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W.P.No.27935 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.03.2024
Pronounced on	25.04.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.27935 of 2012
and M.P.No.1 of 2012

U.Inbanathan

... Petitioner

Vs.

1.The Commissioner,
Corporation of Madras,
Chennai – 600 003.

2.The Assistant Commissioner,
Corporation of Chennai,
Zone-9,
No.1, Lake Area 4th Cross Street,
Nungambakkam, Chennai – 34.

... Respondents

Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records connected with the proceedings issued in Na.A9.Su.Thu.Na.Ka.No.H1/0887/2007 dated 04.05.2012 passed by the second respondent and quash the same and consequently direct the respondents to appoint the petitioner as Malaria worker.



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For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.Arunbabu,
Standing Counsel

ORDER

The relief sought by the petitioner in this writ petition is to call for the records connected with the proceedings issued in Na.A9.Su.Thu.Na.Ka.No.H1/0887/2007 dated 04.05.2012 passed by the second respondent and quash the same and consequently direct the respondents to appoint the petitioner as Malaria worker.

2. Learned counsel for the petitioner submitted that the petitioner has joined as NMR Sanitary Worker in the Madras Corporation and served in the Malaria Department and was appointed through employment exchange vide Employment card in No.U.S/8837/98 dated 14.12.1998. He was forced to go on Medical leave, since he was affected by Malaria and both of his legs were in a swelling stage and he could not even easily walk. In order to take treatment, he was admitted in the Government hospital and later he got recovered.



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3. Learned counsel for the petitioner would further submit that the petitioner was bed ridden from 28.12.2002 to 28.02.2003 and again he was admitted in the Hospital till 13.01.2004. After, recovery the petitioner has approached the respondents for joining duty, he was not permitted by the respondents. Hence, he has made representations to the Health Inspector, Assistant Health Officer, Health Officer and to the Commissioner and Hon'ble Local Administration Minister on several occasions to permit him to join into service, however, no order has been passed for a long time.

4. Learned counsel for the petitioner would further submit that since no order has been passed by the respondents, the petitioner has filed writ petition before this Court in W.P.No.22108 of 2007 to dispose of his representation and to reinstate him into service. This Court vide its order dated 29.06.2007 directed the respondents to consider the representation of the petitioner and pass orders within a period of six weeks from the date of receipt of a copy of this order. But, the first respondent has issued a proceedings in Z.O.Vi.C.No.H2/886/2007 dated 01.09.2007 and rejected the



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representation of the petitioner on the ground that the petitioner was appointed as daily wages labourer for eradication of mosquito nuisance and the same is not a permanent vacancy and due to insufficient man power the petitioner was appointed and now it is not required hence his request could not be considered.

5. Learned counsel for the petitioner would further submit that challenging the aforesaid proceedings dated 01.09.2007, the petitioner has filed another writ petition before this High Court in W.P.No.32693 of 2007, but the same was dismissed on 10.10.2007 on the ground that the petitioner was only a temporary employee, hence he has got no right to seek employment. Aggrieved over the said order dated 10.10.2007, the petitioner has preferred an appeal before this Court in W.A.No.1936 of 2009, while disposing that writ appeal this Court pleased to pass an order dated 12.01.2010 and the same reads as follows:

"The learned counsel appearing for the respondents states that in the event of any future vacancies, the respondents will consider the appellant for employment."

6. Learned counsel for the petitioner would further submit that



subsequent to the order passed by this Court in W.A.No.1936 of 2009, dated 12.01.2010, the respondent Corporation has issued a proceedings in Su.Thu.(Ma).Na.Ka.No.1/2897/2009 dated 23.11.2010 by appointing 238 persons as Malaria staff and most of them are enrolled their names later to the petitioner and this itself is a deliberate act of contempt. Thus, the petitioner has filed another writ petition in W.P.No.6315 of 2011 to include his name and appoint him by a proceedings issued by the Commissioner, Corporation of Chennai in Su.Thu.(Ma).Na.Ka.No.M.1/2397/2009 dated 23.11.2010 and this writ petition was disposed of on 29.06.2011. For better appreciation, the relevant portion of the order is extracted hereunder:

