



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

Coram

THE HON'BLE MR JUSTICE D. KRISHNAKUMAR
AND
THE HON'BLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI
W.A.No. 197 of 2020 and CMP.No. 3070 of 2020

and
W.P.Nos. 34357,34358 /2014, 24859 of 2019, 30291 of 2019 and
27414 of 2019

and
M.P.Nos. 1 & 1/2014 and 1/2015
W.A.No. 197 of 2020

The Commissioner
Vellore Corporation,
Vellore District.

..Appellant

Vs.

- 1.T.Saravanan
- 2.R.Nithiyanandam
- 3.P.Velmurugan
- 4.S.Ramesh
5. J.Pitchai
- 6.P.Mahendran
- 7.G.Siva
- 8.K.Pitchaimuthu



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

WEB COPY

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

10. The Commissioner of Municipal Administration,
Chepauk,
Chennai

..Respondents

Prayer in W.A.No. 197 of 2020 : This Appeal has been filed under Clause 15 of Letters Patent to set aside the order made in W.P.No.744 of 2018 dated 13.08.2019.

Common prayer in all 5 WPs: Writs petitions are filed under Article 226 of Constitution of India to issue mandamus, directing the respondents to regularise the services of the petitioners from the date of their initial appointment or otherwise at least from the date (25.10.2011) on which petitioners were absorbed in the 3rd respondent's corporation with all service and monetary benefits and consequently to direct the respondents to count the 50% of the service rendered by the petitioners in respective Village Panchayats for the purpose of calculating regular pension.

For Appellant	:	Mr.S.Silambanan, Senior Counsel Assisted by Mrs.P.Shanthi
For respondents	:	Mr.P.I,Thirumoorthy - R1 to R8 Mr. V.Manoharan, AGP - R9 & R10

For Petitioners (in all WPs)	:	Mr.P.I.Thirumoorthy
For respondents (in all WPs)	:	Mr.V.Manohanran, AGP - R1 & R2 Mr.S.Silambanan, Senior Counsel Assisted by Mrs.P.Shanthi - R3



WEB COPY



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

COMMON JUDGMENT

[Judgement of the Court was made by *D.KRISHNAKUMAR,J.*]

Challenging the order of the learned single judge in W.P.No. 744 of 2018, dated 13.08.2019, the appellant-Corporation has filed the instant writ appeal. Seeking directions to the respondents to regularise services of the writ petitioners from the date of their initial appointment or otherwise at least from the date (25.10.2011) on which petitioners were absorbed in the 3rd respondent's corporation with all service and monetary benefits, instant five writ petitions are filed.

2. Since the issue involved in the instant writ appeal and writ petitions are same, they are clubbed together and taken up for final hearing and orders passed by way of common judgment.

Brief facts:

3. The respondents 1 to 8 herein have filed a writ petition in W.P.No. 744 of 2018 to set aside the order passed by the appellant herein in Na.Ka.No. C1/2206/2013 dated 06.01.2016 and consequently to direct the respondents to regularise the services of the petitioners in the category of sweepers from the date of their initial appointment or from the date of



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

absorption in the appellant corporation with all attendant service & monetary benefits. The said writ petition came to be allowed by the learned Single Judge with a direction to the appellant /3rd respondent therein to grant benefit of regularisation with all attendant benefits in terms of G.O.Ms.No. 22 P & AR (F) Department, dated 28.02.2006. Pursuant to the said order of this Court, the appellant herein has considered the claim made by the respondents 1-8/petitioners and rejected on the ground that the petitioners have not worked in any Government Departments as daily rated employees, they worked in Village Panchayat on consolidated wages for the period from 01.03.2003 to 01.06.2010 and have not completed 10 years of service as daily wages employees as on 01.01.2006. Aggreived by the said rejection order, the respondents 1to 8 herein have filed writ petition before this Court in W.P.No. 744 of 2018, wherein the writ Court has directed the appellant herein to consider the petitioners' claim in terms of G.O.Ms.No. 22 P & AR (F) Department, dated 28.02.2006. Assailing the said order of this Court, the appellant-Corporation has preferred the instant writ appeal.

4. The learned senior counsel appearing for the appellant has submitted that the Government Orders in G.O.Ms. No. 199, 198, 72 and 125 are not applicable to the respondents 1 to 8/writ petitioners, since they



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

WEB COPY
were not appointed based on any service rules or against any sanctioned posts and also not on the basis of any specific government order.

