



W.P.(MD).Nos.2492 of 2017 & 4496 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated :19.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.2492 of 2017 & 4496 of 2016

W.P.(MD).No.2492 of 2017

The Management,
The Executive Officer,
Vellimalai town Panchayat,
Thirunainarkurichi,
Ammandivilai Post,
Kanyakumari District 629 204

...Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Tirunelveli.

2.P.Rajakumar

3.S.Thangaswamy

T.Raja Davidson (Died)

4.S.Glory

(R4 is substituted vide Court order dated 24.04.2023

in W.M.P.(MD).No.8544 of 2023 in W.P.(MD).No.2492 of 2017)



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5.S.Packiyalakshmi

6.T.Arjunan

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records relating to the proceedings of the first respondent in Claim petition No.86 of 2016 and quash the same.

For Petitioner : Mr.A.K.Baskarapandiyar

For Respondents : Labour Court for R1

: Mr.R.Thangasamy for R2 to R6

W.P.(MD).No.4496 of 2016

The Management,
The Executive Officer,
Vellimalai Town Panchayat,
Thirunanarkurichi,
Ammandivilai Post,
Kanyakumari District 629 204

...Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.



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2.P.Rajakumar

3.S.Amirthalingam

4.S.Thangaswamy

5.A.Aruljegan

T.Raja Davidson (Died)

6.S.Glory

(R6 is substituted vide Court order dated 24.04.2023

in W.M.P.(MD).No.8542 of 2023

in W.P.(MD).No.4496 of 2016)

7.S.Packiyalakshmi

8.T.Arjunan

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records relating to the impugned order passed by the first respondent in I.D.No.51 of 2014, dated 03.08.2015 and quash the same.

For Petitioner : Mr.A.K.Baskar Pandian

For Respondents : Labour Court for R1

Mr.R.Thangasamy for R2, R4, R6 to R8



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COMMON ORDER

The writ petition in W.P.(MD)No.4496 of 2016 has been filed against the order passed in I.D.No.51 of 2014 dated 03.08.2015 and the writ petition in W.P.(MD)No.2492 of 2017 has been filed against the proceedings of the first respondent in Claim Petition No.86 of 2016.

2. These writ petitions have been filed by the Executive Officer, Vellimalai Town Panchayat, herein after referred as Town Panchayat. The respondents 2 to 8 were engaged by the Town Panchayat as pump operators. The contention of the Town Panchayat is that the said respondents were engaged through tender contract to operate the pump and supply water within the Town Panchayat. They were never ever engaged as a temporary employee. Therefore, the Industrial Dispute Act will not be applicable to the respondents. The Town Panchayat has also submitted before the Labour Court that the respondents had accepted the tender conditions and were doing their work from the year 1998 onwards. The respondents have relied on G.O.Ms.No.198 Municipal Administration and Water Supply (Na.Pa.3) Department dated 26.10.1998. The said G.O.Ms., is applicable to the person who were engaged prior to 31.06.1998. Whereas, the respondents



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were engaged even as per the respondents from 1998. Therefore, the respondents are not entitled to regularisation or permanency. But, without taking into consideration of these facts, the first respondent had directed the Town Panchayat to regularize the respondent Nos.2 to 8. Aggrieved over the same, the present writ petition in W.P.(MD)No.4496 of 2016 is filed.

3. Pending this writ petition, the respondent Nos.1 to 5 had filed Claim Petition No.86 of 2016 before the Labour Court and the same was allowed on 06.10.2016 directing the Town Panchayat to pay a sum of Rs.2,32,715/-, Rs. 2,31,509, Rs.2,32,715/- Rs.2,32,715/- Rs.1,78,499/- respectively. Aggrieved over the same, the Town Panchayat had preferred the writ petition in W.P.(MD) No. 2496 of 2017.

4. Pending these two writ petitions, the Town Panchayat was directed to deposit Rs.50,000/- each of the awarded amount. At the time of admission, this Court directed the respondents to withdraw a sum of Rs.25,000/- by each of the respondents.



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5. The contention of the individual respondent is that the lease agreement through tender is sham and nominal. Moreover, the Government has granted sanctioned post from 2007 onwards. In such circumstances, the respondents are entitled to get employment in the said sanctioned post. The further contention of the respondents is that as per the G.O.Ms.No.198, the Vellimalai Town Panchayat, was granted one Pump Operator and one Overhead Tank Operator. In the said circumstances, the Town Panchayat should accommodate the respondents. Moreover, under the Industrial Dispute Act the employees cannot be continued as temporaries or casuals with the object of depriving them the status of permanent workmen, if continued then the same is against the Serial No.10 of Schedule V of Industrial Dispute Act. The Labour Court has specifically considered the claim of the Town Panchayat and rejected the same and directed the respondents to regularize the service of the respondents from the date of completion of 480 days and also to pay the wages which is applicable to the respondents. Even though the respondents have not invoked the permanency Act, the Labour Court has fixed the eligibility of the respondent for the date of completion of 480 days, which was perfectly legal. Hence, the first respondent had rightly rejected the claim of the Town Panchayat and directed to regularize the respondent and to pay the salary.



