



W.A.No.1615 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE G.ARUL MURUGAN

W.A.No.1615 of 2018 and
W.M.P.No.12992 of 2018

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai – 600 003.

2.The Executive Engineer,
Corporation of Chennai,
Zone XIV, Zonal Office,
Puzhuvdivakkam,
Perungudi, Chennai.

... Appellants

Vs.

1.Principal Secretary to Government,
Municipal Administration and
Water Supplies Department,
Fort St. George, Chennai – 600 009.

2.The Director of Town Panchayat,
Kurlagam Buildings,
Chennai – 600 018.

3.The Commissioner,
Municipal Administration,
Chepauk, Chennai – 600 005.



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4.The Managing Director,
Chennai Metropolitan Water Supply and
Sewerage Board,
No.1, Pumping Station Road,
Chindatripet, Chennai – 600 002.

5.M.Mari
6.C.Rajammal
7.V.Yesaiah
8.A.Ramaswamy
9.R.Jagannadhan
10.R.Kuppan
11.G.Ravi
12.M.Udayakumar
13.Y.Subbamma
14.J.Velankanni
15.K.Gnanam
16.R.Desingh
17.A.Sakthivel
18.K.Pushpalingam
19.P.Gopal

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 04.06.2013 made in W.P.No.13455 of 2013.

For Appellants : Mr.S.Silambanan
Additional Advocate General
for Mr.S.Gopinathan

For Respondents : Mr.M.Murali
Government Advocate for R1 & R2

: Mr.K.Suresh
Government Advocate for R3

: Mr.Krishna Ravindran
Standing Counsel for R4

: Mr.G.Bala for R5 & R19



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JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

The contesting private respondents were appointed in various posts in the erstwhile Kottivakkam Panchayat, which had been annexed to appellant Chennai Corporation. These employees were appointed in various capacities like Overhead Tank Operator, Scavenger, Gate Value Operator, Sweeper, Plumber etc. They have been appointed in various years from 1981 to 2005. Though these people had been appointed and had been working as such for several years, they had not been brought under the time scale of pay on regular basis. In this context, it is to be noted that, the Government had issued a Government Order in G.O.Ms.No.199 Municipal Administration and Water Supply Department dated 12.08.1997. Under the said GO, the newly appointed employees shall be appointed for the first one year, thereafter their appointment could be renewed every year for three continuous years. After a period of three years on evaluating the weightage of the service, they could be recommended to the Government for bringing them under regular pay scale if necessary, and in this regard order can be issued after due consideration.



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2. Since this G.O.Ms.No.199 was issued which enabled these employees to seek for regular time scale of pay on completion of three years of service as these employees have put in more years of service, they had approached this Court by filing a writ of mandamus in the said writ petition in W.P.No.13455 of 2013.

3. While deciding the said writ petition, the learned Judge of the Writ Court not only taking the import of G.O.Ms.No.199 but also having taken note of the earlier judgment of a Division Bench of this Court made in W.A.Nos.47 and 385 of 2010 dated 23.06.2010 and after having extracted the relevant portion of the order, was inclined to allow the said writ petition by giving the directions which is impugned herein.

4. Heard Mr.S.Silambanan, learned Additional Advocate General appearing for the appellants and Mr.G.Bala, learned counsel appearing for the contesting private respondents.

5. The learned Additional Advocate General for the appellants would contend that, in fact the Chennai Corporation had not engaged any of these employees directly and it was the claim of them that, they have



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been engaged by the erstwhile Kottivakkam Panchayat which had subsequently been merged with the Corporation of Chennai.

6. When this kind of merger is taken place, insofar as this kind of temporary engaged employees are concerned, normally the Corporation would not take the responsibility of regularising them, because, for want of vacancy such kind of regularisation or time scale of pay cannot be granted. Insofar as these employees are concerned, admittedly they had been engaged or claimed to have been engaged only by the erstwhile Kottivakkam Panchayat depending upon the vacancy in that Panchayat at the relevant point of time, the very same thing cannot be accepted to prevailing after the Panchayat area got merged with the Corporation, therefore only on need basis and depending upon the vacancy that was available in the Chennai Corporation that kind of gesture can be shown either to regularise their services or bring them under the time scale of pay. Therefore, as a matter of right these employees cannot seek for such regularisation.

7. The learned Additional Advocate General for the appellants would also contend that, assuming that there has been a procedure



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contemplated under Clause 6 of G.O.Ms.No.199, that does not mean that, every such employee who has been engaged by the erstwhile local body on merger with the present larger local body like the Chennai Corporation have to be brought under that regular time scale of pay after completion of three years of their service. The word 'if necessary' as has been mentioned in Clause 6 of G.O.Ms. No.199 would be paramount where the necessity means the need of the employee on permanent basis as well as vacancy position. Therefore, without considering all these aspects since the learned Judge had allowed the said writ petition giving direction to regularise all these employees and out of the 15 employees only 7 had been given to the Chennai Corporation at the time of merger of the Kottivakkam Panchayat, the said direction given by the learned Judge could not be complied with, therefore aggrieved over the said order since this appeal has been filed, the learned Additional Advocate General seeks indulgence of this Court to interfere with the said order.