5. The learned senior counsel for the appellant has further submitted that G.O.Ms.No. 22 P & AR (F) Department, dated 28.02.2006 has been subsequently modified to G.O. Ms.No. 74 P& AR Department, dated 27.06.2013. In light of the aforesaid G.O, the respondents 1 to 8 did not satisfy the guidelines issued by the Government since they have worked as daily rated basis, therefore the appellant herein has rightly rejected the claim made by the respondents 1 to 8/writ petitioners. Therefore, the said G.O. will not applicable to Village Panchayat workers and apply only to the regular service Government employees.

6. The learned counsel for the respondents 1to 8 /petitioners would submit that the writ petitioners not relied upon Government Orders in G.O.Ms. No. 199, 198, 72 and 125. Further, the similarly placed persons who worked more than 3 years 5 years and 7 years were granted regularisation of service in local bodies, particularly in Town Panchayats, therefore the respondents 1to 8 herein also entitled for regularisation of service from the date of their initial appointment in the Village Panchayat as per the aforesaid Government Orders.



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

WEB COPY

7. The learned counsel for the respondent 1 to 8/writ petitioners would further submit that G.O.22 P&AR Department, dated.28.02.2006 would also apply to them, since they worked more than 10 years in Town Panchayats as well as in Corporations and they entitled for regularisation of service as per the said G.O. The learned counsel for the respondent 1 to 8/writ petitioners would further submit that the said fact has been rightly considered by the learned Single Judge and directed the appellant-Corporation to pass appropriate orders by applying the legal principles in terms of the aforesaid G.O. Ms. No. 22 P&AR Department, dated 28.02.2006. Therefore, according to learned counsel for the respondents 1 to 8/writ petitioners, the impugned order of the learned Single Judge is perfectly valid and does not require any interference by this Court.

8. Heard both sides and perused the materials available on record.

9. The only point for consideration in the instant writ appeal as well as in the writ petitions is that whether the respondents 1to 8/writ petitioners are entitled for regularisation of service on completion of 10 years of service in light of G.O.Ms. 22 P & AR Department, dated 28.02.2006 or in G.O. Ms. No. 74 (P&AR) Department, dated 27.06.2013.



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

WEB COPY

10. The aforesaid G.O.Ms. 22 P & AR Department, dated 28.02.2006 relied upon by the respondents 1 to 8/writ petitioners was subsequently modified as G.O. Ms. No. 74 (P&AR) Department, dated 27.06.2013. It is useful to extract para 6 of the the said G.O.

6) In supersession of the orders issued in the Government Order read above, the Government now issued revised orders on regularization of services of full time daily wage employees working in all Government departments as detailed below:

(i). This order shall be deemed to have been come into force with retrospective effect from 01.01.2006;

(ii). The services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and completed 10 (ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength:

(iii). In cases of relaxation of service rules, the service rules relating to the educational qualification and mode of recruitment shall not be relaxed:

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23(a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services:

(v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularization;



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

(vi) The Part-time and casual employees are not entitled to the concession referred to at para (ii) above;

(vii) The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularized;

(viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, It will be viewed seriously and necessary disciplinary action will be initiate as per rules against the person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the above said Instructions are followed without fail and lapses if any found, responsibility will be fixed against them;

(ix). All the proposals for regularization of the services of full time daily wage employees should be sent to the Government even in cases where relaxation of rules are not involved.

7. This Government order shall not be applicable the cases where orders have already been issued by the competent authority in pursuance of the Government Order (Ms.) No. 22, Personnel and Administrative Reforms (F) Department, dated 28.2.2006 and also the orders issued in pursuance of the Court directions where the verdict reached finality."

11. Earlier, similarly placed persons have filed writ petition before this Court in W.P.7594 of 2014 challenging Clause 6 of the Government Order in G.O.Ms. No. 74, P& AR Department, dated 27.06.2013 on the ground that on account of completion of 10 years of service, they are eligible for regularisation of service in accordance with the Government



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

Order in G.O.Ms.No. 22 P&AR Department, dated 28.02.2006. The learned single Judge by order dated 22.09.2017, quashed the Clause 6 of the G.O.Ms.No. 74 P&AR Department, dated 27.06.2013 and held that the writ petitioners therein were entitled to regularisation on service on completion of ten years by virtue of G.O.Ms.No. 22 P&AR Department, dated 28.02.2006.

