



W.P.(MD)Nos.4063 to 4065 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :20.12.2023

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.(MD)Nos.4063 to 4065 of 2016

and

W.M.P(MD) Nos.3645, 3647 and 3645 of 2016

V.Thanka Raj ... Petitioner in W.P(MD) No.4063 of 2016

T.Bernice Geetha ... Petitioner in W.P(MD) No.4064 of 2016

A.Padma ... Petitioner in W.P(MD) No.4065 of 2016

Vs

1.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai-600 009.

2.The Director of Municipal Administration,
Directorate of Municipal Administration,
Chennai-600 005.

3.The Commissioner of Municipal Administration,
Ezhilagam,
Chepauk,
Chennai-600 005.



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4. The Commissioner,
Nagercoil Municipality,
Nagercoil,
Kanyakumari District.

... Respondents
(in all petitions)

COMMON PRAYER : Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the first respondent in Letter No.3261/Na.Pa.1/2014-4 dated 01.10.2015 and the consequential impugned order passed by the second respondent in Roc.No. 25911/14/F3, dated 15.10.2015 and quash the same as illegal in so far as petitioners are concerned and consequently, direct the respondents to absorb the petitioners in the regular establishment in regular time scale of pay with all consequential benefits in the 4th respondent's municipality as per the order issued by the fourth respondent in Na.Ka.Noi.1017/2006/C.1, dated 222.03.2006 with all attendant and other benefits.

For Petitioners : Mr.R.Maheswaran

For R1 to R3 : Mr.J.Ravindran,
Additional Advocate General
Assisted by Mr.T.Amjadhan

For R4 : Mr.P.Athimoolapandian
(in all petitions)



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COMMON ORDER

Heard Mr.R.Maheswaran, learned counsel appearing for the petitioners, Mr.J.Ravindran, Additional Advocate General Assisted by Mr.T.Amjadhan, learned Government Advocate appearing for the respondents 1 to 3 and Mr.P.Athimoolapandian, learned counsel appearing for the fourth respondent.

2. All these writ petitioners were appointed as Section Writers on the rolls of the Nagercoil Municipality, Nagercoil at Kanyakumari District. The petitioners were appointed in the year 1988. However, their services were not regularized by the respondents herein. Placing reliance upon G.O(Ms)No.125 Municipal Administration and Water Supply Department, dated 27.05.1999, whereunder the Government had ordered persons working in Municipalities and other local bodies on daily wages were to be regularized, the petitioners filed O.A.No.7336 of 2001 before then existing Tamil Nadu Administrative Tribunal seeking for a direction to appoint the



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petitioners in the post of Clerks on permanent basis from the date on which the post fell vacant. Needless to state they relied upon the aforesaid Government order. The matter stood transferred from the Administrative Tribunal and was renumbered as W.P.No.32076 of 2005 before the Principal Bench of this Court. By an order dated 17.03.2006, the writ petition came to be ordered in the following terms:

4. Taking note of the said submissions as well as the recommendations sent by the second respondent to the first respondent containing the name of the petitioner, a direction is issued to the 1st respondent to appoint the petitioner in the post of Clerk in the 2nd respondent municipality on permanent basis in strict compliance with G.O.Ms.No.125, Municipal Administration and Water Supply Department dated 27.05.1999 within a period of two weeks from the date of receipt of a copy of this order. The petitioner shall be paid the salary at the rate of Rs.2,000/- per month from 27.05.1999 to 26.05.2000 and thereafter, in time scale pay. The arrears shall be paid after disbursing the salary already paid, within a period of three months therefrom. With the above direction, the writ petition is disposed of. No costs.



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3. Aggrieved by the same, the respondents herein preferred an appeal in W.A(MD)Nos.299, 301 and 303 of 2006 before this Bench. By an order dated 05.12.2006, these writ appeals were disposed of with the following directions:

Accordingly, the orders are set aside and the appellants are directed to consider and pass orders on the request of the respondents for regularisation considering the fact as to whether the G.O.Ms.No.125, dated 27.05.1999 is also applicable to them.

