



W.P.No. 9968 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.08.2023**

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

WP No.9968 of 2017

And

W.M.P.No. 10980 of 2017

1. K.Thirupal
2. Sulochana @ Mangammal ... Petitioners

-Vs-

1. The Secretary to Government
Government of Tamil Nadu
Municipal Administration & Water Supply Department
Fort St. George, Chennai -9.
2. The Director of Town Panchayat
Kuralagam Buildings, Chennai -108.
3. The Commissioner,
Chennai Corporation
Ripon Building, Chennai.
4. The Zonal Officer/Assistant Commissioner
Zone 14, Greater Chennai Corporation
Ullagaram, Puzhuthivakkam, Chennai -91. ... Respondents



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PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the third respondent dated 31.07.2006 issued in Na.Ka.No. 384/2006 and quash the same and consequently, to direct the respondents to consider the claim of the petitioners to bring them under regular time scale from the date on which they completed three years consolidated pay service with all consequential service and monetary benefits as done to their co-employee namely Savarimuthu (Petitioner in W.P.No. 12025 of 2013) in terms of G.O.Ms.Nos. 199 & 142 Municipal Administration and Water Supply Department dated 12.08.1997 and 23.09.2015.

For Petitioners	:	Mr. P.I.Thirumoorthy
For RR 1 & 2	:	Mr. S.Ravi Kumar Special Government Pleader
For RR 3 & 4	:	Mr. S.Gopinathan

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus relating to the proceedings of the third respondent dated 31.07.2006 issued in Na.Ka.No. 384/2006 and quash the same and direct



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the respondents to bring them under regular time scale from the date on which they completed three years consolidated pay service with all consequential service and monetary benefits. The petitioners place reliance of an order of learned Single Judge in ***W.P.No. 12025 of 2013 [S.Savarimuthu Vs. Secretary to Government of Tamil Nadu, Municipal Administration and Water Supply Department, Chennai and two others] dated 25.06.2013.***

2. It must also be kept in mind that the learned Single Judge therein had also referred to an earlier Writ Petition in W.P.No. 25620 of 2006, dated 17.09.2008 wherein also a similar issue raised by the petitioners therein had been examined and order had been passed.

3. The Writ Petition has been filed by two writ petitioners, who have raised the same contentions and therefore having obtaining permission had both filed a single Writ Petition. They are both son and mother respectively.



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4. In the affidavit filed by the first petitioner, he had stated that he had been appointed as Sweeper on consolidated pay on 003.01.2000 and the second petitioner/ his mother was appointed as Sweeper on consolidated pay on 01.10.1999. They were both appointed by the Executive Officer, Perungudi Town Panchayat. They were brought under regular time scale prospectively by the Executive Officer, Perungudi Town Panchyat by proceedings in Na.ka.No. 384/2006 on 31.07.2006 with effect from 23.06.2006.

5. All supervening circumstance then took place whereby the Perungudi Town Panchayat was merged with Chennai Corporation termed as Greater Chennai Corporation. The petitioners are now effectively working under the third respondent / the Commissioner, Chennai Corporation. The petitioners seek regular time scale retrospectively with effect from the date on which they had completed three years of consolidated pay service.



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6. In this connection, they place reliance on Government Orders which had been passed and also on the orders of the learned Single Judges in the Writ Petitions referred supra.

7. Let me now examine the order passed by the learned Single Judge in *W.P.No. 12025 of 2013 / S.Savarimuthu Vs. Secretary to Government of Tamil Nadu, Municipal Administration and Water Supply Department, Chennai and two others*] dated 25.06.2013.

8. That Writ Petition had also been filed by the petitioner therein, who was originally working under that Perungudi Town Panchayat, as similar to that of the petitioners herein and whose service had also been regularised by the Executive Officer of Perungudi Town Panchayat, again similar to that of the petitioners herein and he also sought to bring him into regular time scale with effect from the date on which he had completed three years of consolidated pay service.



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9. The learned Single Judge in that particular case after extracting the facts had also examined G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.08.1997, G.O.Ms.No. 212 P & AR Department, dated 29.11.2001 and G.O.Ms.No. 21, Municipal Administration and Water Supply Department, dated 23.02.2006. Relying on those three Government Orders, an order was passed, wherein paragraph Nos. 4, 5 and 6 which are extracted below:-

“4. The Government issued G.O.Ms.No. 199, Municipal Administration and Water Supply Department, dated 12.08.1997. As per the G.O., the petitioners should have been brought into regular time scale of pay on completion of three years of service from the date of appointment on consolidated pay.

5. Subsequently, the Government issued G.O.Ms.No. 212, P&AR Department, dated 29.11.2001 imposing ban on recruitment in the Government Departments and local bodies. Later, in the year 2006, the ban was lifted.