“2. Earlier, the petitioner approached this Court by filing W.P.No.32693 of 2007 challenging the order dated 01.09.2007 of the first respondent and prayed for reinstatement. The said writ petition was dismissed by this Court, against which, the petitioner filed W.A.No.1936 of 2009 and the writ appeal was disposed of on 12.01.2010 by the Division Bench of this Court, recording the statement made by the counsel for the Corporation that in the event of any future vacancy, the respondents will consider the petitioner for employment. On the basis of such statement made by the counsel for the respondents before this Court, the writ appeal was disposed of. Thereafter, the first respondent, on the basis of availability of vacancy, submitted a proposal, by proceedings dated



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11.04.2011 and 24.05.2011 seeking permission from the Government to appoint the petitioner in a permanent vacancy of Malaria Worker. In response, the Government, by letter No.10021/Ma.Na.3/2011-1 dated 10.06.2011, after narrating the entire facts, including the judgment passed by the Division Bench of this Court in W.A.No.1936 of 2009, directed the first respondent to take appropriate action in as much as the first respondent is the appointing authority empowered to appoint Class IV employees.

3. In the light of the said stand taken by the Government, the first respondent is directed to consider the claim of the petitioner for appointment as Malaria Worker, in the light of the earlier order passed by this Court and on the basis of the letter dated 10.06.2011 of the Government mentioned supra and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

4. With the above direction, the writ petition is disposed of. No costs. Consequently, connected MP.No.1 of 2011 is closed."

7. Learned counsel for the petitioner would further submit that subsequent to the aforesaid order, the petitioner has given representation to consider him for the post of Malaria Staff, but the second respondent has issued a proceedings in Ma.A.No.9.Su.Thu.Na.Ka.No.H1/0887/2007 dated



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04.05.2012 rejected the claim of the petitioner by stating that he has not completed 10 years of service as ordered by the Government letter No.1002/Ma.Ne.3(2011-1 MAWS), against which, the petitioner has come forward with the present writ petition.

8. The counter affidavit was filed by the second respondent dated 20.03.2024. Learned standing counsel appearing for the respondents would submit that the petitioner was appointed as daily wages labourer for only 89 days in Health Department, Chennai Corporation from 10.03.1999 for carrying out the fogging and spraying works for eradicating mosquito nuisance and he had been worked continuously for 89 days and thereafter 3 to 4 days breakage had been given and again the petitioner was deployed for another 89 days.

9. Learned standing counsel appearing for the respondents would submit that while the matter stood thus the petitioner has been remained unauthorized absent from 30.12.2002 to 17.05.2003. Further an explanation was called for and the petitioner herein had submitted a letter dated



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17.05.2003 stating that due to his ill health he was unable to attend duty and had requested to allow him to join the duty. It is further submitted that after submitting the letter the petitioner has neither joined the duty nor approached the officials for reinstating him on a temporary basis.

10. Learned standing counsel appearing for the respondents would submit that since the petitioner was appointed purely on a temporary basis as a daily wages labourer for 89 days only no action can be taken against the petitioner under the Chennai Corporation Employees Class III & IV (Discipline and Appeal) Bye laws 1983. After a lapse of more than 5 years the petitioner herein has given a representation dated 15.05.2007 requesting to reinstate him into service and immediately after giving the representation the petitioner herein has filed a Writ Petition in W.P.No.22108 of 2007 praying to issue a Writ of Mandamus to direct the respondents to reinstate him into service and dispose of his representation dated 15.05.2007.

11. Learned standing counsel appearing for the respondents would submit that pursuant to the above order the petitioner's representation dated



15.05.2007 was considered and a reply letter dated 01.09.2007 was addressed to the petitioner by rejecting the his claim for reinstatement into the service since he was employed as a 89 days temporary labourer and he has not also completed the 10 years of service as temporary labourer. Aggrieved by the rejection order, the petitioner has filed another Writ Petition in W.P.No.32693 of 2007 praying to issue a Writ of Certiorarified Mandamus calling for the records connected with the proceedings issued in Z.O.VI./C.No.H2/886/2007, dated 01.09.2007 passed by the 1st respondent and quash the same and consequently direct the respondent to reinstate the petitioner into service and the said Writ Petition was dismissed by this Court on 10.10.2007.

