



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 25.01.2023

Delivered On: 03.03.2023

CORAM

**HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP**

W.A.Nos.2682 of 2018 & 2013 of 2019
and
CMP Nos.21876 of 2018 and 13597 of 2019

W.A.Nos.2682 of 2018

- 1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George,
Chennai – 600 009.
- 2.The Director of Town Panchayats,
Kuralagam, Chennai -600 108.
- 3.The Assistant Director of Town Panchayats,
Salem.
- 4.The Executive Officer,
Veeraganur Town Panchayat,
Salem District.

... Appellants

Vs.

M.Senthilkumar

... Respondent



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

WEB COPY W.A.No.2013 of 2019

- 1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George,
Chennai – 600 009.
- 2.The Director of Town Panchayats,
Kuralagam, Chennai -600 108.
- 3.The Assistant Director of Town Panchayats,
Salem.
- 4.The Executive Officer,
Veeraganur Town Panchayat,
Salem District.

... Appellants

Vs.

P.Sankar

... Respondent

Common Prayer: These Writ Appeals are filed under Clause 15 of Letters Patent, to set aside the order dated 10.04.2018 made in W.P.Nos.27825 and 27826 of 2011.

For Appellants
in both appeals

:: Mr. S.Silambannan
Additional Advocate General
Assisted by Mr.L.S.M.Hasan Fizal,
Additional Government Pleader

Mr.M.Babu Barveez
Government Advocate

and Mr.G.Ameedius
Government Advocate



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

WEB COPY

For Respondent :: Mr.E.K.Kumaresan
in both appeals

COMMON ORDER

SATHI KUMAR SUKUMARA KURUP, J.

Aggrieved by the Order of Writ Court, both these Appeals had been filed by the Government seeking to set aside the Order passed in W.P.Nos.27825 and 27826 of 2011, dated 10.04.2018.

2. The Respondents/Writ Petitioners were working as Technical Assistants in the Town Panchayat, Salem. Writ Petitions were filed by the Respondents herein.

3. The Respondents/Writ Petitioners were appointed as Technical Assistants with the Director of Town Panchayat, Kuralagam in 2009. They are qualified in Diploma in Civil Engineering. On being appointed in 2009, they had been continuously working without any interruption. The post of Technical Assistant is a work charged post and the salary to the said post, is paid out of common fund created for the said purpose. They were never treated as regular Government servants. Since the Writ



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

WEB COPY

Petitioners were working in the post of Technical Assistant for long years and in response to the repeated representations, the Government took a policy decision to sanction regular posts, called 'Work Inspectors' to accommodate such all those Technical Assistants, who had fulfilled certain criteria as permanent employees. The Government passed a Government Order in G.O.Ms.No.93 dated 28.5.1998 creating several categories of posts in the Engineering Wing in addition to the existing engineering posts. The date on which, the Government passed G.O.Ms.No.211, Personnel and Administrative Reforms Department, dated 29.11.2001 imposing general ban on recruitment and 5 sanctioned posts of Work Inspectors were brought on regular time pay scale at Rs.3050-4590 and all the Technical Assistants who were initially regularized, were granted necessary relaxation of the rules and all other were allotted the same District where they were originally employed. Some of the Technical Assistants like the Petitioners herein who were appointed after 2001 had approached this Court by way of Writ Petitions, which came to be dismissed by a learned single Judge of this Court. However, as against dismissal of the Writ Petitions, Writ Appeals were



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

filed and Appellants therein had withdrawn the Writ Appeals and submitted a representation to the Director of Town Panchayat, the second Appellant herein to consider their claim for absorbing them as Work Inspectors. The second Appellant in consideration of the said representation, has recommended for their absorption by proceedings dated 15.01.2011. In a batch of Writ Appeals, viz., W.A.No.1507 to 1516 of 2010, wherein, the Government is the Appellant and while recording the subsequent development, the Hon'ble Division Bench of this Court had disposed of the Appeals as follows:

