



W.P.No.17237 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.17237 of 2018

1.G.Govindan

2.K.Thirumurthy

3.R.Vijayan

4.K.Krishnan

5.G.Marimuthu

6.Manogaran

7.S.Mahali

...Petitioners

Vs.

1.The Secretary to Government of Tamilnadu,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai – 9.

2.The Commissioner of Municipal Administration,
Chepauk, Chennai - 5.

3.The Commissioner,
Erode Municipal Administration,
Erode - 638 001.

4.The Assistant Commissioner, Zone IV,
Erode Municipal Administration,
Moolapalayam, Erode - 1.



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5.The Assistant Commissioner, Zone IV,
Kasipalayam,
Erode Municipal Administration,
Erode – 1.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 4 to regularise the services of the petitioners by bringing them on time scale of pay with effect from the respective dates of completion of 3 years of service as provided under G.O.Ms.No.199 (MAWS Department) dated 12.08.1997 and in the light of the judgements passed by this Court in W.P.No.25620 of 2006 dated 17.09.2008 and W.A.No.47 of 2020 dated 23.06.2010 with all consequential and attendant benefits.

For Petitioners : Mr.V.Vijay Shankar

For Respondent : Mr.M.Shahjahan,
Nos.1 & 3 Special Government Pleader

For Respondent : Mr.P.Srinivas
Nos.3 to 5

ORDER

Heard Mr.V.Vijay Shankar, learned counsel for the petitioners and Mr.M.Shahjahan, learned Special Government Pleader appearing for the respondents 1 and 2, as well as Mr.P.Srinivas, learned counsel appearing for the respondents 3 to 5.



2. The petitioners were originally appointed on consolidated basis for a period of one year, which was extended to two more years. By placing reliance on G.O.(Ms) No.199, Municipal Administration and Water Supply Department, dated 12.08.1997, the petitioners claim that on completion of three years of service, they are entitled to be brought under regular time scale of pay.

3. According to the learned counsel for the petitioners, the petitioners were originally inducted as Sanitary workers in the year 1998 in the Kasipalayam Town Panchayat, which was subsequently merged with the Erode Municipal Corporation and have completed three years of service in the year 2001. He further submitted that since they have completed three years of service, G.O. (Ms) No.199 dated 12.08.1997, is applicable to the petitioners herein.

4. The learned counsel for the respondents 3 to 5, on the other hand, submitted that the ban of regularization was imposed by the Government in the year 2000 and subsequently, G.O.Ms.No.21, dated 23.02.2006 was issued for regularization of NMRs / consolidated wage employees, on completion of 10 years of service and accordingly, the petitioners' services were regularized. The learned counsel submitted



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that G.O. (Ms) No.199 dated 12.08.1997, would not be applicable to the petitioners herein, which only speaks about enhancement of wages based on the efficiency of the employees. He also submitted that after the Hon'ble Full Bench of this Court had held that regularization cannot be granted as a matter of right on expiry of three years, it was subsequently reviewed and the order passed in the review petition has now been stayed by the Hon'ble Supreme Court in S.L.P.(C) No.19874 of 2017.

5. The main issue involved in this Writ Petition is as to whether all these petitioners are entitled for regularization from the date on which they had completed three years of service from their respective initial engagement.

6. This issue had already come up before this Court for consideration in W.P.No.27191 of 2004, as against which an appeal came to be filed by the official respondents in the case of ***The Director of Town Panchayat and others Vs. R.Sundaradas in W.A.No.1454 of 2007*** and the Hon'ble Division Bench of this Court, in its order dated 19.12.2008, had affirmed the order of learned Single Judge in holding that the employees would be entitled for regularization, on completion



of three years of service from their date of initial engagement. The relevant portion of the order reads as follows:

"2. There is absolutely no merit in this appeal. The appeal has been filed for the sake of filing an appeal. The respondent herein joined the service of the third appellant as sweeper on 16.03.1998. Based on two G.Os. Ms.Nos.84 and 199, Municipal Administration and Water Supply Department, dated 21.05.1998 and 12.08.1997, the writ petitioner, the respondent herein, sought for regularisation, which has been rejected by the respondent. The correctness was canvassed before the Court by filing the writ petition. As could be seen from the order, the request for regularisation has been rejected on two grounds – the first being that the leave period of the respondent from 23.04.1998 to 14.06.1998 has not been regularised and the services of the respondent has not been appraised as required under the G.O.

