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W.P.No.21385 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

and

THE HONOURABLE Mrs.JUSTICE N.MALA

W.P.No.21385 of 2013

1.K.Lakshminarayanan
2.M.Subramanian
3.B.Regghupathy
4.N.Marudhachalam

...Petitioners

VS

1. The Director of Town Panchayats,
Kuralagam,
Chennai.

2. The Executive Officer,
Gudalur Town Panchayat,
Coimbatore-20.

3. The Commissioner,
Gudalur Municipality,
Coimbatore District.

(R.3 impleaded vide order dated 29.03.2023
made in WMP No.8475 of 2023 in W.P.No.
21385/2013)

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a



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Writ of Mandamus directing the respondents to regularise the services of the petitioner on the completion of 10 years of service on NMR basis in the light of G.O.Ms.No.22 P & AR Department dated 28.02.2006 and/or in light of G.O.Ms.No.198(MAWS Department) dated 26.10.1998.

For Petitioners : Mr.V.Vijay Shankar

For Respondents : Mr.P.Gurunathan
Addl.Govt.Pleader
For R.1 and R.3
Mr.M.Shajahan
Spl.Govt.Pleader

ORDER

This Writ Petition has been filed to issue a Writ of Mandamus directing the respondents to regularise the services of the petitioner on the completion of 10 years of service on NMR basis in the light of G.O.Ms.No.22 P & AR Department dated 28.02.2006 and/or in light of G.O.Ms.No.198(MAWS Department) dated 26.10.1998.

2. The case of the petitioners is that the 1st petitioner joined service in the 2nd respondent Town Panchayat in the year 1992 on NMR basis. Similarly, the 2nd and 3rd petitioners joined in the year 1996 and the 4th petitioner joined in the year 1986. They were all discharging duties in the



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Town Panchayat in connection with Water Supply works and getting consolidated pay from the date of their appointment which was periodically increased. However, inspite of several years of service, they are yet to be regularised. The Government issued G.O.Ms.No.198 dated 26.10.1998 to bring such of those persons working on NMR basis to regular time scale of pay. Since the petitioners were already drawing consolidated pay even prior to 31.12.1996 which is the cut off date prescribed under the G.O., confusion prevailed as to how to bring the petitioners on regular time scale of pay. Similarly placed persons working in other Town Panchayat /Municipalities were regularized as early as in the year 2001 pursuant ot G.O.Ms.No.198 dated 26.10.1998. Another G.O.Ms.No.22 P& AR Dept. dated 28.02.2006 was issued bringing all those persons working on NMR basis on regular time scale of pay on completion of 10 years of continuous service as on 1.1.2006. Though the said GO is applicable to persons working in Government Department, this Court extended the said benefit to the persons working in Town Panchayats/Municipalities/Corporation. However, the said benefits were not extended to the petitioners. Hence, the present writ petition.

3. Learned counsel for the petitioners would submit that similarly



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placed persons in Town Panchayat and Municipalities were regularised from 2001 or 2002 on completion of 3 years of continuous service from the date on which they were brought on consolidated pay scale pursuant to G.O.Ms.Nos.199 and 198. Learned counsel would further submit that inspite of repeated proposals sent by the 2nd respondent to the Assistant Director of Town Panchayats, nothing fruitful has happened and the petitioners continued to be on consolidated pay without being regularised for no fault on their part. The action of the respondents in not regularising their service either as per G.O.198 or G.O.22 amounts to total discrimination resulting in wiping out the entire past service rendered by them.

4. Learned counsel would further submit that now except the 3rd petitioner all other petitioners have retired on completion of 60 years of age. The petitioners 1 and 2 retired in September 2019 and the 4th petitioner in February 2021. The 3rd petitioner is still working as Water Supply Operator in the respondent town panchayat. All the four petitioners were paid consolidated pay which was increased year after year. At the time of retirement, the petitioners 1 and 2 were getting about Rs.2700/- as consolidated pay and the 4th petitioner around Rs.3350/-. The Hon'ble



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Supreme Court and this Hon'ble Court have time and again emphasised that employees completing 10 years of service should be brought on regular scale of pay by regularising their service. Pursuant to such directions, several employees have been granted benefits of regularisation. The petitioners herein being similarly placed and having completed more than 30 years of continuous service are entitled to regular appointment, pay fixation and consequently for grant of pension and other benefits.

