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W.P.Nos.27100 and 26879 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On: 20.07.2023

Reserved On: 17.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.27100 and 26879 of 2016

And

W.M.P.Nos.23275, 23093 and 23094 of 2016

1.D.Munusamy
2.M.Kamaraj
3.Sekar

... Petitioners in W.P.27100/2016

K.Janakiraman

... Petitioner in W.P.26879/2016

Vs.

1.The State of Tamil Nadu,
Represented by Secretary to Government,
Municipal and Local Administration Department,
Fort St.George,
Chennai – 600 008.

2.The Director of Municipality,
Municipal and Local Administration,
Chepauk,
Chennai – 600 005.

3.The Commissioner,
Kancheepuram Municipality,
Kancheepuram District.

... Respondents in both the W.Ps.

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to



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issue a Writ of Certiorari calling for the records pertaining to the issue of the impugned order Na.Ka.No.6374/2006 E-2 dated 04.05.2016 passed by the third respondent and quash the same.

For Petitioners : Mr.G.Mutharasu

For Respondents : Mr.M.S.Prem Kumar for R1 and R2
Government Advocate
Mr.P.Srinivas for R3

COMMON ORDER

The petitioners have filed these writ petitions seeking issuance of Writ of Certiorari calling for the records pertaining to the issue of the impugned order Na.Ka.No.6374/2006 E-2 dated 04.05.2016 passed by the third respondent and to quash the same.

2.Since the issue involved in these writ petitions are one and the same, they are heard together and disposed of by way of a common order.

3.The case of the petitioners is that the petitioners were employed as regular Gang Masdoors on Nominal Muster Roll basis from August, 1984 under the third respondent and were terminated from service by the third respondent during the year 1989. Aggrieved by



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the same, they raised industrial dispute as against the third respondent in I.D.Nos.132, 133, 134 and 131 of 1997 respectively, on the file of the Principal Labour Court, Chennai. The Labour Court passed award dated 15.12.2003 in favour of the petitioners by holding that the petitioners are entitled to the relief of reinstatement in service with backwages, continuity of service and all other attendant benefits.

4.The further case of the petitioners is that aggrieved by the award of the Labour Court dated 15.12.2003, the third respondent filed W.P.Nos.25537, 25538, 25540 and 25536 of 2005 respectively, before this Court as against the petitioners and this Court vide order dated 23.03.2006 dismissed the said writ petitions. Subsequently, the petitioners were reinstated in service during the year 2010 by the third respondent. Challenging the order of this Court dated 23.03.2006, the third respondent filed W.A.Nos.1719, 1720, 1722 and 1718 of 2011 respectively, before the Hon'ble Division Bench of this Court and the Hon'ble Division Bench of this Court vide judgment dated 19.01.2012 dismissed the said writ appeals. Thereafter, the petitioners were appointed as fresh sanitary workers in the third respondent Municipality during the year 2012.



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5.The further case of the petitioners is that thereafter, the petitioners made representations dated 10.02.2015, 10.02.2015, 10.02.2015 and 10.07.2015 respectively, to the respondents seeking to regularize their service from the date of initial appointment and since the said representations were not considered, the petitioners in W.P.No.27100 of 2016 filed W.P.No.31730 of 2015 and the petitioner in W.P.No.26879 of 2016 filed W.P.No.77 of 2016 before this Court and this Court vide order dated 07.10.2015 and 05.01.2016 respectively, directed the third respondent to consider the representation of the petitioners after taking note of the award passed by the Principal Labour Court, Chennai in I.D.Nos.132, 133, 134 and 131 of 1997 respectively, and to forward necessary proposal to the first respondent through the second respondent. However, the impugned order rejecting the claim of the petitioners and regularising their services from the date on which they were appointed in regular service i.e., 03.10.2012, was passed. Challenging the same, the petitioners have filed these writ petitions.

6.The learned counsel appearing for the petitioners submitted that admittedly, the petitioners were employed as regular Gang



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Masdoors on Nominal Muster Roll basis from August, 1984 under the third respondent and were terminated from service by the third respondent during the year 1989. Aggrieved by the same, they raised industrial dispute as against the third respondent in I.D.Nos.132, 133, 134 and 131 of 1997 respectively, on the file of the Principal Labour Court, Chennai. The Labour Court passed award dated 15.12.2003 in favour of the petitioners by holding that the petitioners are entitled to the relief of reinstatement in service with backwages, continuity of service and all other attendant benefits.

