



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.1768 of 2021

and

C.M.P.No.11034 of 2021

Maraimalai Nagar Municipality,
Represented by its Commissioner,
Maraimalai Nagar,
Chengalpatu Taluk,
Kancheepuram District.

... Appellant

Vs.

1.The Presiding Officer,
I Additional Labour Court,
Chennai.

2.G.Ravikumar

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed in W.P.No.10141 of 2014 dated 10.12.2020 and allow the Writ Appeal.

For Appellant

: Mr.Lourdu Paul Maurya



For R1 : Labour Court
For R2 : Mr.K.M.Ramesh
Senior Counsel
For Mr.V.Subramani

J U D G M E N T

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The present Intra Court Appeal has been instituted challenging the order dated 10.12.2020 passed in W.P.No.10141 of 2014.

2. The writ petitioner Maraimalai Nagar Municipality is the appellant before us. The respondent-Workman admittedly appointed as a consolidated pay employee in Maraimalai Nagar Municipality on terms and conditions. The appointment order issued to the respondent would indicate that the appointment was initially for a period of one year and will be renewed up to three years. The appointment is made on consolidated pay and after completion of three years of period, the employee will be eligible to get time scale of pay subject to the approval of the Government of Tamil Nadu.

3. Mr.K.M.Ramesh, learned Senior Counsel appearing on behalf of the



2nd respondent would submit that the workman continuously worked beyond three years and as per the conditions stipulated in the order of appointment the time scale was not granted to the 2nd respondent. Thus, he filed a claim petition under Section 33C (2) of the Industrial Disputes Act, 1947 before the Labour Court. The Labour Court conducted an enquiry and allowed the claim petition. Granting monetary benefits by fixing time scale of pay on completion of three years of service of these workmen based on the Government order issued in G.O.Ms.No.198, Municipal Administration and Water Supply Department dated 26.10.1998. The said award passed by the Labour Court came to be challenged by way of writ petitions. The Writ Court confirmed the order on the ground that the Government order stipulates that the time scale is to be granted on completion of three years of service. Even as per the terms stipulated in the order of appointment, the respondent-workman are eligible to draw time scale of pay on completion of three years of service and accordingly, rejected the writ petitions filed by the appellant and confirmed the order passed by the Labour Court in the claim petition. Thus, the present writ appeal is filed.

4. Mr.L.P.Maurya, learned counsel for the appellant would submit that the initial appointment of the respondent-Workman is on consolidated pay.



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He was not initially appointed in accordance with the Tamil Nadu Municipal Corporation basics Service Rules, 1996. When the initial appointment of the respondent-Workman is not in accordance with the Service Rules applicable to the municipality, he is not entitled to claim any benefit by filing a claim petition under Section 33C (2) of the Industrial Disputes Act, 1947. The order of appointment would reveal that the appointment of the respondent-Workman is temporary in nature. However, the time scale will be granted only if the Government approves the scheme. In the absence of approval from the Government, the respondent is not eligible to claim time scale of pay even as per the conditions stipulated in the order of appointment. The Labour Court has not considered this aspect. Thus, the writ appeal is to be considered.

5. Considering the submissions as advanced between the Mr.K.M.Ramesh, learned Senior Counsel and Mr.L.P.Maurya, learned counsel for the appellant, the maintainability of the claim petition under Section 33C (2) Industrial Disputes Act, 1947 has to be considered at the first instance.

6. The appellant / Maraimalai Nagar Municipality is a “State” within the meaning of Article 12 of the Constitution of India. The appointments,



permanent absorption and regularization are governed under the Service Rules i.e., Tamil Nadu Municipal Corporation Basics Service Rules, 1996.

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The said special rules are issued by the Governor of Tamil Nadu in exercise of powers conferred under Article 309 of the Constitution of India. Thus, the Service Rules as applicable to the employees of the Municipality will prevail over the General Law. Thus, the claim petition filed under the Industrial Disputes Act is not entertainable. Aggrieved persons have to approach the authorities under the said Service Rules and the Appellate Authority and thereafter, the High Court by way of writ proceedings.

7. It is not in dispute that the service of the respondent was subsequently regularized by the appellant / Municipality with effect from the year 2006. As of now, the respondent-workman is the permanent employee of the appellant / Municipality. The claim petition was filed only to the extent of claiming monetary benefits of time scale of pay on expiry of three years of service until the services of the respondent-workman are regularized. Such a claim before the Labour Court is not entertainable, in view of the fact that appointment, regularization, confirmation of service are of the Municipality governed under the special rules applicable. When special rules are in force general law would have no application.



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8. In respect of public employment, regularizations or permanent absorption is to be granted scrupulously in accordance with the Service Rules in force. Irregular and illegal appointees are not entitled to claim regularization or permanent absorption. Those appointments are back door appointments as held by the Constitution Bench of the Hon'ble Supreme Court of India in the case of *State of Karnataka Vs. Uma Devi* reported in *(2006) 4 SCC 1*.

9. All appointments to the public services are to be made under the constitutional schemes and by following the procedures as contemplated. Lakh and lakh of youth of our Great Nation are longing to secure public employment through open competitive process. Back door appointments are infringing the constitutional rights of the citizen. Back door, irregular or illegal appointments are depriving the eligible candidates to secure appointment on merits and through Rule of Reservation. Thus, the Apex Court in an unequivocal terms held that back door appointments at no circumstances be approved nor the benefit of regularization is to be granted.

10. In paragraph 54 of the judgment, the Constitution Bench reiterated



that judgements running counter to the principles laid down in *Uma Devi's* case are denuded to loose its status as precedent. Thus, those judgments cannot be followed as binding judgments in the matter of regularization or permanent absorption.

11. In the present case, admittedly, the respondents were initially appointed for a period of one year on consolidated pay. They were allowed to continue as consolidated employees. The case of the respondent was considered as one time measurement and his services are regularized in the year 2006. Once their services are regularized under the Tamil Nadu Municipal Corporation Basics Service Rules, 1996, the respondent-workman cannot approach the Labour Court under Section 33C (2) of the Industrial Disputes Act, 1947 for claiming monetary benefits on the ground that they are eligible to draw time scale of pay on expiry of the period of three years as per the Government orders issued in G.O.Ms.No.198 dated 26.10.1998.

12. Equal opportunity in public employment is the constitutional mandate. Irregular and illegal appointments are offending the Equality Clause under the Constitution. Thus, the Courts have consistently held that such irregular and illegal appointments cannot be a ground to claim regularization



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or permanent absorption. Despite the legal principles in the present case, the benefit of regularization had been extended to the respondents. Therefore, their further claim seeking time scale of pay on expiry of three years is not entertainable. The benefit of regularization granted to these employees, who were initially appointed irregularly itself is a concession extended to them. Thus, the claim petition is not entertainable. They are entitled for all the service benefits from the date of regularization in the sanctioned post in Maraimalai Nagar Municipality.



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13. With these observations, the order under challenge dated 10.12.2020 passed in W.P.No.10141 of 2014 is set aside and consequently, the Writ Appeal stands allowed. No costs. Connected Miscellaneous Petition is closed.

[S.M.S., J.] [K.R.S., J.]
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Index : Yes
Speaking order
Neutral Citation : Yes

To

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