



W.P.(MD).No.5411 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.5411 of 2016

P.Thangavel

... Petitioner

Vs.

1.The Director of Town Panchayats,
Department of Town Panchayat,
Kuralagam,
Chennai – 600 008.

2.The Executive Officer,
Boothapuram Town Panchayat,
Theni District.

3.The Executive Officer,
Uthamapalayam Town Panchayat,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents herein to regularize the services of the petitioner w.e.f. 01.08.1992 with all consequential, monetary and service benefits.

For Petitioner : Mr.A.Thirumurthy

For R-1 and R-2 : Mr.P.Thambidurai,
Government Advocate.

For R-3 : Mr.M.Murugan



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ORDER

This Writ Petition is filed for Mandamus, directing the respondents to regularize the service of the petitioner with effect from 01.08.1992 with all consequential, monetary and service benefits.

2. The petitioner was appointed as Over Head Tank Motor Operator by the Executive Officer of Boothapuram Town Panchayat in the year 1982. Subsequently in the year 1992, the petitioner was appointed on daily wages basis in the same post with the additional charge of Watchman to supply water day and night in Boothapuram Town Panchayat under the Draught Eradication Scheme by the said Panchayat through its resolution dated 01.08.1992. The service register of the petitioner was opened on 01.08.1992 and the petitioner was continued in the said service. Further, the petitioner was directed to fix drinking water pipe lines to the houses and other works were also allotted to him by the Executive Officer, Boothapuram Town Panchayat. But the service of the petitioner was not regularized by the authorities concerned inspite of repeated request. Hence, the petitioner approached the Inspector of Labour, Theni under the Conferment of Permanency Act and the authority directed the respondents to confer permanent status to the applicant. The Commissioner of



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Municipal Administration, Chennai had issued a circular in February 2006, wherein, he had directed the Executive Authorities of all the Municipalities to regularize the services of the NMRs on daily wages as per G.O.Ms.No.21 Municipal Administration and Water Supply Department dated 23.02.2006. Based on this, the Secretary to Government, Rural Development Department has directed to send a consolidated proposal for regularizing the services of daily wage workers in Special Village Panchayat Administration working for more than 10 years to the Government urgently in order to regularize their services and to bring them to time scale of pay. The Government has passed G.O.Ms.No.242 Municipal Administration and Water Supply Department (Town Panchayat-1) Department dated 10.12.2009, wherein, the Government had passed an order of regularizing the services of daily wages employees and contingent employees of Town Panchayat, who had completed 10 years of services as on 01.01.2006. As per the said G.O., the service of the petitioner was also regularized with effect from 10.12.2009 that is from the date of issuance of G.O.Ms.No.242. The Executive Officer of Uthamapalayam Town Panchayat had absorbed the service of the petitioner as Sanitary Worker in the time scale of pay of Rs.4800-10,000+1300 by his proceedings dated 11.12.2009. But the same is not in consonance with G.O.Ms.No.242 dated 10.12.2009, since the appointment order states that the appointment is temporary and thrown to streets again.



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3. The further contention of the petitioner is that the Government in G.O.Ms.No.199 dated 12.08.1997 states that the candidates will be placed initially for a period of 3 years in consolidated scale of pay and thereafter be brought under regular time scale of pay. Since the respondents have not granted regularization from the initial date of appointment, aggrieved over the same, the petitioner submitted representation dated 19.01.2016 seeking regularization from 01.08.1992. Since the same was not considered, the petitioner is before this Court.

4. The third respondent has filed a counter stating that initially the petitioner was appointed as a Part Time Over Head Tank operator (OHT) on daily wages since 1982. Thereafter, based on the resolution of the Town Panchayat the petitioner was appointed as part time OHT operator on 01.08.1992 and daily wages was paid on the basis of minimum wages fixed by the District Collector which was periodically increased and he was paid Rs. 115/- from the year 2009. The petitioner filed petition before the Inspector of Labour, Theni, wherein the petition was allowed vide order dated 28.12.2015 directing the Executive Officer to make the petitioner permanent from the next day of completing 480 days of employment. Thereafter, the petitioner filed O.A.No.5324 of 1999 and obtained an interim order to permit him to continue



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in the daily wages. Accordingly, his service was continued in daily wages on permanent basis. In the meanwhile, the respondents have issued G.O.Ms.No. 242 dated 10.12.2009 to regularize the service of the petitioner and also similarly placed persons like that of the petitioner. Based on the said Government Order, the service of the petitioner was regularized with effect from the date of issuance of the said G.O. Therefore, the respondents prayed to dismiss this Writ Petition, since the petitioner's prayer was considered and granted regularization as per G.O and rules applicable thereunder.

5. Heard Mr.A.Thirumurthy, learned counsel for the petitioner, Mr.P.Thambidurai, learned Government Advocate appearing for the respondents 1 and 2 and Mr.M.Murugan, learned counsel appearing for the 3rd respondent and perused the records.

6. The learned counsel appearing for the petitioner submitted that inspite of Labour Court order, the respondents have regularized the petitioner's service from 2009 onwards and the petitioner is entitled to regularization from 01.08.1992 which is the date on which the petitioner had completed 10 years of service in the said post.



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7. It is seen from the records that the petitioner was appointed as Over Head Tank Operator in the part time service. Even if the claim of the petitioner is accepted, then the petitioner ought to have be converted from part time service which was served from 1982 to full time service in the year 1992. From 1992 onwards, the petitioner ought to have completed 10 years in the full-time employment service, which will be in the year 2002. Therefore, this Court is of the considered opinion, when the petitioner was in part time service, then the petitioner ought to be brought under full time service, then from full time service the petitioner ought to have been completed 10 years, then only the petitioner would be entitled to permanent service.