"7. Aggrieved, the Government has come forward with these appeals. Though the learned Government Pleader raised many contentions with regard to the claim of the respondents for appointment as Work Inspectors, we do not want to delve into the same for, it appears that in respect of certain candidates/incumbents, who had joined in the post after 2001, the learned single Judge declined to grant relief and their writ petitions were dismissed. Those writ petitioners preferred Writ Appeals against the said judgment. Subsequently, those appellants withdrew the writ appeals and submitted representation to the second respondent to consider their cases for absorption as Work Inspectors. The second respondent appears to have favourably considered those representations and by proceedings Na.Ka.No.22943/2009 A2, dated 15.01.2011 recommended them to be considered for absorption. Copy of such proceedings was produced before us by the learned Government Pleader. Learned Government Pleader submitted that the case of the present respondents shall also be considered along with others for their absorption. Learned counsel appearing for the respondents very



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

WEB COPY

fairly submitted that the respondents have no objection if the impugned judgment is modified to that extent. Learned counsel for the respondents submitted that the respective Assistant Director of Panchayats, under whom the respondents are working, have certified to the fact that all the respondents have been engaged in service much prior to 2001, and the first respondent may take note of them same, while considering the case of the respondents.

8. Hence, we dispose of these appeals, and modify the impugned judgment by directing the appellants to consider the case of the respondents for their absorption along with the candidates, whose names have been recommended by the second respondent by proceedings dated 15.1.2011, and take a final decision, within three months from the date of receipt of a copy of this order. Till final decision is taken the respondents, if they have been engaged in services, shall be continued to be engaged, and it shall abide by the final decision to be taken by the respondents, as indicated above. No costs. Consequently, miscellaneous petitions are closed."

4. For unknown reasons, the claim of the Writ Petitioners were not considered. Therefore, they were constrained to approach this Court seeking for issuance of Writ of Mandamus directing the Respondents/Appellants herein to regularize their service as Work Inspector pursuant to G.O.Ms.No.93 dated 28.05.1998. On behalf of the Government, two Review Applications have been filed in order to review the interim order passed by this Court in M.P.Nos.1 & 1 of 2011 in W.P.Nos.27825 and 27826 of 2011, dated 29.8.2012. Earlier though both the Contempt Petitions and the Review Applications were heard, however, the same were not disposed of. But they were tagged along



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

with the present Writ Petitions to be heard together. Hence, the said Contempt Petitions and the Review Applications were also taken up together and disposed of along with the Writ Petitions.

5. Upon hearing the Writ Petitions and the Contempt Petitions, the Writ Court disposed of the same as follows:

5.1. Though there were 252 posts of Work Inspectors by G.O.Ms.No.93 dated 28.05.1998, the entire sanctioned strength had not been filled up and still there are 117 vacancies to the Post of Technical Assistants. He would draw the attention of this court to the Order passed by the learned Judge of this Court in W.P.No.5203 of 2016, dated 03.03.2016 wherein, the learned Judge directed to consider 15 Petitioners therein as Work Inspectors who had joined after 2001 by referring to the orders passed by the Courts and the learned Judge not only confined the relief to the Petitioners who were 15 in number but also has observed that all the 54 persons presently working as Technical Assistants may also be considered for regular appointment as there are 79 vacancies of Work Inspectors and after their superannuation, the Respondents/State



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

WEB COPY

were free to treat the Post of Work Inspector as vanishing category. In pursuance of the Order passed by the Writ Court dated 03.03.2016, a list was prepared containing 32 names vide proceedings dated 26.05.2017 directing the individuals to submit certain documents as required for their consideration for regular employment as Work Inspectors. According to the learned Counsel, in 32 names which were being considered vide proceedings dated 26.05.2017, the names of the Writ Petitioners did not find a place. At this, the learned Counsel for the Writ Petitioners would submit that this was probably for the reason that from October 2014, the Writ Petitioners were restrained from working by the 4th Appellant on the instructions of the superiors when notices of Contempt were issued to them. The said action on the part of the Appellants/Respondents in the Writ Petitions was nothing but a vindictive action.

5.2. That there are unimpeachable and clinching materials which were filed in the form of typed set of papers in the Contempt Petitions would unequivocally demonstrate that the Petitioners were continuously



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

employed when the interim injunction was passed in 2011 and in spite of the same, they were not paid salary. Therefore, there is a clear case of Contemptuous Act on the part of the Respondents/Appellants here for which the Respondents/Appellants were liable to be punished by this Court.

