



W.P. No.34219 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P. No.34219 of 2012

Pachaimuthu

... Petitioner

Vs.

1.Assistant Director of Town Panchayat,
Coimbatore Region, Coimbatore.

2.Executive Officer,
Komaralingam (I Grade) Town Panchayat,
Komaralingam, Coimbatore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent in his proceedings in Na.Ka.No.1242/2011/P3 dated 01.07.2011 and quash the same and consequently direct the respondents to regularise the service of the petitioner on completion of 3 years from the year 2001 onwards.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.Vadivelu Deenadayalan
Additional Govt. Pleader (for R1)

Mr.T.Chezhiyan (for R2)



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ORDER

The writ petition is filed challenging the order of the 1st Respondent in Na.Ka.No.1242/2011/P3 dated 01.07.2011 and quash the same.

2.The petitioner herein was appointed as Tank Operator on 01.02.1988 along with one Muthusamy in the 2nd Respondent Town Panchayat and has been working as such without any break. They were also brought in consolidated pay of Rs.1800 with effect from 01.07.1998 through proceedings issued by Panchayat Union on 24.05.2006 and the said proposals given to the 2nd Respondent were approved. The petitioner was granted the benefit of consolidated pay on completion of 10 years of service as Tank Operator. It was at this stage the Government issued G.O.Ms.No.198 MAWS Department dated 26.10.1998 sanctioning various posts for the Town Panchayat on consolidated basis and accordingly the services of the petitioner was absorbed in the said post sanctioned through G.O.Ms.No.198 dated 26.08.1998. While so, the petitioner claimed for the benefit of extension of time scale of pay in terms of the said G.O.Ms.No.198 and G.O.Ms.No.195 dated 17.08.1999. The claim of the petitioner was also considered by the 2nd Respondent and Resolution No.91/2000 dated 28.08.2000 was passed to absorb the petitioner and another against the sanctioned post and sought for permission from the 1st Respondent to absorb the petitioner in the sanctioned post. While the matter was pending with the 1st



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Respondent, G.O.Ms.No.212 Personnel and Administrative Reforms Department dated 29.11.2001 came to into force imposing ban on filling up of the posts and the said ban was lifted during the month of February, 2006.

3. During the course of the time, the service of the petitioner was allowed to continue in service on temporary basis, however after lifting of the ban in February 2006, similarly situated persons were appointed afresh on consolidated pay in other Town Panchayats, and those who had completed 3 years of continuous service were brought on time scale of pay on 23.06.2006. However, the case of the petitioner was not considered. Thereafter, the 2nd Respondent in letter bearing Na.ka.No.1333/2009 dated 27.06.2011 submitted proposals to the Director of Town Panchayat through the 1st Respondent to bring the petitioner on time scale of pay from 23.06.2006. However, the said proposal was rejected by the 1st Respondent through impugned proceedings dated 01.07.2011. It is aggrieved by the said proceedings, the present writ petition has been filed by the petitioner.

4. The 1st Respondent rejected the proposals of the petitioner only on the ground that the resolution of Town Panchayat is under consideration of the



Government and the claim for absorption of the petitioner cannot be considered at that point of time. The 2nd Respondent filed a detailed counter affidavit, there is not much dispute on the factual aspects of the matter. The relevant para of the counter reads as under:

“4. In this connection, I submit that, the Government in G.O.(Ms)No.198 MAWS Dept. dated 26.10.1998 permitted the Director of Town Panchayats, to sanction required number of posts of Water Supply workers as per the norms prescribed. On the proposals submitted by the 1st Respondent dated 24.05.2000, the Director of Town Panchayats in Proceedings Na.Ka.13069/2000/A3 dated 10.07.2000 sanctioned two post of Fitter one each at Water Supply Head Works and Distribution Pipeline and four posts of Water Tank Operator /Watchman on consolidated pay. At this point of time, the petitioner was already on consolidated pay from 01.07.1998. Accordingly, Komaralingam Town Panchayat's Council in its Resolution No.91/2000 dated 28.08.2000 resolved to absorb the petitioner and the deceased Mr.Muthusamy against the sanctioned posts. Before acting upon the resolution, the 2nd Respondent in letter Na.Ka.No.186/2000/A dated 12.09.2000 sought the permission of the 1st Respondent to absorb the petitioner and the deceased in the sanctioned posts. When final reply was awaited from the 1st Respondent, the Government in G.O.(Ms)No.212 Personnel and Administrative Reforms Department dated 29.11.2001 imposed ban on filling up of posts and the said ban was lifted during the month of February 2006. Hence, during the ban period the petitioner was not absorbed in the sanctioned posts and allowed to continue as such. In the course of time on lifting of the ban the workers posted and appointed



afresh on consolidated pay in the sanctioned posts in other Town Panchayats who had completed 3 years of continuous service were brought under time scale of pay from 23.06.2006.