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6. Heard Mr.A.K.Baskar Pandian, the Learned Counsel appearing for the petitioner and Mr.R.Thangasamy, the Learned Counsel appearing for the respondents 2, 4, 6 to 8 and perused the materials available on records.

7.The first contention that was raised by the Town Panchayat is that there was a policy decision not to recruit any persons to certain posts since the same would be left to be managed through outsourcing or through tender process. It is an admitted fact that the respondents were engaged from 1998 only and one Arjunan had joined in the year 2003. It is seen from the date of joining until six months they were granted daily wages. Thereafter the Town Panchayat had called for tender and the respondents were directed to quote the amount for which they are willing to carry on the work. After perusal of the tender quotation, the Town Panchayat would fix the person who had quoted the lower value. From the said process it would clearly indicate that the respondents are not engaged as daily wage employees or contract employees. Therefore, the claim of the Town Panchayat that the respondents cannot claim for regularisation ought to be considered.



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9. The next contention that was raised by the Town Panchayat is that the respondents rely on G.O.Ms.No.198 and claims regularisation, but there is a specific condition under clause 5 (2) in the said G.O., wherein it states that the persons who were employed prior to 31.12.1996 on the basis of the daily wages or consolidated pay alone are entitled for consideration for regularisation under the said G.O. As stated supra the respondents are not engaged as daily wages or consolidated pay employees and hence, they are not entitled for regularisation. If for arguments sake, the plea of the respondents ought to be accepted that the said G.O. is applicable to them, then also the respondents will not be eligible for consideration, since the respondents were engaged only from 1998 onwards and the G.O. states persons engaged prior to 31.12.1996 are considered under the said G.O. Therefore, the respondents will not come under the consideration of the said G.O.Ms.No.198.

10. The contention of the respondents that the Director in its proceedings in Na.Ka.No.12159-1/2000/A3 dated 10.07.2000 had directed to submit the list of candidates who are working as consolidated pay in order to regularise them, but the Town Panchayat had deliberately did not submit a list to the Director. But



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the Town Panchayat submitted that the respondents are not working as consolidated pay employees and infact none of the employee are working in the Town Panchayat as consolidated pay employee and hence the Town Panchayat had not submitted any list based on the Director's proceedings, hence, the communication dated 10.07.2000 is not applicable to the petitioner Town Panchayat. This Court had already held that the said G.O. itself is not applicable and hence the Director's proceedings is not applicable.

11. The next contention that was raised by the Town Panchayat is that the Labour Court has invoked the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, but the said Act is not applicable to the Town Panchayat. Even according to the respondents, they had not invoked Conferment of Permanent Status Act but they had sought only regularisation. However, the Labour Court has invoked the condition stated in the Conferment of Permanent Status Act and held that the respondents had served for more than 480 days and hence they are entitled to regularisation. This Court is of the considered opinion that the Conferment of Permanent Status Act in not applicable to the Town Panchayat and hence the Labour Court had erred in granting the relied.



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12. Further this Court is of the considered opinion that granting of permanency to the employees who had worked for 480 days is a totally different from regularisation. The regularisation of service is entirely different concept and based on various conditions. The employee ought to have participated in the recruitment process and selected after following rules of reservation, within the age limit and various other conditions. Further the government is the authority to grant the relief regularisation after taking into consideration of various factors. Any appointment other than following proper recruitment process can only be termed as 10(a)(i) appointments and it is settled law that such appointees cannot seek regularisation or any preferential right to appoint in such post. But they are eligible to participate in the regular recruitment process and if they are successful candidate then they are eligible for appointment.

13. The next contention that was raised by the respondent is that Amirthalingam and Aruljegan were granted regularisation, hence, the other persons who are similarly placed persons should be granted regularisation. However, the Town Panchayat refuted and submitted that the said Amirthalingam had attended the recruitment process for the sanctioned post, was selected in the



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selection process and then he was appointed. Likewise, the said Aruljegan attended the separate recruitment process in Transport Corporation and he was successful in the same and was appointed. Therefore, this Court is of the considered opinion that the respondents are entitled to participate in the selection process and if they are successful in the recruitment process, they would be appointed. Hence the claim of the respondents for regularisation cannot be entertained. The Labour Court had erroneously granted regularisation and the same is liable to be quashed and accordingly quashed.

14. The respondents are at liberty to participate in future recruitment process and the Town Panchayat may consider to grant any weightage to the experience of the respondent. With the observation the writ petitions are allowed. No costs.

19.04.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To
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- 1.The Managing Director,
Tamil Nadu Transport Corporation Ltd.,
Bye Pass Road,
Madurai-10.

- 2.The General Manager,
Tamil Nadu Transport Corporation Ltd.,
Bye Pass Road, Dindigul.

- 3.The Presiding Officer,
Labour Court,
Madurai.



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S.SRIMATHY, J.

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