6. The learned Counsel appearing for the Respondents/Writ Petitioners Mr.Vijay Shankar would submit that since the Writ Petitions are taken up for final disposal and the matters are being argued on merits, he would not pursue the Contempt remedy and he would rather take the decision in the Writ Petition as Contempt Petitions have lost its sting due to efflux of time.

7. From the facts as discussed above, this Court is of the considered view that these petitioners who appointed as Technical Assistants in 4th Appellant/Panchayat, are also entitled to be considered on par with the others. As rightly contended by the learned Counsel appearing for the Petitioners that the employees who were brought in



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

WEB COPY

regular establishment by granting them the benefit of absorption had been working earlier like the benefit of absorption. Therefore, the arguments advanced on behalf of the learned Additional Advocate General that these two Petitioners were working only in the work charged Post and therefore, they are not entitled to seek absorption, is not a valid argument which can be appreciated by this Court. The Writ Petitioners/Respondents herein were not in employment on the date cannot be a valid reason since these two Petitioners came to be stopped from their work after notification. The Contempt Petitions could not be taken up to its logical end and ordered to be tagged along with Writ Petitions for final hearing. Therefore, period of non-employment of the Writ Petitioners can at best be ignored for the purpose of their inclusion in the latest list providing for permanent absorption. For all practical reasons, it must be taken that the Writ Petitioners are deemed to have been in the employment at least for the purpose of inclusion of their names for permanent observation as Work Inspectors. Therefore, the argument raised on behalf of the Respondents in the Writ Petitions/Appellants herein are unacceptable and run contrary to the



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

guidelines of equity, fairness and good conscience. For the above reasons, Writ Petitions were allowed. The Respondents/Competent Authority had directed to initiate and complete such exercise within a period of 10 weeks from the date of receipt of a copy of this Order.

8. Aggrieved by the same, the Respondents had approached this Court by filing this Appeal.

9. *Point For Consideration*

Whether the Appeals are to be allowed and the Order passed by the Writ Court dated 10.04.2018 in W.P.Nos.27825 and 27826 of 2011 are to be set aside?

10. Mr.S.Silambannan, learned Additional Advocate General appearing for the Appellants/State submitted that the Respondents/Petitioners in the Writ Petition Nos.27825 and 27826 of 2011 cannot seek the benefit of the earlier order passed by this Court in W.P.No.5203 of 2016 as the Respondents herein/Writ Petitioners had left the service after 1½ years. Therefore, they cannot have the benefit of the



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

WEB COPY

order passed by the Writ Court in W.P.No.5203 of 2016. The said contention of the learned Additional Advocate General cannot be accepted in the light of the specific observation made by the Writ Court in the order dated 10.04.2018 in W.P.Nos.27825 and 27826 of 2011 wherein it is observed that Mr.Vijay Shankar, learned Counsel appearing for the Respondents/Writ Petitioners had clearly stated that after filing of the contempt petition by the Respondents/Writ Petitioners, the superior officers did not permit them to sign the attendance stating that the Writ Petitioners were restrained from working by the fourth Respondent on instructions of the superiors when notice of contempt were issued to them. The said action on the part of the Appellants/State was nothing but a vindictive action in order to compel the Writ Petitioners not to pursue the contempt before the Writ Court. There are unimpeachable and clinching materials which were filed in the form of typed set of papers in the contempt petition that would unequivocally demonstrate that the Respondents/Writ Petitioners were continuously employed when the interim injunction was passed in 2011 and in spite of the same, they were not paid salary. Therefore, there is a clear case of contemptuous act on



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

WEB COPY

the part of the Respondents in the Writ Petitions/Appellants herein. A fresh list was prepared by the State/Respondents in the Writ Petitions/Appellants herein wherein obviously the names of the two Writ Petitioners were left out since they were not allowed to work from 2014. Unfortunately, contempt petitions could not be heard in the appropriate time in order to set right the illegal action of the Respondents in the Writ Petitions/Appellants herein in stopping the Writ Petitioners from work despite the clear interim orders passed by this Court. Since Writ Petitioners had been continuously employed from 2009 to 2014 and they were illegally stopped from attending work during the pendency of the Writ Petitions, their names ought to have been included in the list for regular absorption as Work Inspectors. In fact, a learned Judge of this Court in the order dated 03.03.2016 in W.P.No.5203 of 2016 had not only directed the Respondents/State to consider the regularization of 15 Petitioners but also all similarly placed 54 Technical Assistants that there were only 32 persons available and by inclusion of two more persons in the list no prejudice would be caused to the Respondents in the Writ Petitions/Appellants in the Writ Appeals as sufficient posts are remaining



