



W.A.No.413



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM:

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.4131 of 2019
and C.M.P.No.25794 of 2019**

1.The State of Tamil Nadu
Rep. by its Secretary,
Municipal Administration and Water Supply Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Municipal Administration,
Ezhilagam Complex,
Chepauk,
Chennai – 600 005.

...Appellants

VS.

1.T.Lakshmanan
(Pump Operator)
Sooramangalam Ward Office,
Salem Corporation,
Salem – 636 001.

2.Salem Corporation,
Rep. by its Commissioner,
Salem – 636 001.

...Respondents



Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order of the learned Single Judge dated 14.11.2018 made in W.P.No.23468 of 2018 on the file of this Court.

For Appellants : Mr.V.Arun, Additional Advocate General
Assisted by Mr.R.Kumaravel
Additional Government Pleader

For Respondents : Mr.K.Selvaraj for R1
R2 – No appearance

J U D G M E N T

(Judgment of the Court was delivered by K.Kumaresh Babu, J.)

This Intra-Court appeal has been preferred as being aggrieved against the order of the learned Single Judge, wherein the learned Single Judge had allowed the Writ Petition filed by the first respondent for a Certioratified Mandamus to quash the order dated 02.08.2017, wherein the request of the first respondent to regularize the services was rejected on the ground that the first respondent was only working as a part-time Pump Operator and therefore, the Government Order relied upon by him would not be applicable to him and for a consequential direction to regularize the services of the first respondent in the Salem Corporation.

2.The brief facts of the case is that the first respondent was originally



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W.A.No.413



Commissioner of the then Salem Panchayat Union in the year 1986. Thereafter, when Salem was upgraded as a Corporation in the year 1994 adjoining areas were merged. The Jagir Ammapalayam Panchayat Union was also brought within Salem Corporation and the first respondent was also absorbed into the services of Salem Corporation who is the second respondent herein. The Government in the year 2006 had issued G.O.(Ms.)No.21, Municipal Administration and Water Supply Department dated 23.02.2006, wherein it had taken a policy decision to regularize the services of various employees on consolidated pay and NMRs on daily wage who have in the roles as on 01.01.1996 in respect of Municipalities and Municipal Corporations (except Chennai) and as on 31.12.1996 in respect of Grade-III Municipalities in the vacant post. The first respondent seems to have made a representation which was finally considered and rejected in the year 2018 which had led him to file a Writ Petition in which, the impugned order had been passed.

3.The learned Single Judge after considering various facts had held that the first respondent was not working as a part-time worker as claimed by them and that he had been working on a full time basis on a consolidated pay and that to support the claim of the part-time worker, the Government have not produced any documents whatsoever.



W.A.No.413

WEB COPY

4. We have heard Mr.V.Arun, learned Additional Advocate General, assisted by Mr.R.Kumaravel, learned Additional Government Pleader appearing for the appellants and Mr.K.Selvaraj, learned counsel for the first respondent.

5. Mr.V.Arun, learned Additional Advocate General would vehemently contend that the first respondent was never appointed on a full time basis and the job of a Pump Operator was not a full time work and it is only a part-time work. He further contended G.O.(Ms.)No.21 which has been relied upon by the first respondent is not at all applicable to the post of Pump Operator and it will only apply to the post of Maintenance of street lights, Sanitary workers, Maintenance of water supply and General category. He would further contend that the first respondent was appointed as a Pump Operator by the Commissioner of the then Salem Panchayat Union and when Salem Corporation was formed in the year 1994, he had only been absorbed as a part-time worker and nothing more. He would contend that when he has being admittedly a part-time worker, he cannot seek to regularize the services in support of the said contention, he relied upon a Judgment of the Hon'ble Apex Court in the case of ***State of Rajasthan and Others vs. Dayalal and Others*** reported in ***(2011) 2 SCC 429***.

6. He would further contend that even though the Government Order had been issued in the year 2016, the first respondent had approached the Authority

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W.A.No.413

WEB COPY

only in the year 2017 and his representation was rejected in the year 2018. There has been a considerable delay on the part of the first respondent even if he had a rightful to claim, the same would be hit by laches. He would further contend that the first respondent had not produced any documents whatsoever to substantiate that he had been appointed only as a full time worker and not as a part-time worker. He would submit that the learned Single Judge had erred in holding that the Government Order would also apply to a part-time worker. He would further submit that the learned Single Judge had wholly overlooked a legal proposition laid down by the Hon'ble Apex Court that a part-time worker is not entitled for regularization. Therefore, he would submit that the order passed by the learned Single Judge is liable to be interfered with.

7. Countering his arguments, learned counsel appearing for the first respondent would submit that the first respondent was appointed as a full time employee on a consolidated basis by the Commissioner of the then Salem Panchayat Union as a Pump Operator at Jagir Ammapalayam Panchayat Union. In the course of time, Salem Panchayat Union was upgraded as Salem Corporation. When Salem Corporation was formed, various surrounding areas were merged with Salem Corporation and Jagir Ammapalayam Panchayat Union where the first respondent working was also merged with Salem Corporation and on merger, the first respondent had been absorbed into the services of Salem



WEB COPY

W.A.No.413



Corporation on the same terms and had been paid consolidated pay. He would submit that this issue was raised by the appellants during the admission of Intra Court Appeal and the Service Register pertaining to the first respondent was produced by the appellants as well as the first respondent. Relying upon the typed set of papers filed by him which is his Service Register, he would contend that the same would disclose the misconception on the part of the appellants to contend that the first respondent has been appointed by the Jagir Ammapalayam Panchayat.