4. At the time of disposal of the appeals, the Bench also observed that “it is made clear that while such consideration is made, the appellants have to give due weightage to the observation made in this order as to the employment of the respondents in the municipality for quite long number of years and their entire livelihood is depending only on the employment in question. The orders for consideration of regularisation shall be passed by the appellants within a period two months from the date of receipt of a copy



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of this order. With these observations, the writ appeals are disposed of. No costs". Despite the observation that had been made by this Court, the third respondent Commissioner of Municipal Administration passed the following orders:

i) They were only Section Writers doing the work of preparing Demand Notice for House Tax as and when required on piece meal basis.

ii) They were not paid on daily wages basis and their payment is paid on basis of volume of work done by them. They are not enlisted in the Nominal Muster Roll of the Municipality.

iii) They were not appointees of the Municipality but were working as and when need arises

iv) They were not recruited against any post sanctioned

v) They were not recruited through Employment Exchange as well as following recruitment process.

5. Feeling aggrieved by the same, the petitioners preferred W.P(MD) Nos.1014 to 1016 of 2009. Taking note of the fact that the third respondent had not taken into consideration the observations of the Division Bench



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extracted above, the orders were set aside and the matters were remitted to the third respondent to pass fresh orders in accordance with law. Yet again, by the impugned orders, the same position that prevailed before the order was passed by this Court on 07.07.2014 has been reiterated.

6. I have carefully gone through the records.

7. A perusal of the impugned orders show that the authorities have not taken into consideration the orders passed by this Court on 05.12.2006 or that of the order of the learned Single Judge on 07.07.2014. This reflects patent non-application of mind. The observations of the Division Bench are very clear that the case of the petitioners should be considered in the light of the fact that the total expenditure would not exceed 49%, if they are regularized. Apart from that, the learned Single Judge on 07.07.2014 had specifically held that while the Division Bench had directed the third respondent to consider the case of the petitioners, though it was aware that the petitioners were not NMRs, yet again, to reject the case on the same ground, to say the least, is contumacious. However, initiation of contempt



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is not going to help in the case of the petitioners who have been knocking on the doors of this Court for more than a decade and half.

8. The orders extracted above make it very clear that the position that prevailed in 2014, namely, the present impugned order passed by the first respondent is in direct conflict with the order passed by the Division Bench prevails even as on today. The petitioners had been employed by the Nagercoil Municipality and therefore, the rejection of their claim that they were not employed with the Nagercoil Municipality is *ex facie* contrary to facts of the case.

9. When these aspects were pointed out to the learned Additional Advocate General, he fairly submitted the impugned orders may be set aside and the matters may be remitted to the third respondent for reconsideration afresh in the light of the directions given by the Division Bench in the order dated 05.12.2006. Accordingly, the following orders are passed:

(i) The impugned order passed by the first respondent in Letter No. 3261/Na.Pa.1/2014-4, dated 01.10.2015 and the consequential impugned



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order passed by the second respondent in Roc.No.25911/14/F3, dated 15.10.2015, are set aside;

(ii) The matters are remitted to the file of the third respondent, who shall pass an order taking into consideration the observations made by the Division Bench in particular Paragraph Nos.6 and 7 of the order dated 05.12.2006 made in W.A(MD) Nos.299, 301 and 303 of 2006; and

(iii) The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order or on production of the web copy of the same before him.

10. With the aforesaid directions, these writ petitions are allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

20.12.2023

NCC : Yes / No

Internet: Yes/No

Index : Yes/No

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To:

- 1.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai-600 009.
- 2.The Director of Municipal Administration,
Directorate of Municipal Administration,
Chennai-600 005.
- 3.The Commissioner of Municipal Administration,
Ezhilagam,
Chepauk,
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V. LAKSHMINARAYANAN, J.

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