12. Challenging the said order of the learned Single Judge, the appellant has preferred appeals in W.A.Nos. 2875 of 2018 etc., batch before the Hon'ble Division Bench of this Court, wherein the Hon'ble Division Bench by its order dated 16.08.2019 set aside the above order of the learned Single Judge and remitted the writ petitions to the writ court for fresh consideration to decide the eligibility as per G.O.Ms. No. 74 P & AR Department, dated 27.06.2013. As per the directions of the Hon'ble Division Bench of this Court, the above writ petition in W.P.No. 7594 of 2014 along with other writ petitions filed by the similarly placed person have been considered by the learned Single Judge and held that the petitioners therein were entitled for relief and consequentially directed the respondent authority concerned to grant the benefit of regularisation with effect from the date of their original appointment.



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

sweeper, OHD, etc., in the Village Panchayat. After the said village panchayat was merged, their services were absorbed as employees in the appellant-corporation and they are continuing their services from the 2010 till now in various cadres viz., Sweeper, Water supply employee etc., in the sanctioned post, therefore they are entitled from the date of absorption in the respondent corporation as they have completed 10 years of service and also satisfied the guidelines framed in G.O.Ms. No. 74 P & AR Department, dated 27.06.2013 for regularisation of service.

16. All these facts are adjudicated by the learned counsel for the respondents 1 to 8/writ petitioners only before this Court at the time of hearing the appeal, but no materials have been placed before this Court. Such a claim was not made before the appellant- Corporation.

17. At this juncture, it would be relevant to refer the decision of the Honourable Supreme Court in ***Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and others [(2014) 4 SCC 769]*** wherein in Paragraph Nos.7 & 8, it has been observed as follows:

"7. This Court in State of Rajasthan & Ors. vs. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.” (Emphasis added)

18. As held by the Honourable Apex Court in **R.Govindaswamy's** case (supra) mere continuation of service by a temporary or daily wage employee



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years will not entitle such employee to claim regularisation, if he is not working against a sanctioned post.

19. A perusal of the rejection order passed by the appellant Corporation would reveal that the rejection was made only on the basis that the respondents 1to 8 herein have worked on consolidated pay from the year 2003 to 2006 and have not completed ten years of service to extend the benefits as per G.O.Ms.No. 22 P&AR Department, dated 28.02.2006.

20. It is clear from the impugned rejection order that order passed by the appellant-Corporation is only in respect of the claim made by the petitioner for regularisation of service rendered in the village panchayats for the period from 2003 to 2010. Therefore, in view of the aforesaid submissions made by the learned counsel for the respondents 1to 8 that after the said village panchayat was merged, their services were absorbed as employees in the appellant-corporation and they are continuing their services from the 2010 till now in various cadres viz., Sweeper, Water supply employee etc., in the sanctioned post and completed 10 years of service, the applicability of G.O.Ms. No. 74 P & AR Department, dated



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

27.06.2013 to the respondents 1to 8 for regularisation of service and granting other consequential benefits has to be decided by the appellant Corporation based on the materials.

21. In view of the above, the impugned order passed by the learned Single Judge in W.P. No. 744 of 2018, dated 13.08.2019 is set aside and consequently, ***the writ appeal is allowed. Likewise, the instant writ petitions are disposed of.*** Liberty is granted to the respondents 1 to 8/writ petitioners in W.A.No. 197 of 2020 and writ petitioners in other writ petitions to make fresh individual representations along with necessary particulars to satisfy the authority concern that they are eligible for consideration in terms of G.O.Ms. No. 74 P & AR Department, dated 27.06.2013 or any other Government Orders, to the appellant-corporation, within a period of two weeks from the date of receipt of a copy of this order.



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

WEB COPY

22. On receipt of such representations, the authority concern shall consider the same by taking note of the decision of the Hon'ble Supreme Court in *Govindasamy's case* cited supra and the Government Orders in G.O.Ms. No. 74 P & AR Department, dated 27.06.2013 and pass appropriate orders in accordance with law, within a period of eight (8) weeks thereafter.

23. With the above discussions and directions, the writ appeal is allowed and writ petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.J.] [K.G.T.J.]
29.03.2023

Speaking/Non Speaking Judgment

Index: Yes/No

ak



WEB COPY



W.A.No. 197 of 2020 and
W.P.Nos. 34357,34358 /2014, 24859 of 2019,
30291 of 2019 and 27414 of 2019

D. KRISHNAKUMAR, J.
AND
K. GOVINDARAJAN THILAKAVADI, J

ak

Common Judgemnt in
W.A.No. 197 of 2020
and CMP.No. 3070 of 2020
and
W.P.Nos. 34357,34358 /2014,
24859 of 2019, 30291 of 2019 and 27414 of 2019
and
M.P.Nos. 1 & 1/2014 and 1/2015

29.03.2023