8.He would further submit that various columns of the Service Register would also explicitly conclude that the first respondent was not appointed as a part-time worker but as a full time worker on a consolidated pay. He would further contend that the work of the Pump Operator cannot be construed as being fortified by the learned Additional Advocate General. He would submit that the work of Pump Operator not only involves switching off and switching on the motor but also involves the work of regulating the pipeline from which the water had to be supplied to the neighbouring areas. He would submit that the learned Additional Advocate General is also wrong in submitting that it would not apply to the first respondent as he is only a Pump Operator. He would submit that the post of Pump Operator is encompassed within the maintenance of services of water supply.



W.A.No.413

WEB COPY

9.He would further submit that it is also wrong to suggest that the Writ Petition filed by the first respondent is hit by laches. He would draw our attention to a communication of the second respondent in the year 2010 addressed to the first respondent intimating further action on his representation is being processed and is awaiting the decision/opinion of the Director of Municipal Administration to be forwarded to the Government in that regard. Since nothing had happened again, he had approached the Government regularly and finally his representation of the year 2017 which was rejected by the first appellant in the year 2018 which he had challenged in the Writ Petition. He would submit that having failed to consider the case of the first respondent in spite of the Government Order and in spite of the representation of the first respondent to apply to the Government Order to him even as early as in the year 2010, the appellants cannot contend that the Writ Petition filed by the first respondent is hit by laches. Therefore, he would contend that there is no infirmity in the order passed by the learned Single Judge and the Writ Appeal should be dismissed.

10.We have considered the rival submissions made by the respective counsels appearing on either side and we have perused the materials available on record.



WEB COPY

W.A.No.413



11.The main contention of the appellants is that the first respondent had been appointed as a part-time worker. To support their contention, the appellants have not produced any documents. In spite of a finding that had been given by the learned Single Judge, to refute such a finding, the appellants even during this Intra Court Appeal had not produced any evidence.

12.A perusal of the Government Order that is sought to be relied upon by the first respondent, it could be seen that it does not make a distinction between a part-time or full time worker. It clearly envisages two class of persons working on temporary basis either on consolidated pay or NMRs on daily wages working before a particular cut-off date to be regularized. In the present case, the first respondent had been initially appointed as a Pump Operator in the year 1986. Therefore, he falls within the cut-off date to whom the Government Order seeks to benefit.

13.The Government Order seeks to regularize the employee working on a consolidated pay and NMRs on daily wages in Corporations except Chennai to be regularized in the vacant post which have been created in the year 1998 in G.O.(Ms.)No.198, Municipal Administration and Water Supply Department dated 26.10.1998, in the post of Maintenance of street lights, Sanitary workers, Maintenance of water supply and General category. The Government Order



W.A.No.413

WEB COPY

does not envisage that such temporary employees on consolidated pay and NMRs on daily wages should be working in a particular Department all it envisages employees receiving consolidated pay and NMRs on daily wages could be regularized in various posts mentioned in the Government Order if the same is vacant and sanctioned post.

14.The learned Single Judge had analysed the Government Order and had held that it does not differentiate a part-time worker from a full time worker. The learned Single Judge had also given a categorical finding that the first respondent was working on a consolidated pay and the same has also not been disputed by the appellants. We also find that there is no distinction made in the Government Order as claimed by the appellants and therefore, we are in agreement with the reasonings & findings given by the learned Single Judge as regards to the applicability of the Government Order to the first respondent.

15.In view of the aforesaid factual finding, we are of the considered view that the judgment relied upon by the learned Additional Advocate General would not be of any help to him, in fact would support the claim of the first respondent.

16.Further ground that had been raised by the learned Additional Advocate General that the claim of the first respondent is hit by laches is also



W.A.No.413

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again without any merit. As rightly pointed out by the learned counsel appearing for the first respondent, the communication of the second respondent herein as early as on 25.11.2010 would explicitly without any doubt suggest that the first respondent had been vindicating his rights from the date when the Government Order had been issued. In fact, a thorough perusal of the aforesaid communication would show that even much prior to the first respondent's representation to the Chief Minister's Cell (19.10.2010), his request which was assigned proceedings No.Na.Ka.No.C3/26733/2006, had been forwarded to the higher officials by proceedings dated 01.02.2010 and 20.09.2010. But it is the Government which had failed to respond which made the first respondent try to reach out the Officials and only in the year 2018, the claim of the first respondent had been rejected and he had approached this Court. Therefore, we are of the view that the claim of the appellants to raise the ground of laches is without any merit.

17.In fine, the Writ Appeal is dismissed and the order of the learned Single Judge is affirmed and the appellants are directed to regularize the services of the first respondent, as we are of the view that he is fully entitled to seek the benefit of G.O.(Ms.)No.21, Municipal Administration and Water Supply Department dated 23.02.2006, within a period of eight weeks from the date of receipt of a copy of this judgment. However, such regularization shall be made



W.A.No.413

WEB COPY

notionally and the first respondent would be entitled to payment of salary fixed on such notional basis only from the date of this judgment which would mean he would not be entitled to any back wages, however, he would be entitled to all other attendant benefits. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.S.K.,J.) (K.B.,J.)
19.09.2023

Index: yes/no
Speaking order:yes/no
Neutral Citation:yes/no
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To
The Commissioner,
Salem Corporation,
Salem – 636 001.



WEB COPY

W.A.No.413



R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

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W.A.No.4131 of 2019

19.09.2023