5. I submit that, the petitioner did not renew his request at the appropriate time and this led to omission of his name in the general regularization orders. Further, the respondents herein are not the authority competent to bring the petitioner on time scale of pay and are implementing agencies only. Having regard to the services rendered the 2nd Respondent in letter Na.ka.No.1333/2009 dated 27.06.2011 submitted suitable proposals to the Director of Town Panchayats through the Assistant Director of Town Panchayats, Coimbatore zone to bring the petitioner and the deceased on time scale of pay from 23.06.2006.

6. I submit that, in the given circumstances and non-receipt of orders on regularization proposals, the 1st Respondent in his Memo.Na.Ka.No.1242/2011/TP3 dated 01.07.2011 rejected the requests of the petitioner and the deceased person.”

5. From the above, it is evident that the persons who were similarly situated like the petitioner were extended the benefit of G.O.Ms.No.198 after lifting the ban in the month of February 2006, however the case of the petitioner was not considered on the ground that the petitioner has not made request at the appropriate time. Otherwise there is no dispute on the factual aspects. The 1st Respondent rejecting the claim of the petitioner on the ground that the resolution to absorb in the time scale of pay is in the active consideration of the



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Government is totally unsustainable. It is also necessary to note that the petitioner has worked for all these years and was allowed to retire from service on 31.01.2021 on attaining the age of superannuation. Thus, the petitioner has served the Respondent Town Panchayat till the date of his retirement, however without the benefit of extending the regular time scale of pay.

6. The Division Bench of this Court almost under similar circumstances considered the claim of grant of regular time scale of pay in W.P.No.21385 of 2013 and considering the G.O.Ms.No.198 dated 26.10.1998, held as under:

“7. It is not in dispute that the petitioners were all discharging their duties in the Town Panchayat in connection with Water Supply works and getting consolidated pay from the date of their appointment which was periodically increased. However, inspite of several years of service, they were not regularised till date. Right from the date of their appointment they have been discharging their duties continuously. Though repeated proposals were sent by the 2nd respondent to the Assistant Director of Town Panchayats, who in turn, had taken up the issue to the 1st respondent and followed by the proposals on 27.07.2010 and panchayat resolutions on 18.09.2008, no action was taken to regularise the service of the petitioners.

8. It is also brought to the notice of the Court that similarly placed persons working in other Town Panchayat/Municipalities were regularized as early as in the year 2001 pursuant to



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G.O.Ms.No.198 dated 26.10.1998. G.O.Ms.No.22 P & AR Dept., dated 28.0.2006 was passed bringing all those persons working on NMR basis on regular time scale of pay on completion of 10 years of continuous service as on 1.1.2006. Though the said GO is applicable to persons working in Government Department, this Court extended the said benefit to persons working in Town Panchayats/Municipalities/Corporation. Further, inspite of the Government passing G.O.Ms.Nos.199,198 & 22 to regularise the employees who have completed 10 years of service and having utilised their services for more than 30 years, the rejection of the claim of the petitioners stating that they lack educational/technical qualification is unsustainable. In this regard, the Hon'ble Division Bench of this Court, to which, one of us was a party (N.Mala,J.), while considering the similar issue in W.P.No.594 of 2022 dated 30.06.2022, held as follows:

“23. The learned Judge has rightly relied on the case of Sheo Narain Nagar and others Vs. State of Uttar Pradesh and Another, reported in (2018) 13 Supreme Court Cases 432. We are in complete agreement with the learned Judge and we are also of the view that menial workers and last grade labourers do not require any educational qualifications and if under the exigencies of the case, the Government chose to engage them and keep them for years together, then the Government cannot turn around and say that such engagement was illegal.

Therefore, the action of the respondents in not regularising the service of the petitioners as per G.O.Ms.Nos198 and 22 amounts to total discrimination resulting in wiping out the entire past service rendered by them. The petitioners are entitled for regularisation on the completion of 10 years of service on NMR basis in the light of G.O.Ms.No.22, P & AR Department dated 28.02.2006 and in light of G.O.Ms.No.198(MAWS Department) dated 26.10.1998.”..”

7. In the circumstances, the impugned order cannot be sustained and the



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same is accordingly set aside. The writ petition is allowed with a direction to the

Respondents herein to consider the claim of the petitioner for absorption in terms of G.O.Ms.No.198 dated 26.10.1998 on par with other similarly situated persons whose services were absorbed and extend the benefit of time scale of pay with effect from 23.06.2006 and pass orders in accordance with law as expeditiously as possible at any rate within a period of 8 weeks from the date of receipt of a copy of this order. No costs.

24.09.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To:

1.Assistant Director of Town Panchayat,
Coimbatore Region, Coimbatore.

2.Executive Officer,
Komaralingam (I Grade) Town Panchayat,



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MUMMINENI SUDHEER KUMAR, J.

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