. In the present case, since the petitioner was not regularized, the respondents have refused to apply the fundamental rules and therefore, the impugned order is set aside. Since as per G.O.Ms.341 the petitioner's name is in the list for regularization, the respondents ought to regularize the petitioner. Thereafter,



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the respondents are directed to regularize the period when the petitioner was out of employment period as per the Fundamental Rule 54, within a period of eight weeks, from the date of receipt of a copy of this order. However, it is made clear that the petitioner is not entitled to any back wages for the period of absence under the principle of “No Work No Pay”. The petitioner is entitled to continuity of service alone.

7. With the above directions, this writ petition is disposed of. No costs.

31.10.2022

Index : Yes / No

Internet : Yes/ No

lr

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S.SRIMATHY, J.

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