8. Thereafter, there was ban in recruitment. Therefore, the respondents have considered the case of the petitioner and granted regularization after lifting of ban. In Municipal service, after lifting ban, the Government issued G.O.Ms.No.21 Municipal Administration and Water Supply Department dated 23.02.2006 and directed all the Municipals and Town Panchayat to regularize all NMRs and daily wages employees. Based on the said G.O., the respondents have regularized the petitioner in the year 2009. Therefore, there is no illegality in granting regularization form 2009. Therefore, this Court is of the considered opinion that the respondents have followed all the rules and the Government Orders applicable for regularization.



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9. It is seen from the records that the Government was intended to oust the petitioner and similarly placed from service. Hence, the Tamil Nadu Town Panchayat Water Supply Daily Wage Employees Association had filed a petition in Tribunal and the Tribunal has granted an interim order directing the government to allow the daily wages employees to continue as daily wages itself.

10. The Learned Counsel appearing for the petitioner submitted that the petitioner was absorbed in the post of Sweeper and hence, the G.O.Ms.No199 passed in the case of Sweeper and Scavengers are applicable to the petitioner. Therefore, this Court is not accepting such contention, since the petitioner has served as Over Head Tank Operator and was not served as Sweeper or Scavengers. In case, if the initial appointment of the petitioner is taken in the post of Sweeper, then the said G.O is applicable to Sweepers and Scavengers are applicable to the petitioner. But the petitioner was initially appointed as Over Head Tank operator, but regularized in the existing vacancy of sweeper and hence the G.O.Ms.No.199 is not applicable. Since the petitioner was regularized in the existing vacancy of sweeper, the petitioner cannot claim the benefits of a G.O. which was issued to persons who were initially appointed as sweeper or scavenger. Therefore, the contention of the learned counsel for the petitioner is rejected.



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11. As far as the order passed by the Labour Officer, the Labour Officer is not having any jurisdiction to pass an order directing the respondents to grant permanency, since the petitioner is in service of the local body, which is quasi-governmental organisation. The Tamil Nadu Industrial Establishment (Conferment Permanent Status to Workmen) Act, 1981 is not applicable to the Government service and quasi-government service. The Act has defined the word “industrial establishment” as under:

(3) “industrial establishment ” means---

- (a) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (Central Act LXIII of 1948) or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act; or
- (b) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951); or
- (c) a motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961); or
- (d) a beedi industrial premises as defined in clause (i) of section 2 of the Beedi and Cigar Workers (conditions of employment) Act, 1966. (Central Act 32 of 1966); or
- (e) an establishment as defined in clause (6) of section 2 of the Tamil Nadu Shops and Establishment Act, 1947 (Tamil Nadu Act XXXVI of 1947); or
- (f) a catering establishment as defined in clause(1) of section 2 of the Tamil Nadu Catering Establishment Act, 1958.(Tamil Nadu Act XIII of 1958) ; or
- (g) any other establishment which the Government may, by notification, declare to be an industrial establishment for the purpose of this Act;

The Local Body cannot be termed as factory, plantation, motor transport, beedi industry, catering and the Local Body is not notified by the government. Then only Shops and Establishment Act would be made applicable as per the above definition. Under the Shops and Establishment Act the definition under section 2 clause (6) is stated as under:



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(6) 'establishment' means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the [State] Government may by notification declare to be an establishment for the purposes of this Act;

Admittedly the Local Body cannot be termed as shop, commercial establishment, restaurant, eating house, residential hotel, theatre or any place of public amusement or entertainment and Local Body is not notified by the state government. The phrase "commercial establishment" was also defined in the Act under sub clause (3) and the same is as under:

(3) 'commercial establishment' means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act.

The Local Body would never come under business of advertising, commission, forwarding or commercial agency, or clerical department of a factory or industrial undertaking or an insurance company, joint stock company, bank, broker's office or exchange. From the above definition it would be evident that the Legislature intended that some institutions like the Local Body should be outside the purview of the Conferment of Permanent Status Act. Therefore, this Court is of the considered opinion that the Local Body cannot be termed as doing commercial activity.



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12. From the above definition it would be evident that the government service and quasi-government service cannot come within the purview of the Conferment of Permanent Status Act and the Labour Officer is not conferred jurisdiction to pass such an order and hence the order of Labour Officer is non-est in eye of law. Therefore, the petitioner cannot seek to implement an order which is passed without jurisdiction. Consequently, the petitioner cannot seek permanency under the Act.

13. When the petitioner is not entitled to permanency then the only available remedy is to seek absorption or regularization. In the present case, the petitioner was serving as part time employee and the Government alone is empowered to regularize such service. The Government has taken policy decision and has granted regularization based on G.O.Ms.No.21. Since it is coming within the purview of the policy decision and the regularization is as per the G.O.Ms.No.21, there is no infirmity in granting regularization from the date of passing the order of regularization.



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14. Therefore, this is Court is not inclined to entertain this Writ Petition.

The Writ Petition is devoid of merits. Hence the Writ Petition is dismissed. No costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

- 1.The Director of Town Panchayats,
Department of Town Panchayat,
Kuralagam,
Chennai – 600 008.
- 2.The Executive Officer,
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S.SRIMATHY, J.

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