7.The learned counsel appearing for the petitioners further submitted that the award of the Labour Court in I.D.Nos.132, 133, 134 and 131 of 1997 respectively, dated 15.12.2003, was confirmed by this Court in W.P.Nos.25537, 25538, 25540 and 25536 of 2005 respectively, on 23.03.2006. It was also confirmed by the Hon'ble Division Bench of this Court in W.A.Nos.1719, 1720, 1722 and 1718 of 2011 respectively, on 19.01.2012. However, the service of the petitioners were regularized only from the date on which they were appointed in regular service i.e., 03.10.2012, which is not sustainable. The petitioners are entitled to be regularized in service from the date of their initial appointment, i.e., from August, 1984.



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8. In support of his contentions, the learned counsel appearing for the petitioners relied upon the following decisions:

(i) The decision of the Hon'ble Apex Court in the case of Ravi Verma and others Vs. Union of India and others (Civil Appeal No(s).2795 – 2796 of 2018) dated 13.03.2018;

(ii) The decision of the Hon'ble Apex Court in the case of Raman Kumar and others Vs. Union of India and others (Civil Appeal No(s). / 2023 @ SLP(C) No.7898/2020) dated 03.07.2023;

(iii) The decision of the Hon'ble First Bench of the Madurai Bench of this Court in the case of The Principal Secretary to Government and others Vs. V.Annamuthu (W.A.(MD) No.902 of 2015) dated 24.02.2020 and

(iv) The decision of this Court in the case of G.Sivaganesan and others Vs. State of Tamil Nadu, Rep. by its Secretary and others (W.P.Nos.29346 of 2014 etc., batch) dated 22.04.2022.

9. Per contra, the learned counsel appearing for the third respondent submitted that the petitioners were initially employed as regular Gang Masdoors on Nominal Muster Roll basis under the third respondent and not as regular employees and since the cost for



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maintenance of sewerage farms was higher, the third respondent decided to hand over the maintenance of sewerage farm works by way of auction in the year 1988 and hence, the services of the petitioners were terminated during the year 1989.

10.The learned counsel appearing for the third respondent further submitted that the petitioners thereafter raised industrial dispute as against the third respondent in I.D.Nos.132, 133, 134 and 131 of 1997 respectively, on the file of the Principal Labour Court, Chennai and the Labour Court passed award dated 15.12.2003 in favour of the petitioners by holding that the petitioners are entitled to the relief of reinstatement in service with backwages, continuity of service and all other attendant benefits.

11.The learned counsel appearing for the third respondent further submitted that the award of the Labour Court in I.D.Nos.132, 133, 134 and 131 of 1997 respectively, dated 15.12.2003, was confirmed by this Court in W.P.Nos.25537, 25538, 25540 and 25536 of 2005 respectively, on 23.03.2006. It was also confirmed by the Hon'ble Division Bench of this Court in W.A.Nos.1719, 1720, 1722 and 1718 of 2011 respectively, on 19.01.2012. All those facts are not



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denied.

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12.The learned counsel appearing for the third respondent further submitted that the petitioners were appointed as fresh sanitary workers in the third respondent Municipality on 03.10.2012 as per the award dated 15.12.2003, which was confirmed by this Court on 23.03.2006 and by the Hon'ble Division Bench of this Court on 19.01.2012.

13.The learned counsel appearing for the third respondent further submitted that the order of this Court in W.P.Nos.25537, 25538, 25540 and 25536 of 2005 respectively, dated 23.03.2006, makes it clear that this Court directed the third respondent to consider the petitioners regularization on preferential basis, as and when the vacancy arises in future by waiving the age bar necessary and that until the petitioners are regularised in the future vacancies, the third respondent shall not resort to any fresh recruitment from outside. Accordingly, the service of the petitioners were regularized from the date on which they were appointed in regular service i.e., 03.10.2012. Hence the impugned order was rightly passed and it needs no interference.



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14. Heard the arguments advanced on either side and perused the materials available on record.

15. The facts in the present case is not in dispute. Admittedly the petitioners were employed as regular Gang Masdoors on Nominal Muster Roll basis during August, 1984 under the third respondent and were terminated from service by the third respondent during the year 1989. Aggrieved by the same, the petitioners raised industrial dispute as against the third respondent in I.D.Nos.132, 133, 134 and 131 of 1997 respectively, on the file of the Principal Labour Court, Chennai. The Labour Court passed award dated 15.12.2003 in favour of the petitioners by holding that the petitioners are entitled to the relief of reinstatement in service with backwages, continuity of service and all other attendant benefits.

16. Aggrieved by the award of the Labour Court dated 15.12.2003, the third respondent filed W.P.Nos.25537, 25538, 25540 and 25536 of 2005 respectively, before this Court as against the petitioners and this Court vide order dated 23.03.2006 dismissed the said writ petitions. Subsequently, the petitioners were reinstated in



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service during the year 2010 by the third respondent. Challenging the order of this Court dated 23.03.2006, the third respondent filed W.A.Nos.1719, 1720, 1722 and 1718 of 2011 respectively, before the Hon'ble Division Bench of this Court and the Hon'ble Division Bench of this Court vide judgment dated 19.01.2012 dismissed the said writ appeals. Thereafter, the petitioners were appointed in regular service as fresh sanitary workers in the third respondent Municipality during the year 2012.

