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Cont.Petn.Nos.993, 994, 995 and 996 of 2016 and
Review Appln. No.31 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

Cont.Petn.Nos.993, 994, 995 and 996 of 2016 and

Reveiw Application No.31 of 2023

Contempt Petitions

K.Vasagar

... Petitioner in
Cont.Petn.No.993/2016

V.Srinivasan

... Petitioner in
Cont.Petn.No.994/2016

M.Nagarajan

... Petitioner in
Cont.Petn.No.995/2016

K.Perumal

... Petitioner in
Cont.Petn.No.996/2016

vs

1. K.Phanindra Reddy,
Secretary to Government, State of Tamilnadu.
Municipal Administration and Water Supply Department,
Fort St. George, Chennai 600 009.



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2. Dr.R.Selvaraj, I.A.S.,
The Director of Town Panchayat,
Kuralagam Buildings, Chennai-108.

... Respondents in all
contempt petitions

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1. The State of Tamilnadu,
rep. by its Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai 600 009.

2. The Director of Town Panchayat,
Kuralagam Buildings, Chennai - 108.

... Petitioners

Vs.

1. K.Perumal
2. V.Srinivasan
3. M.Nagarajan
4. K.Vasagar

... Respondents

Prayer in all contempt petitions: Contempt Petitions filed under Section 11 of the Contempts of Courts Act, 1971 to punish the respondents for their act of contempt in not complying with the order of this Court dated 30.06.2015 made in W.A.No.1537/2014.

Prayer in Review Application: Review Application filed under Order 47 Rule 1 r/w Section 114 of CPC to review the order made in W.A.No.1537/2014 dated 30.06.2015.



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For all Contempt Petitioners/

Respondents in rev.appln. : Mr.S.Palanivelayutham

For Respondents/

Review applicants : Mr.J.Ravindran, Addl. Advocate General

Assisted by Mr.S.John J.Rajasingh,

Addl.Govt.Pleader

COMMON ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

The contempt petitions have been filed to punish the official respondents for disobeying the order of this Court dated 30.06.2015 made in W.A.No.1537/2014. The Review application has been filed to review the order dated 30.06.2015 passed by this Court in W.A.No.1537/2014.

2. The parties and the issues involved in the Contempt petitions as well as the Review application are one and the same and hence, all the matters were clubbed together and taken for disposal.



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3. The contempt petitioners jointly filed a writ petition in W.P.No.11585/2013 for direction to the respondents to bring them into a regular time scale of pay, from the date on which they completed 3 years consolidated pay services, in the light of G.O.Ms.No.198 Municipal Administration and Water Supplied Department dated 26.10.1998 with all service and monetary benefits. The Writ Court, vide order dated 02.08.2013, has allowed the writ petition, directing the respondents to regularise the service of the writ petitioners, on completion of 3 years from the date on which they have been appointed on consolidated pay into regular time scale of pay, within a period of three months. The above order was challenged by the Government by Writ Appeal No.1537/2014 and it was taken together along with other Writ appeals batch, which were similar in nature. A Division Bench of this Court, vide common order dated 30.06.2015, has partly allowed all the Writ Appeals to the extent that the writ petitioners are entitled to consideration for grant of time scale on regular basis on the basis of performance assessment to be done on completion of 3 years. Since the said order of Division Bench dated 30.06.2015 in W.A.No.1537/2014 was not complied with by the Government, the writ petitioners filed their



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respective contempt petitions. At the same time, the Government has also filed the review application, to review the above order passed by the Division Bench.

4. The learned counsel for the contempt petitioners submitted that the contempt petitioners were appointed as over head tank operator, tank cock operator and Electrician during the year 1982, 1985 and 1992 in Tamil Nadu Water Supply and Sewerage Board at various Panchayats and their services were regularized only from 11.12.2010. He further submitted that though the Division Bench of this Court has directed the respondents to regularize the service of the writ petitioners, on completion of 3 years in the regular time scale of pay, on the basis of performance assessment, it was not implemented by the respondents. Therefore, the respondents may be directed to implement the order passed by this Court.

5. The learned Additional Advocate General appearing for the respondents/review petitioners submitted that the writ petitioners had filed the above writ petition to grant regular time scale of pay from the date on



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which they completed 3 years of service on consolidated pay, in the light of G.O.Ms.No.198 dated 26.10.1998. He further submitted that the writ petitioners were not appointed in Town Panchayats on consolidated pay, by following G.O.Ms.No.198 dated 26.10.1998, G.O.Ms.No.72 dated 05.05.1998 and G.O.Ms.No.84 dated 21.05.1998; whereas, they were appointed in the existing vacancies in the Town Panchayat, as per G.O.Ms.No.242, dated 10.12.2009 and further they were not appointed in any sanctioned post, prior to such absorption. However, this fact was not brought to the notice of the Division Bench and inadvertently, the instant W.A.No.1537/2014 was clubbed together along with W.A.No.1289/2014, in which, all the employees working in various Town Panchayats were appointed under G.O.Ms.No.198, 72, 84 dated 26.10.1998, 05.05.1998 and 21.05.1998 respectively. Therefore, sofar as the writ petitioners are concerned, the question of retrospective regularization, in the light of G.O.Ms.No.198, dated 26.10.1998 does not arise.