8. However, Mr.G.Bala, learned counsel appearing for the contesting private respondents/employees would submit that, insofar as G.O.Ms.No.199 is concerned, it was issued in the year 1997 even before issuance of that G.O., majority of these employees had been appointed or



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engaged by the erstwhile local body i.e., Kottivakkam Panchayat. This factor is not disputed. Subsequently, G.O. has been made where it has been provided that, any new appointment is made in any local body that shall be made for only one year thereafter every year renewal can be given for consecutively three years and after completion of three years, the performance can be evaluated, based on which, on need basis it can be requested to the Government to bring them under time scale of pay.

9. Therefore the learned counsel would contend that, insofar as these employees are concerned, their service is very much required that is the reason why even till date they have been continuously working and has been engaged, therefore there was a need and necessity that cannot also be disputed, when that being the position, after evaluation of their performance within three years period, automatically they must have been brought under the time scale of pay atleast after the issuance of G.O.Ms.No.199 on 12.08.1997, since they failed to execute such action to bring them under time scale of pay, it become necessitated for these employees to approach this Court to file writ petition.



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10. The learned counsel also would contend that, a similar issue had already been raised before this Court in a writ petition which was allowed by the learned Judge, as against which, when the authorities preferred appeal in W.A.Nos.47 and 385 of 2010, a Division Bench of this Court by order dated 23.06.2010 has confirmed the order passed by the writ Court, not satisfying with the same, the Executive Officer of the local body preferred appeal before the Hon'ble Supreme Court and that was also dismissed. All these factors have been taken into account by the learned Judge and since the issue has been concluded by the orders passed by the Hon'ble Supreme Court, the similarly placed persons should be extended the benefit, therefore the learned Judge has allowed the said writ petition.

11. The learned counsel would also submit that, during the pendency of this appeal, out of the 15 employees, 8 of them, who have been placed before the Metro Water Department, have been regularised they are the respondents 5, 8, 9, 11, 12, 15, 16 and 18. Insofar as the remaining contesting respondents 7 in numbers who have been entrusted to the appellant Chennai Corporation, they alone have not been regularised and brought under the time scale of pay, therefore it is a clear



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case of discrimination. Therefore, on that ground also the arbitrary action or inaction on the part of the appellant Corporation cannot be approved, therefore to that extent, the decision taken by the learned Judge to give such direction is to be sustained, the learned counsel contended.

12. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

13. Insofar as the initial engagement or appointment of these employees are concerned, it starts from 1981 and it spread over upto 2005, assuming that the last person who has been engaged in the year 2005, as per G.O.Ms.No.199, the three years period over by 2008 and in 2009 immediately he could be brought under the time scale of pay.

14. Since they have been continuously working for all these years till date the need of the employees to be engaged continuously is there and it cannot be disputed, when that being the position, since these employees have fulfilled the requirements as stated in the said Government Order, they are eligible to be considered for being brought



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under the time scale of pay, for which steps should have been taken by the appellants Corporation to write to the Government and a nod has to be obtained and to do the same by bringing them under regular time scale of pay.

15. Insofar as the legal position is concerned, based on the very same G.O.Ms.No.199 when orders were passed in respect of similarly placed persons by the Writ Court, which was appealed by the local body in the said Writ Appeal Nos.47 and 385 of 2010 which was also disposed on 23.06.2010 by a Division Bench confirming the order passed by the Writ Court and that order passed by the Division Bench also has been confirmed by the Hon'ble Supreme Court in the SLP filed by the Executive Officer of the local body, therefore as has been rightly pointed out by the learned counsel appearing for the contesting respondents, the issue has been given a quietus.

16. Apart from that, 8 out of 15 employees, who all joined together and filed the writ petition which is impugned herein, had already been regularised by bringing them under the time scale of pay by another local authority or an organisation that is called Metro Water Department.



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Merely because the 7 out of 15 employees herein have been placed at the disposal of the Chennai Corporation, a different treatment cannot be meted out by them and therefore such an inaction on the part of the appellant Corporation can easily be construed as a discrimination, therefore on that ground also, the remaining employees are entitled to get such a benefit of regularisation under regular time scale of pay.

17. Therefore, for all these reasons we do not find any infirmity in the orders passed by the learned Judge in the impugned order and therefore the said order is to be sustained, accordingly this appeal fails, hence it is dismissed. However, there shall be no order as to costs. The needful as indicated above i.e. bringing them under regular time scale of pay by regularising their services by the appellant Corporation in respect of the remaining 7 employees are concerned, such a needful should be undertaken by the appellant Corporation within a period of twelve (12) weeks from the date of receipt of a copy of this judgment and accordingly the service benefits including the monetary benefits shall be extended to them as in the case of other similarly placed persons who received the similar benefits already.



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18. With these directions, this Writ Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is dismissed.

[R.S.K., J.] [G.A.M., J.]
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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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and
G.ARUL MURUGAN, J.

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