17. Thereafter, the petitioners made representations dated 10.02.2015, 10.02.2015, 10.02.2015 and 10.07.2015 respectively, to the respondents seeking to regularize their service from the date of initial appointment and since the said representations were not considered, the petitioners filed W.P.No.31730 of 2015 and W.P.No.77 of 2016 before this Court and this Court vide order dated 07.10.2015 and 05.01.2016 respectively, directed the third respondent to consider the representation of the petitioners after taking note of the award passed by the Principal Labour Court, Chennai in I.D.Nos.132, 133, 134 and 131 of 1997 respectively, and to forward necessary proposal to the first respondent through the second respondent. However, the impugned order rejecting the claim of the petitioners and regularising



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their services from the date on which they were appointed in regular service i.e., 03.10.2012, was passed.

18.The moot question that arise for consideration is whether the petitioners are entitled for regularisation of service with retrospective effect from the date of initial appointment?

19.For better appreciation, the relevant portion of the order of this Court dated 23.03.2006 made in W.P.Nos.25536 to 25540 of 2005 is extracted hereunder:

"4.The writ petitions were admitted on 10.8.2005. The petitioner-management had not even attempted to obtain stay of the impugned Award from the year 2005. On the other hand, the learned counsel appearing for the first respondent placed reliance on a decision of this Court, dated 05.12.2003 in W.P.Nos.2113 to 2116 and 2126 to 2130 of 1997, wherein this Court directed the continuance of employment of the respective first respondents therein as daily rated mazdoors by paying current rate of wages as determined by the District Collector, Kancheepuram and also



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to consider their regularization on preferential basis, as and when the vacancy arises in future by waiving the age bar necessary. It was also further observed that until the respective first respondents covered by those petitions are regularised in the future vacancies, the petitioner shall not resort to any fresh recruitment from outside.

5.Following the abovesaid order, dated 05.12.2003 passed by this Court in W.P.Nos.2113 to 2116 and 2126 to 2130 of 1997, these writ petitions are dismissed. No costs."

20.Perusal of the decision cited supra makes it clear that this Court issued direction to the third respondent to consider the petitioners regularization on preferential basis, as and when the vacancy arises in future by waiving the age bar necessary and until the petitioners are regularised in the future vacancies, the third respondent shall not resort to any fresh recruitment from outside. Accordingly, the service of the petitioners were regularized from the date on which they were appointed in regular service i.e., 03.10.2012, which is perfectly in order.



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21. Though very many decisions have been relied on by the learned counsel appearing for the petitioners, the said decisions do not in any manner apply to the facts of the present case. In the said cases, the persons were in employment for more than 10 years and as an one-time measure, their services were regularised by initially bringing them under consolidated pay and, thereafter, regularisation was granted.

22. In the case on hand, the initial employment of the petitioners were as NMRs in the year 1984 and they continued in the said post till 1989. Based on the award, the petitioners were continued in service, but afresh by appointing them from the year 2012. Thereafter, on their representation and on the basis of the orders passed by this Court, regularisation was granted from 03.10.2012, the date on which they were appointed pursuant to the award of the Court below. In fact, the order passed in W.P.Nos.25536 to 25540 of 2005 clearly spells out that the appointment of the petitioners should be on preferential basis, as and when substantive vacancy arises. Therefore, the arising of vacancy was the basis of their appointment, as till such date, the petitioners were directed to be kept in employment as daily



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rated mazdoors. The above said order had attained finality in the dismissal of the writ appeals filed by the third respondent. Such being the case, the petitioners having been appointed in the substantive vacancy only on 03.10.2012, their regularisation could only be from the said date and it cannot date back to the year 1984. The award passed in the industrial disputes merged with the order passed in W.P.Nos.25536 to 25540 of 2005 and, therefore, the regularisation could only be from the date of their appointment and not from the date of their initial employment as NMRs in the year 1984.

23.In the aforesaid facts and circumstances, the prayer sought for by the petitioners is wholly misconceived and it cannot be granted. Accordingly, both the writ petitions fail and the same are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

20.07.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No



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To

- 1.The Secretary to Government,
Municipal and Local Administration Department,
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- 2.The Director of Municipality,
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M.DHANDAPANI,J.
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**Pre-delivery Order in
W.P.Nos.27100 and
26879 of 2016
And
W.M.P.Nos.23275, 23093
and 23094 of 2016**

20.07.2023