3. The Writ Court, after taking into consideration the materials placed before it, has found that the first of the reasons that the leave period between 23.04.1998 and 14.06.1998 has been regularised is not correct and as a matter of fact, by proceedings dated 16.06.2001 the leave period has been regularised. Likewise, the third



appellant, in his communication dated 16.06.2001, has categorically stated that the respondent has completed three years of service and the appellant appraised the service of the respondent and on being satisfied, recommended the case of the respondent for regularisation. On that score, the Writ Court allowed the writ petition filed by the respondent. That order is canvassed before us in this appeal.

4.The very same arguments that had been submitted before the Writ Court, are reiterated before this Court. We are not able to countenance any of those arguments. This is a pure and simple factual issue, which has been considered on the basis of the materials available on record in favour of the respondent. Hence, we find no merit in the writ appeal. The writ appeal is dismissed."

7. The decision of the Hon'ble Division Bench of this Court in W.A.No.1454 of 2007 was challenged by the official respondents before the Hon'ble Supreme Court in SLP(Civil)No. 16217 of 2009, which came to be dismissed on 16.03.2012. Thus, the decision of this Court that the employees, who are similarly placed as that of the petitioners herein, would be entitled for regularization on completion of three years of service, has attained finality.



8. The aforesaid decision of the Hon'ble Division Bench in W.A.No.1454 of 2007, came to be followed for similarly placed employees in the case of ***The Executive Officer Vs. C.Kittusamy and others in W.A.Nos.47 and 385 of 2010*** and in the order dated 23.06.2010, the Hon'ble Division Bench had affirmed the findings of the learned Single Judge, with regard to the entitlement of the petitioners therein for being brought into the regular time scale of pay from the date of completion of three years. This order reads as follows:

"2.The short facts leading to the filing of these appeals are stated hereunder:-

The petitioners in both the writ petitions were appointed as Sweepers/Sanitary Workers by the concerned Town Panchayats, on a consolidated pay of Rs.900/- with effect from 27.3.1998 and 30.4.1998 respectively. They joined duty on different dates in the year 1998. As per the Government Orders, dated 17.8.1999, on completion of three years of service on consolidated pay, they should have been brought under the time scale of pay with effect from the date when they completed three years. But by means of the orders impugned in the writ petitions, they were brought under the time scale of pay only with effect from 23.2.2006 in so far as W.A.No.47 of 2010 is concerned and with



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effect from 23.6.2006 in so far as W.A.No.385 of 2010 is concerned. The said orders were challenged in the writ petitions.

3.The learned Single Judge, on the basis of the judgment rendered by a Division Bench of this Court in W.A.No.1454 of 2007, dated 19.12.2008 in the case of Director of Town Panchayat, Kuralagam, Chennai and two others -vs- R.Sundaradas, allowed the writ petitions and held that the writ petitioners are entitled to the time scale of pay only from the date when they completed three years on consolidated pay and not from any subsequent date. Aggrieved by the same, the respective panchayats have filed the above appeals.

4.We have perused the judgment, dated 19.12.2008, rendered by the Division Bench of this Court in the aforementioned appeal. In our view, as rightly held by the learned Single Judge, the present cases are squarely covered by the said Division Bench judgment. We do not find any reason to differ with the view taken by the learned Single Judge. There being no merit in the appeals, they stand dismissed.”



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9. For all the foregoing reasons, the Writ Petition stands allowed, directing the respondents to regularize the services of the petitioners on completion of three years of service from the date of their original appointment and to disburse the service and monetary benefits, within a period of 6 weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

02.02.2023

Index : Yes/No

Neutral Citation: Yes/No

Order: Speaking /Non Speaking o

DP

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Fort St. George, Chennai - 9.
- 2.The Commissioner of Municipal Administration,
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M.S.RAMESH,J.

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