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W.P.No.3765 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2023

PRONOUNCED ON : 16.04.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.3765 of 2015
and
W.M.P.No.1 of 2015

A.Jayaseelan

...Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to the Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai – 9.
2. The Vellore City Municipal Corporation,
Rep. by the Commissioner,
Vellore District,
Vellore.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus, directing the respondents to regularize the service of the petitioner on the basis of the judgment rendered by the Hon'ble Apex Court in Olgatellis - Vs - Bombay Municipal Corporation reported in Olgatellis - Vs- Bombay Municipal Corporation reported in 1985 (3) SCC 545 and Delhi Jal Board case reported in 2011 (8) SCC 568



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and also in G.O.Ms.No,385, Finance (Pay Scale) Department, dated 01.10.2010 and G.O.Ms.No.653, Home (Police.15) Dept., dated 07.08.2009 with all monetary and service benefits.

For petitioners : Mr.R.Singaravelan
Senior Counsel
for Ms.M.Srividhya
For R1 : Mr.S.Silambannan
Additional Advocate General
For R2 : Ms.Shanthi

ORDER

This writ of mandamus is filed to direct the respondents to regularize the services of the petitioner.

2. The facts in brief as culled out from the affidavit enclosed in the writ petition are as follows:

2.1. The petitioner was working as a Sweeper on 01.03.1997. As per the order dated 14.03.1997 of the Konavattam Panchayat on the basis of the resolution No.41 since then he been continuing in his services. The petitioner has been working for the last 17 years as part time Sweeper. However, his services are being utilized as full time employee in the school.

The petitioner was made to work in the school until 6.00 p.m. everyday



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with a meager. The petitioner's request for regularization of his services was denied by the respondent. The benefit of regularization cannot be denied to the petitioner as similarly placed persons who are juniors to the petitioner was regularized. It is submitted by the learned counsel for the petitioner that failure to regularization of services of the petitioner on completion of 10 years of service is punishable under article 14 and 16 of the Constitution of India. The services of the petitioner has to be regularized as already done for his juniors and thereby, has come forward with this writ petition.

3. Counter affidavit has been filed by the respondents. It is submitted by Mr.S.Silambannan, the learned Additional Advocate General that there is no record to show that the petitioner was appointed in the Konavattam Panchayat as Sweeper with a monthly salary of Rs.1430-00 and that as per the Service Register of the petitioner, he was engaged as Cart Driver in the Konavattam Panchayat with effect from 01.03.1997 with a remuneration of Rs.280/- per month and that his services were purely temporary. It is further submitted that as per G.O.No.234, Finance Department, dated. 01.06.2009, the remuneration of the petitioner has been revised and arrears of remuneration for the period from 01.03.1997 to



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October 2010, a sum of Rs.14300-00 was paid to the petitioner and to that extent entries were also made by president, konavattam village panchayat in the service register. He has further submitted that he was not appointed on the sanctioned post and hence, the claim of the petitioner cannot be considered.

4. The Vellore City Municipal Corporation was established with effect from 1.8.2008 and from October 2011 the neighboring Village Panchayats, Town Panchayats and Third Grade Municipalities were merged with the Vellore City Municipal Corporation. The Konavattam Panchayat is one of the Village Panchayats merged with the Vellore Corporation. The workers who were in service in the panchayats were allowed to continue in the corporation after merger of the panchayats.

5. It is submitted by the learned Additional Advocate General that the petitioner was absorbed while merging the village panchayat with the Corporation and that the Corporation has allowed him to work in the same position which he was holding at the time of absorption. The Government as per G.O. (Ms) No.118 MA&WS Dept. Dt.19.12.2012 while issuing orders of absorption of the local body employees has directed



to allow such employees to work in the similar position without any modification in their post since such employees were not appointed under any service rules.

6. It is further by the learned Additional Advocate General that temporary or daily wages employees even if worked for long number of years cannot claim for regularization, if he is not working against the sanctioned post and that part time employees are not entitled to seek regularization as they are not working against any sanctioned posts. It is submitted by the learned Additional Advocate General that there cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees and that part time temporary employees in Government institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

7. It is further submitted by the learned AAG that though the petitioner has relied on certain judgments, they are not applicable to the petitioner's case as the petitioner was absorbed along with merger of village panchayat into the Corporation. Hence, the relief sought by the petitioner could not be considered.



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8. Heard both sides and perused the materials available on record.

9. The Full Bench of this Court in W.P.No.23823 of 2023 has held that:

“36. Having considered the entire literature that is available in the form of various pronouncements of this court, as well as the Hon’ble

Supreme Court, we find it difficult to accept the judgment of the Division Bench in State of Tamil Nadu. by its Secretary, Public Works Department. and another vs. S. John Charles and others, as one laying down the law to the effect that the Government is free to appoint persons either in part-time or on a full-time temporary basis to permanent posts and oust them out at its whims and fancies and we conclude that such unbridled exercise of indiscretions by the State Government would amount to exploitation.

37. We are of the considered opinion that wherever the posts are permanent in nature and they come within 86 categories of posts which form the Tamil Nadu Basic Service, temporary or part-time employment should be avoided and those persons, who have been appointed to such posts and who have completed 10 years of service as on 28.02.2006 would be entitled to regularization dehors the nomenclature that is given to the appointment.

38. In fine, we hold



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(a) If it shown that the appointment is made to anyone of the 86 categories of posts enumerated in the Tamil Nadu Basic Service immaterial of the fact that whether such appointment is part-time or full- time, the employee would be entitled to the benefit of regularization de hors G.O.Ms.No.74 dated 27.06.2013.

(b) If it is shown that the nature of employment is temporary and the requirement will cease to exist after a particular time, like those appointments that are made under various welfare schemes, it will then be open to the Government to engage temporary employees or part- time employees.

39. We conclude that the judgments in State of Tamil Nadu. by its Secretary, Public Works Department. and another vs. S. John Charles and others, and State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others vs K.Rajakrishnan, cannot be taken as laying down an inflexible rule of law that any part-time or temporary employee who has completed 10 years of service on 28.02.2006 will not be entitled to regularization. The benefit of regularisation will depend on the nature of the job and the fact that whether the post falls within any one of the 86 categories mentioned in the Special Rules for Tamil Nadu Basic Service.”

10. Basing on the Full Court judgment stated *supra*, it is to be examined whether the petitioner's service can be regularize. The petitioner was working as a Sweeper and had put up 17 years of service as on the date of filing this writ petitioner in the year 2015. The post of Sweeper



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falls in 12 of 86 categories of the post enumerated in the Tamil Nadu Basic Service Rules. The petitioner has mentioned in his affidavit that though the petitioner was appointed as a part time Sweeper he has been working as a full time Sweeper. The Full Bench of this Court in the judgment stated *supra*, has considered the issue and given a finding that if employee was working either as a part time or as a full time he or she is entitled for regularization. Considering G.O.Ms.No.74 dated 27.06.2013, in this case if the services falls in any one of 86 categories of Tamil Nadu Basic Service Rules as already observed, the services of the petitioner falls within category 12 of the Service Rules and therefore, he is entitled for regularization.

11. Accordingly, this writ petition is allowed. Connected M.P. is closed. No costs.

16.04.2024

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Index	:	Yes/No
Internet	:	Yes/No
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DR. D.NAGARJUN,J.

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