12. Learned standing counsel appearing for the respondents would submit that aggrieved by the aforesaid order dated 10.10.2007, the petitioner has preferred a Writ Appeal in W.A.No.1936 of 2009 and the same was disposed of by this Court on 12.01.2010. Further, the petitioner has filed another Writ Petition in W.P.No.6315 of 2011 praying for a Writ of



Mandamus directing the first respondent to include the petitioner's name in the proceedings issued for appointment in Su.Thu.(Ma).Na.Ka.No.1/2897/2009 dated 23.11.2010 in an appropriate place and to appoint him as Malaria worker and this Court has passed an order dated 29.06.2011 as follows:

"... 3. In the light of the said stand taken by the Government, the first respondent is directed to consider the claim of the petitioner for appointment as Malaria Worker, in the light of the earlier order passed by this Court and on the basis of the letter dated 10.06.2011 of the Government mentioned supra and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order...."

13. Learned standing counsel appearing for the respondent would further submit that pursuant to the above orders the petitioner's claim has been considered and the same was rejected since the petitioner had worked for 947 days only and as per the G.O.Ms.No.125 of Municipal Administration and Water Supply Department dated 27.05.1999, the labourer must have completed 10 years of service as a temporary labourer for regularizing his/her service.



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14. Learned standing counsel appearing for the respondents would further submit that the petitioner has been unauthorisedly absent from the duty and has filed a series of cases claiming for same relief for which decision has already been taken. If the above Writ Petition is allowed,, it will create a bad precedent among the employees of the Chennai Corporation.

15. Heard the learned counsel on either side and perused the materials available on record.

16. According to the petitioner, he was appointed as NMR Sanitary Worker in the Malaria Department of Madras Corporation and according to the respondents, the petitioner was appointed as 89 days daily wages labourer for carrying out the fogging and spaying works for eradicating mosquito nuisance. The respondents in the counter affidavit has admitted that the petitioner has worked for 947 days and as per G.O.Ms.No.125 of Municipal Administration and Water Supply Department dated 27.05.1999, the labourer must have completed 10 years of service as a temporary labourer for



regularizing his/her service, against which, the petitioner has filed writ petition in W.P.No.32693 of 2007 and the same was dismissed on 10.10.2007. Challenging the same, he has preferred writ appeal in W.A.No.1936 of 2009 and the same was ordered on 12.01.2010. For better appreciation, the relevant portions of the order is extracted hereunder:

“2. The appellant had filed a petition challenging his termination by the Health Department of the Municipal Corporation. The respondents pointed out before the learned Single Judge that he was appointed on a temporary basis and thereafter, he had no particular right. The learned Single Judge dismissed the petition and hence, this appeal.

3. Mr. V.Bharathidasan, Learned counsel appearing for the respondents states that in the event of any future vacancies, the respondents will consider the appellant for employment.

4. In view thereof, the appellant does not press this appeal. The appeal stands disposed of as not pressed. There will be no order as to costs....”

17. This being the case, the petitioner has filed another writ petition before this Court in W.P.No.6315 of 2011 to include his name in the proceedings issued for appointment of 238 person as Malaria Worker in Su.Thu.(Ma).Na.Ka.No.1/2897/2009 dated 23.11.2010 in an appropriate



place and to appoint him as Malaria Worker and this Court vide order dated

29.06.2011 has issued the following order:

“2. Earlier, the petitioner approached this Court by filing W.P.No.32693 of 2007 challenging the order dated 01.09.2007 of the first respondent and prayed for reinstatement. The said writ petition was dismissed by this Court, against which, the petitioner filed W.A.No.1936 of 2009 and the writ appeal was disposed of on 12.01.2010 by the Division Bench of this Court, recording the statement made by the counsel for the Corporation that in the event of any future vacancy, the respondents will consider the petitioner for employment. On the basis of such statement made by the counsel for the respondents before this Court, the writ appeal was disposed of. Thereafter, the first respondent, on the basis of availability of vacancy, submitted a proposal, by proceedings dated 11.04.2011 and 24.05.2011 seeking permission from the Government to appoint the petitioner in a permanent vacancy of Malaria Worker. In response, the Government, by letter No.10021/Ma.Na.3/2011-1 dated 10.06.2011, after narrating the entire facts, including the judgment passed by the Division Bench of this Court in W.A.No.1936 of 2009, directed the first respondent to take appropriate action in as much as the first respondent is the appointing authority empowered to appoint Class IV employees.

3. In the light of the said stand taken by the Government, the first respondent is directed to consider the claim of the petitioner for appointment as Malaria Worker, in the light of the earlier order passed by this Court and on the



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basis of the letter dated 10.06.2011 of the Government mentioned supra and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

4. With the above direction, the writ petition is disposed of. No costs. Consequently, connected MP.No.1 of 2011 is closed.”

