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W.P.Nos.7765 to 7774 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.7765 to 7774 of 2015 and
MP.No.1 of 2015(10 Nos.)

WP.No.7765 of 2015

The Zonal Officer,
Zone-VII,
Corporation of Chennai,
Ambattur,
Chennai 600 053
Formerly
The Commissioner,
Ambattur Municipality,
Ambattur,
Chennai 600 053

... Petitioner

Vs.

1.The Presiding Officer,
II Additional Labour Court,
Chennai
2.Mani

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records on the file of the first respondent herein in CP.No.632 of 2007 and quash the impugned order dated 28.06.2012 passed by the first respondent herein as highly illegal and arbitrary.



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For Petitioner
in all WP's : Mr.S.Gopinathan,
Standing Counsel

For Respondents
in all WP's

For R1 : Court

For R2 : No appearance

COMMON ORDER

All the writ petitions have been filed challenging the common award dated 28.06.2012 passed by the first respondent in various claim petitions thereby directed the petitioner to regularise the services of the second respondent in all the writ petitions after completion of three years of their services and also observing that they are entitled to claim the difference of wages.

2. On perusal of records, the second respondent in all the writ petitions were working as Sweepers in the petitioner management from various dates. They were paid salary at Rs.1,000/- per month with an annual increase at 10% of the salary being drawn. The Government of Tamilnadu, Local Administration and Water Supply Department by their



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GO.No.71 dated 05.05.1998 passed an order that all the Sweepers who have completed three years of service be brought under regular time scale of pay. Therefore, as per Government Order, the Commissioner recommended by its communication dated 10.08.2002 that the financial position of the Ambattur Municipality is sound and satisfactory and that 233 Sweepers including the second respondent in all the writ petitions can be granted time scale in accordance with GO.No.71 dated 05.05.1998. However, their salary was paid on time scale of pay only from 28.02.2006. Therefore, they filed claim petition under Section 33 (C)(2) of Industrial Disputes Act claiming computation of certain monetary benefits due to them. The specific case of the petitioner is that in the year 2001, vide GO.No.22 P&AR(P) Department dated 29.11.2001, a total ban was introduced for creation on new posts or filling up of vacant posts. Therefore, no post was created and filled. In the year 2006, vide GO.Ms.No.14, Personnel and Administrative Reforms Department dated 07.02.2006, the ban on entry level appointments have been lifted and orders have been issued for regularising the services of the employees on consolidated pay into



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regular time scale with immediate effect in GO.Ms.No.21 Municipal Administration and Water Supply Department dated 23.02.2006. Accordingly, 292 Sweepers including 273 Sweepers who were working on consolidated salary have been brought under time scale of pay with effect from 01.03.2006. Therefore, there was a ban for creation of new posts or filling up vacant posts during the period from 29.11.2001 to 07.03.2006. Therefore, they are not entitled to claim retrospectively with effect from 01.01.2002.

3. Further, the Hon'ble Division Bench of Madurai Bench of this Court in the case of S.Dhanasekaran and 24 Others reported in **2013 (6) CTC 593**, held about the applicability of GO.Ms.No.21 Municipal Administration and Water Supply Department dated 23.02.2006 and decided that the ban was in existence for the employers who have been absorbed by GO.Ms.No.71 dated 05.05.1998, the relevant portion of which is extracted hereunder:

15. From the facts narrated above, it is crystal clear that there were three categories of Sanitary Workers. The first category of Sanitary Workers are the



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ones, who had been appointed as against the permanent vacancies prior to G.O. Ms. No.101, Municipal Administration and Water supply Department, dated 30-04-1997. The second category of Sanitary Workers are the ones, who were appointed through Employment Exchanges as against the newly created posts as per [G.O.Ms.](#) No.101, Municipal Administration and Water supply Department, dated 30-04-1997. The third category of Sanitary Workers are the ones, who were absorbed with effect from 01-05-1998, as per [G.O.Ms.](#) No.71, Municipal Administration and Water Supply Department, dated 05-05-1998, as against the newly created posts as per G.O. Ms. No.101, Municipal Administration and Water Supply Department dated 30-04-1997.

16. For the purpose of our discussion, it is not necessary to refer to the Sanitary Workers, who were appointed on regular basis, as against the permanent vacancies prior to G.O. Ms. No.101, Municipal Administration and Water Supply Department, dated 30-04-1997. so far as the Sanitary Workers referred to as second and third categories, as above, they continue to work only on consolidated pay for several years. There were several representations in respect of their request



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for regularization of their services. Having taken note of the same, G.O. Ms. No.21, Municipal Administration and Water Supply Department, dated 23-02-2006, came to be issued. Thus this Government Order is very crucial for the purpose of our discussion. Clause 4 of the said Order states that the question of regularization of these employees could not be considered between 29-11-2001 & 07-02-2006 because the Government had issued G.O.Ms. No.212, Personnel and Administrative Reforms Department, dated 29-11-2001, thereby completely banning filling-up of all vacant posts by direct recruitment. The ban came to be lifted by the Government only from 07-02- 2006, as per G.O. Ms. No. 14, Personnel and Administrative Reforms Department, dated 07-02-2006. Thus, after the ban was lifted, the Government issued G.O.Ms. No.21, Municipal Administration and Water Supply Department, dated 23-02-2006. Clauses 5 & 6 of the said Government Order (G.O. Ms. No.21, Municipal Administration and Water Supply Department, dated 23-02-2006) read as follows:

5. They accordingly direct the Appointing Authorities viz., Municipal Commissioner, Grade-III, Municipal Commissioners and Commissioners of Municipal Corporations (except Chennai) to appoint the



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employees on consolidated pay and NMRS on daily wages on their roll as on 01-10-1996 in respect of Municipalities and Municipal Corporations (except Chennai) and as on 31-12-1996 in respect of Grade-III, Municipalities in the vacant posts and to regularize their services in the regular post, from the date of issue of this order subject to the following conditions:

- (i) Sanctioned posts should be available.*
- (ii) Persons should fulfill all educational and other qualifications, and*
- (iii) Establishment (pay and pension) expenditure of the Urban Local Body should not exceed 49% of revenue after filing up to posts.*

6. The Appointing Authorities are strictly advised not to appoint any person on daily wages or on consolidated pay in the Municipalities and in the Municipal Corporation in future.

4. Further, the first respondent has no jurisdiction to allow the claim petition filed under Section 33 (C) (2) of Industrial Disputes Act. It is relevant to extract provision under Section 33 (C) (2) of Industrial Disputes Act hereunder:

33-C. Recovery of money due from an employer :-

(1) Where any money is due to a workman from an



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employer under a Settlement or an award or under the provisions of (Chapter V-A or Chapter V-B), the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is the satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period

5. Thus, it is clear that unless there is a pre-existing right, the employee has no right to claim anything under Section 33 (C) of the said Act. In the case on hand, the second respondents have no payable dues



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from the petitioner as per any settlement or award or so on was not a regularised payee for the period of claim and more over, without any sanctioning by the Government, the second respondent had no right. Therefore, the claim made by the second respondents should have been adjudicated in the manner known to law. Without adjudication, the first respondent has no jurisdiction to pass award in the claim petition.

6. In view of the above, the impugned order cannot be sustained and it is liable to be quashed. Accordingly, the impugned order dated 28.06.2012 passed by the first respondent in CP.Nos.632, 634 to 636, 669 to 674 of 2007 is quashed and all the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Presiding Officer,
II Additional Labour Court,
Chennai
2. The Government Advocate,
High Court, Madras.

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