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

vacant for accommodating the Writ Petitioners in the Writ Petition Nos.27825 and 27826 of 2012. Further, it was observed by the Writ Court that according to the learned Counsel for the Writ Petitioners, the fact of the matter is that vide G.O.Ms.No.93, dated 28.05.1998, 250 posts of Work Inspectors have been sanctioned and many of the said posts remained unfilled. This fact is not disputed by the Respondents/State. Therefore, by accommodating the Writ Petitioners in W.P.Nos.27825 and 27826 of 2011 in the latest list for the regular absorption as Work Inspector is one way of salvaging the position of the Respondents in Writ Petitions/Appellants herein in order to avoid contempt action by this Court and in any event, when the Writ Petitioners are similarly placed like that of other 32 persons whose names were included in the latest list vide proceedings dated 26.05.2017, the non-inclusion of the Writ Petitioners would be violative of Article 14 of the Constitution of India. Therefore, the persons who approached this Court seeking to enforce, their right to have their appointment regularized will be deprived of appointment itself.

11. The learned Additional Advocate General argued before the



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

WEB COPY

Writ Court that the cut off date was 2001 and such cut off date was not found extended by any court as on date and therefore, the contention of the learned Counsel for the Writ Petitioners that they were continuously employed cannot be accepted and the scope of the Government Order is unlikely to govern such of those who were appointed subsequent to 2001 and therefore, the Writ Petitioners were not equally placed and therefore, the Writ Petitions are to be rejected. The said contention of the learned Additional Advocate General was rejected by the Writ Court stating that the Writ Court does not see any difference in the nature of the employment of the Writ Petitioners as that of the other employees who were included in the list for regular absorption as Work Inspectors as demonstrated by the learned Counsel appearing for the Writ Petitioners. When that being the case, the denial of benefit of regularization to the Writ Petitioners alone despite the existence of vacancies, does not satisfy the Constitutional requirement of equality before law. Any different conclusion can only result in negation of the Writ Petitioners' right to be treated equally under the Constitutional scheme. The main thrust of the argument of the State regarding the cut off date i.e., 2001 fixed by the



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

Government, however, for regularisation of Work Inspector, the cut off date had not been strictly followed by the Respondents in the Writ Petitions/Appellants herein. They themselves have admitted several Technical Assistants who had been appointed after 2001 have been absorbed as Work Inspectors. The arguments that the Writ Petitioners were being paid as work charged employees cannot also be a valid plea to deny them the benefit since all the Technical Assistants who came to be regularised were treated only as work charged employees before they came to be regularised. Therefore, there cannot be invidious discrimination as between the Writ Petitioners and others in the matter of regularisation. The Writ Petitioners were not in employment as on date cannot also be a valid reason as the two Writ Petitioners came to be stopped from work after notices were issued by this Court in the contempt petition. Since the Contempt Petition could not be taken on time and it could not be taken to its logical end. Therefore, the contempt petition having been tagged along with Writ Petitions and in the light of those circumstances, the Writ Court having rejected the contention of the learned Additional Advocate General, the grounds of appeal repeating



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

the very same plea in the Writ Appeals is found unacceptable warranting interference by this Court.

In the light of the above discussion, the Writ Appeals have no merits and the same fail. Accordingly, the Writ Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M.J.) (S.S.K.J.)
03.03.2023

Index : Yes
Internet: Yes
Speaking order
Neutral Citation : Yes
dh/SRM



WEB COPY



Writ Appeal Nos.2682 of 2018 &
2013 of 2019

R.SUBRAMANIAN, J.
AND
SATHI KUMAR SUKUMARA KURUP, J.

SRM

To

- 1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George, Chennai – 600 009.
- 2.The Director of Town Panchayats,
Kuralagam, Chennai -600 108.
- 3.The Assistant Director of Town Panchayats,
Salem.
- 4.The Executive Officer,
Veeraganur Town Panchayat,
Salem District.

Judgment made in
W.A.Nos.2682 of 2018 & 2013 of 2019

03.03.2023