19. Pursuant to the above order, the second respondent has passed an order in Na.A9.Su.Thu.Na.Ka.No.H1/0887/2007 dated 04.05.2012, rejecting the claim of the petitioner on the ground that he was worked only for 947 days and as per G.O.Ms.No.125 of Municipal Administration and Water Supply Department dated 27.05.1999, the labourer must have completed 10 years of service as a temporary labourer for regularizing his/her service.

20. Learned standing counsel appearing for the respondents contended that persons who have completed 10 years of service were only appointed for the post of Malaria Worker vide proceedings in Su.Thu.(Ma).Na.Ka.No.1/2897/2009 dated 23.11.2010 issued by the first respondent. **In this regard, learned counsel for the petitioner has drew the attention of this Court to the list of 238 persons who have been appointed**



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by the first respondent vide his proceedings in Su.Thu.(Ma).Na.Ka.No.1/2897/2009 dated 23.11.2010 and the said proceeding contains only the resolution of the Corporation in Resolution No.378/2010 dated 16.11.2010, proceedings of the Commissioner/first respondent dated 08.10.2010 and the District Employment Exchange Registration list dated 24.06.2010 and no where, the date of appointment of 238 person as temporary labourers has been mentioned in the proceedings and has completed ten years of service.

21. Hence, this Court by its order dated 22.03.2024 directed the second respondent/The Assistant Commissioner to appear in person along with the service records of 238 persons who have been appointed by the first respondent to substantiate that the aforesaid 238 persons have completed 10 years of services in the Chennai Corporation.

22. Pursuant to the above order, the second respondent/Assistant Commissioner was present before this Court on 26.03.2024 and submitted that the appointment is pertaining to the year 2010 and it is difficult to trace



the records. He was directed to file an affidavit, tendering apology for filing counter affidavit, which is indirectly threatening the Court and the relevant paragraph is extracted hereunder:

“13. I respectfully submit that the petitioner has been unauthorizedly absent from the duty and the petitioner has filed a series of cases claiming for same relief for which decision has already been taken. I further submit that if the above writ petition is allowed it will create a bad precedent among the employees of the Chennai Corporation”

23. Thereafter, the second respondent has filed an affidavit dated 28.03.2024 tendering his unconditional apology for a wrong statement made in paragraph 13 of the counter affidavit which was filed on 20.03.2024 and submitted that the same is due to inadvertence and over sight. Hence, irrespective of anything else, without any reservation whatsoever, he tendered his unconditional apology.

24. It is crystal clear and evident that the case of the petitioner is not considered by the respondents for the reason that he has approached this Court by filing writ petitions on various occasion seeking



reinstatement of service, which is also evident from the counter affidavit of the second respondent, wherein it is mentioned that “The petitioner has filed a series of cases claiming for same relief for which decision has already been taken” and if the writ petition is allowed it will create a bad precedent among the employees of the Chennai Corporation”. However, the learned counsel appearing for the respondent in W.A.No.1936 of 2009 has submitted before this Court that the case of the petitioner would be considered in the event of any future vacancies. Further this Court in W.P.No.6315 of 2011 dated 29.06.2011 directed the first respondent to consider the claim of the petitioner for appointment as Malaria Worker. It is pertinent to note from the above order passed by this Court, the case of the petitioner should have been considered for reinstatement by the respondents. Despite the same, the respondents have not considered the case of the petitioner and failed to comply the order passed by this Court.

25. The respondent Corporation is duty bound to appoint the petitioner to the post of Malaria Worker in the Health Department, in view of the



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submission and undertaking given by the Corporation through its counsel in W.A.No.1936 of 2009 dated 12.01.2010 and the order passed by this Court in W.P.No.6315 of 2011 dated 29.06.2011.

26. In view of the above factual matrix of the case, this Court is of the considered view that the order passed by the second respondent vide proceedings in Na.A9.Su.Thu.Na.Ka.No.H1 dated 04.05.2012 is liable to be quashed and the same is hereby quashed.

27. In the result, this writ petition stands allowed and the respondents are directed to appoint the petitioner as Malaria worker, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also closed.

25.04.2024

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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To:

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Corporation of Madras,
Chennai – 600 003.
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J.SATHYA NARAYANA PRASAD,J.

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