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6. *Thereafter, G.O.Ms.No. 21, Municipal Administration and Water Supply Department, dated 23.2.2006 was issued regularising the services of employees who are on consolidated pay from 2006 onwards, for Municipalities. On similar line, G.O.Ms.No. 60, Rural Development and Panchayats (Special Village Panchayat) Department, dated 23.06.2006 was issued for Town Panchayats.”*

10. The learned Single Judge thereafter examined the aspect that various Town Panchayat had regularised the service of workers belatedly in the year 2006 after the ban of recruitment was lifted and those orders were questioned but the Writ Petitions were allowed.

11. The learned Judge then examined an order passed in W.P.No. 25620 of 2006 dated 17.09.2008. This was in paragraph 11 of the said Judgment and let me extract that in its entirety:-



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“ 11. At this juncture, it is relevant to extract paragraph 6 to 9 of the judgement, dated 17.09.2008 in W.P.No. 25620 of 2006 which reads as follows:

“ 6. it is not in dispute that the petitioners were appointed as sanitary workers initially on consolidated basis in Palladam Municipality in pursuant to G.O.Ms.No.199 Municipal Administration and Water Supply Department dated 12.08.1997. As per the said G.O., the sanitary workers shall be regularised on completion of three years of service. The petitioners, who have been appointed on 27.03.1998 as per the said G.O., ought to have been regularised by 27.3.2001. The reason for not regularising their services as per the counter affidavit of the respondents is that there was a ban for recruitment except in police, Medical and Teachers service and hence the services of the petitioners could not be regularised. The ban imposed could only be for a new appointment and the petitioners who have been already appointed



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prior to the ban imposed by the Government cannot be denied regularisation of their services citing the said ban. All the petitioners have already been appointed and it is not as if new posts are being created or new appointments are made. Hence, the contention raised by the learned Special Government Pleader appearing for the respondents that the services of the petitioners could not be regularised in view of the ban imposed by the Government cannot be accepted.

7. Yet another reason that has been stated by the respondents is that due to financial crunch, such regularisation could not be made. Again this cannot be the reason for refusing the regularisation of the petitioners in service. The petitioners have been appointed in pursuant to G.O.Ms.No. 199 referred to above, wherein it is specifically provided that after the completion of three years, their services should be regularised. In view of the said fact, the said contention of the learned Special Government Pleader appearing for the respondents cannot also be accepted.



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8. *Further more as rightly pointed out by the learned counsel appearing for the petitioners G.O.Ms.No.21, Municipal Administration and Water Supply (MC3) Department dated 23.02.2006 referred to by the respondents, does not refer about G.O.Ms.No. 199 Municipal Administration and Water Supply (MC3) Department dated 12.08.1997. Thus, the respondents cannot be permitted to say that the services of the petitioners could be regularised only as per G.O.Ms.No. 21 Municipal Administration and Water Supply (MC3) Department dated 23.02.2006 cannot also be accepted.*

9. *Considering the above facts and circumstances, I am of the considered view that refusal to regularise the services of the petitioners with effect from 27.03.2001 is totally erroneous. In the result, the impugned proceedings of the third respondent dated 27.2.2006 directing the regularisation of the services of the petitioners*



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only with effect from 23.2.2006 is required to be set aside and accordingly set aside and the writ petition stands allowed. Consequently, the connected M.P. is closed. No costs.”

12. It had thereafter been stated that the Writ Appeal filed against the said order had been dismissed and the aforementioned order had been confirmed by the Division Bench. A further Appeal to the Hon'ble Supreme Court also suffered an order of dismissal. In effect, the ratio laid down therein that the petitioners therein should be regularised with effect from the completion of three years of consolidated pay have been upheld not only by the learned Single Judge but also by the Division Bench and also by the Hon'ble Supreme Court. The dictum is binding.

13. My attention has also been drawn to a similar order and view taken by another learned Single Judge of this Court in ***W.P.No. 9970 of 2017, [V.Kavitha Vs. the Secretary to Government, Government of Tamil Nadu, Municipal Administration & Water Supply Department, Chennai and two others]***. The order is dated 03.04.2023,. The learned Single Judge



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had again placed reliance on the aforementioned orders. Since the dictum is binding, the following directions are therefore passed:-

(1) The impugned order dated 31.07.2006 in Na.Ka.No. 384/2006 is quashed;

(2) The respondents are directed to regularise the service of the petitioners herein on completion of three years from the date on which they were appointed on consolidated pay and brought into regular time scale of pay.

(3) Necessary proceedings to be issued within a period of 16 weeks from the date of receipt of a copy of this order. The monetary benefits shall be paid consequent to such regularisation within a period of 12 weeks thereafter.

14. The Writ Petition stands allowed. No costs. Consequently,



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connected Miscellaneous Petition is closed.

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vsg

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Index: Yes/No

Neutral Citation: Yes/No

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C.V.KARTHIKEYAN,J.

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