



WP.No.9970 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

WP.No.9970 of 2017
and WMP.No.10982 of 2017

V.Kavitha

...petitioner

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,
Rippon Building, Chennai,
4. The Zonal Officer/Assistant Commissioner,
Zone 14, Greater Chennai Corporation,
Ullagaram, Puzhuthivakkam, Chennai 91.

...respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the third respondent (Executive Officer, Perungudi Town Panchayat, dated 31.07.2006 issued in



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Na.Ka.No.384/2006 and quash the same and consequently to direct the respondents to consider the claim of the petitioner to bring her husband namely Ventkatesan under regular time scale from the date on which he completed three years consolidated pay service with all consequential service and monetary benefits as done to his co-employee namely Savarimuthu (Petitioner in WP.No.12025 of 2013) in terms of G.O.Ms.No.199 & 142, Municipal Administration and Water Supply Department dated 12.08.1997 and 23.09.2015.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondents

for RR1 & 2

: Mrs.Meea Arumugam

for RR3 & 4

: Mr.A.C.Mani Bharathi

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the third respondent (Executive Officer, Perungudi Town Panchayat), dated 31.07.2006 issued in Na.Ka.No.384/2006 and consequently direct the respondents to consider the claim of the petitioner to bring her husband namely Ventkatesan under regular time scale from the date on which he completed three years consolidated pay service with all consequential service and monetary benefits.



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2. It is the case of the petitioner that her husband Venkatesan was appointed as a Sweeper on consolidated pay on 03.01.2000. Subsequently, he was brought under regular time scale from 23.06.2006, vide proceedings of the Executive Officer Perungudi Town Panchayat. Thereafter, the said Town Panchayat has been merged with Chennai Corporation. In the meanwhile, her husband expired on 18.07.2008.

3. The learned Counsel for the petitioner submitted that the Government has passed G.O.Ms.No.142, dated 23.09.2015 directing to bring the consolidated pay employees under regular time scale from the date on which they completed 3 years consolidated pay service. Pursuant to the said G.O., the third respondent vide proceedings dated 24.10.2016 brought one S.Savarimuthu, who is a co-employee of Venkatesan, under regular time scale on completion of 3 years consolidated pay service. Therefore, the petitioner has filed this petition to pay regular time scale of pay for her husband with effect from the date on which he completed three years consolidated pay service.

4. The Government issued G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated



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12.8.1997. As per the G.O., the petitioner's husband 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.

6. Thereafter, G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.2.2006 was issued regularizing 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 23.6.2006 was issued for Town Panchayats.

7. The petitioner's husband was brought under regular time scale by the order of the Executive Officer, Perungudi Town Panchayat dated 31.07.2006 after the issuance of G.O.Ms.No.60, Rural Development and Panchayats (Special Village Panchayat) Department, dated 23.6.2006.



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8. Similar orders were passed by various Town Panchayats regularising the services of Sanitary Workers belatedly in the year 2006 after the ban on recruitment was lifted and those orders were successfully challenged before this court by filing various writ petitions. Those writ petitions were allowed. More particularly, one of the earliest case was filed by similarly placed Sanitary Workers like the petitioner in W.P.No.25620 of 2006, questioning the belated regularisation and for a direction to regularise them on completion of three years of services in consolidated pay as per G.O.Ms.No.199, Municipal Administration and Water Supply Department, dated 12.8.1997.

9. A detailed order was passed considering all points raised and ultimately, the writ petition was allowed by this court on 17.9.2008. This court negated the contentions raised by the respondent relating to the ban on appointment imposed in G.O.Ms.No.212, dated 29.11.2001 for not regularizing the services of the workmen as per G.O.Ms.No.199, dated 12.8.1997. This court held that the ban could be applied for a fresh appointment and not for regularizing the services of the serving employees.



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10. Another reason given by the respondent was that there was financial crunch for not regularizing the services of the sanitary workers by G.O.Ms.No.199. The said contention was also rejected. This court also held that G.O.Ms.No.21 nowhere refers to G.O.Ms.No.199 and therefore, regularizing the sanitary workers based on G.O.Ms.No.21 in 2006 is not correct and they shall be regularised on completion of 3 years of service in consolidated pay as per G.O.Ms.No.199.

11. At this juncture, it is relevant to extract paragraphs 6 to 9 of the judgment, dated 17.9.2008 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 12.8.1997. 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 27.3.1998 as per the said G.O. ought to have been regularised by 27.3.2001. The reason for not



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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 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



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Pleader appearing for the respondents cannot also be accepted.

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 23.2.2006 referred to by the respondents, does not refer about G.O.Ms.No.199 Municipal Administration and Water Supply (MC3) Department dated 12.8.1997. 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 23.2.2006 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 27.3.2001 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 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."



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12. The writ appeal was filed against the order dated

17.9.2008 in W.A.No.47 of 2010. The First Bench of this court dismissed the writ appeal by a common judgment, dated 23.6.2010 in W.A.Nos.47 and 385 of 2010. The Division Bench confirmed the order of the learned Single Judge. While confirming the order, the Division Bench noted that similar order was confirmed by a Division Bench of this court by an order dated 19.12.2008 in W.A.No.1454 of 2007.

13. The Special Leave to Appeal (Civil) No.26605 of 2010 preferred against the order dated 23.6.2010 in W.A.No.47 of 2010 was rejected by the Apex Court on 27.9.2010.

14. Another Special Leave to Appeal (Civil) No.16217 of 2009 preferred against the order dated 19.12.2008 in W.A.No.1454 of 2007 was also rejected by the Apex Court on 16.3.2012

15. It is also admitted that those orders were implemented and benefits were given to sanitary workers on completion of three years of service on consolidated pay in terms of G.O.Ms.No.199, dated 12.8.1997.



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16. In these circumstances, the impugned order, dated 31.7.2006 of the Executive Officer, Perungudi Town Panchayat, is quashed. The respondents are directed to regularise the service of Venkatesan on completion of three years from the date when he was appointed on consolidated pay into regular time scale of pay, within a period of three months from the date of receipt of copy of this order and monetary benefits pursuant to the regularisation shall be paid to the petitioner within four weeks thereafter.

17. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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