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5.1. The learned Additional Advocate General further submitted that since the writ petitioners were formally appointed in the existing vacancy, in the sanctioned post, which were occupied by some other employees, who received all perquisites till they vacate the said posts, giving retrospective regularization to the writ petitioners would leads to dual payment for the same post in the corresponding period, as against the fiscal policy and rules in force. Therefore, the writ petitioners are not entitled for the relief as granted by this Court and hence the order passed by the Division Bench of this Court may be set aside.

6. Heard the learned counsel for the contempt petitioners and the learned Additional Advocate General appearing for the review applicants/Government and perused the materials on record.

7. According to the writ petitioners, their services have to be regularised on completion of 3 years on consolidated pay, in the light of G.O.Ms.No.198, dated 26.10.1998. But the contention of the learned counsel for the respondents/review applicants is that the above G.O.



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contained only guidelines and prescribing norms to sanction temporary posts by the Director of Town Panchayats and never granted for infinite creation of posts. The learned Additional Advocate General submitted that, the writ petitioners have given their consent in writing to continue as daily wages, instead of joining on consolidated pay, since the daily wage per month was higher than the consolidated pay and hence, the other persons in seniority were absorbed on consolidated pay. Thereafter, the employees under daily wages, who completed more than 10 years as on 01.01.2006, including the writ petitioners were permitted to be appointed by the Town Panchayats in the existing vacancy, as per G.O.Ms.No.242 dated 10.12.2009. Accordingly, the writ petitioners were appointed in the existing vacancies, vide order dated 11.12.2009 at Andipatti and Melachokkanathapuram Town Panchayat.

8. The factum of appointment of the writ petitioners on 11.12.2009, in the existing vacancies in the Town Panchayats, as per G.O.Ms.No.242, dated 10.12.2009, is not denied by the writ petitioners. According to the learned Additional Advocate General, the writ petitioners were appointed



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in the existing vacancy, which post is not sanctioned one, however, considering their continuous service, they were brought into regular time scale of pay. Therefore, the writ petitioners cannot seek regularization, as a matter of right, from the date of completion of three years on consolidated pay, as assured under G.O.Ms.No.198, dated 26.10.1998, especially, when they have given option to work on daily wages.

9. The learned counsel appearing for the writ petitioners fairly admitted that the writ petitioners were appointed, as per G.O.Ms.No.242, dated 10.12.2009 and hence, the G.O.Ms.No.198, dated 26.10.1998, will not apply to the case of writ petitioners. He further submitted that the writ petitioners are in service and in view of their length of service rendered in Panchayats, they are entitled for regularization from the date of their initial appointment.

10. The fact remains that the writ petitioners were not appointed in terms of rules and they were absorbed into regular service only on backdoor method, by considering their long service, as per G.O.Ms.No.242,



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dated 10.12.2009. Further, as per the ratio laid down by the Hon'ble Supreme Court in the case of **Secretary to Government, School Education Department, Chennai .vs. R.Govindasamy** reported in **(2014) 4 SCC 769**, the writ petitioners cannot be considered for grant of retrospective regularization from the date on which, they were engaged as daily wage employees. Therefore, we are satisfied with the submission made by the learned Additional Advocate General and hence, the claim of the writ petitioners cannot be entertained, as it has no merits. As such, the orders passed by the Division Bench as well as Writ Court warrant interference by this Court and thus, the Review Applicants are entitled to succeed in the Review Application and hence, the order passed in W.A.No.1537/2018 dated 02.08.2013 is liable to be set aside.

11. Before parting with the order, we expressed dis-satisfaction on the Department, since they filed Review Application on 20.04.2016 and the same was being kept under SR stage for nearly 7 years and only in the year 2023, it has been numbered. Before filing Review Application, the writ petitioners filed contempt petitions on 01.03.2016 for disobeying the order



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passed by the Division Bench of this Court in W.A.No.1537/2018 dated 02.08.2013 and it was adjourned. But the Department has not chosen to take necessary steps to number the application within a reasonable time. Therefore, we deprecated the attitude of the Department for unnecessarily delaying in numbering the Review Application, due to which, the litigants have suffered at the hands of the appellant/Department. Hence, the Secretary to Government of Tamilnadu, Secretariat, Chennai is directed to take necessary action against the officer concerned, for his lethargic attitude, shown in numbering the Review Application. As such, we are satisfied to impose payment of heavy costs on the Department for the aforesaid delay in numbering the application.

12. Accordingly, the Review Application is allowed on payment of costs of Rs.10,000/- (Rupees Ten Thousand) each to the respondents/writ petitioners namely K.Vasagar, V.Srinivasan, M.Nagarajan and K.Perumal. Since it is brought to the notice of this Court that the above said Writ Petitioner, namely K.Perumal died on 22.02.2016 and his death certificate has been produced before this Court, the cost of Rs.10,000/- payable to



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K.Perumal has to be paid to his legal heirs. Consequently, all the contempt petitions are closed.

(D.K.K., J.)

(J.S.N.P., J.)

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Index : Yes/No
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