5. Per contra, learned Special Government Pleader would submit that as per the condition laid down in the said G.O.Ms.No.198 MA&WS Dept., dated 26.10.1998, the petitioners ought to have passed 8th standard. But the petitioners 1 and 2 have not qualified that standard of education. In addition to the educational qualification, the petitioners ought to have been sponsored through the employment exchange. The petitioners were not sponsored through the employment office. They are working as N.M.Rs. Therefore, the said G.O. is not applicable to the petitioners. He would further submit that based on the announcement made by the Hon'ble Chief Minister on 08.02.2006, the Government directed that the service of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 01.01.2006 be regularised by appointing



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them in the time scale of pay in accordance with the service condition prescribed for the post concerned, subject to the condition that they are being otherwise qualified for the post even in G.O.Ms.No.22 P& AR dept., dated 28.02.2006. The petitioners have not fulfilled the qualification for regularisation. Therefore, the petitioners cannot claim for regularization since they are not qualified. Therefore, he would pray that this writ petition may be dismissed.

6. We have considered the submissions made on either side and perused the materials available on record.

7. It is not in dispute that the petitioners were all discharging their duties in the Town Panchayat in connection with Water Supply works and getting consolidated pay from the date of their appointment which was periodically increased. However, inspite of several years of service, they were not regularised till date. Right from the date of their appointment they have been discharging their duties continuously. Though repeated proposals were sent by the 2nd respondent to the Assistant Director of Town Panchayats, who in turn, had taken up the issue to the 1st respondent and followed by the proposals on 27.07.2010 and panchayat resolutions on 18.09.2008, no action was taken to regularise the service of the petitioners.



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8. It is also brought to the notice of the Court that similarly placed persons working in other Town Panchayat/Municipalities were regularized as early as in the year 2001 pursuant to G.O.Ms.No.198 dated 26.10.1998. G.O.Ms.No.22 P & AR Dept., dated 28.0.2006 was passed bringing all those persons working on NMR basis on regular time scale of pay on completion of 10 years of continuous service as on 1.1.2006. Though the said GO is applicable to persons working in Government Department, this Court extended the said benefit to persons working in Town Panchayats/Municipalities/Corporation. Further, inspite of the Government passing G.O.Ms.Nos.199,198 & 22 to regularise the employees who have completed 10 years of service and having utilised their services for more than 30 years, the rejection of the claim of the petitioners stating that they lack educational/technical qualification is unsustainable. In this regard, the Hon'ble Division Bench of this Court, to which, one of us was a party (N.Mala,J.), while considering the similar issue in W.P.No.594 of 2022 dated 30.06.2022, held as follows:

23. The learned Judge has rightly relied on the case of Sheo Narain Nagar and others Vs. State of Uttar Pradesh and Another, reported in (2018) 13 Supreme Court Cases



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432. We are in complete agreement with the learned Judge and we are also of the view that menial workers and last grade labourers do not require any educational qualifications and if under the exigencies of the case, the Government chose to engage them and keep them for years together, then the Government cannot turn around and say that such engagement was illegal.

Therefore, the action of the respondents in not regularising the service of the petitioners as per G.O.Ms.Nos198 and 22 amounts to total discrimination resulting in wiping out the entire past service rendered by them. The petitioners are entitled for regularisation on the completion of 10 years of service on NMR basis in the light of G.O.Ms.No.22, P & AR Department dated 28.02.2006 and in light of G.O.Ms.No.198(MAWS Department) dated 26.10.1998.

9. In view of the above, the respondents are directed to pass orders regularizing the services of the petitioners in the light of G.O.Ms.No.22 P & AR Department dated 28.02.2006 and in light of G.O.Ms.No.198(MAWS Department) dated 26.10.1998., within a period of three months from the



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date of receipt of a copy of this order. Accordingly, the Writ Petition is allowed. No costs.

(J.N.B.,J.) (N.M.,J.)
09.08.2023

Index:Yes/No
Speaking/Non-speaking order
vsi

To

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**J.NISHA BANU,J.
and
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