IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	31.07.2024
Pronounced on	02.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.A.No.2182 of 2024
and
C.M.P.No.15438 of 2024

The Executive Officer,
Mangalam Pettai Town Panchyat,
Mangalam Pettai,
Cuddalore District. ...Appellant

Vs.

1.N.Periyasamy

2.The Secretary to Government,
Tamil Nadu Municipal Administration
& Water Supply Department,
Secretariat, Chennai – 600 009.

3.The Director of Town Panchayats,
Kuralagam Buildings,
Chennai – 600 108.

4.The Commissioner of Treasuries and Accounts,
Nandanam, Chennai. ...Respondents
*(R4 suo impleaded vide order dated 02.08.2024
made in W.A.No.2182 of 2024 by MSRJ & SMJ)*

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 20.04.2023 passed by the learned Single Judge of this Court in W.P.No.10629 of 2015.

For Appellant	: Mr.R.Neelakandan, Additional Advocate General assisted by Mr.C.Selvaraj
For R1	: Mrs.K.Kanthimathi for Mrs.S.Girija
For R2 & R3	: No Appearance

JUDGMENT

M.S.RAMESH, J.

The order of a learned Single Judge of this Court passed in W.P.No.10629 of 2015, dated 20.04.2023, directing the appellant herein to regularize the service of the appellant and bring him on regular time scale of pay on par with three similarly placed workers, who had the benefit of an Award of the Labour Court passed in the Industrial Dispute in I.D.No.104 of 1993, dated 18.09.2001 and also extend the benefits in G.O.(D) No.34, Municipal Administration and Water Supply (TP.1) Department, dated 23.01.2013, with all consequential benefits, is put under challenge in the present Writ Appeal.

2. The learned Additional Advocate General appearing on behalf of the appellant submitted that in accordance with G.O.Ms.No.60, Rural Development and Panchayat Raj Department, dated 23.06.2006, the services of the 1st respondent herein was regularized in the time scale of pay, with effect from 01.11.2006. He further submitted that regularization of the 1st respondent's services prior to 01.11.2006 was impermissible, since there was a ban for new recruitment under G.O.Ms.No.212, Personnel and Administrative Reforms Department, dated 29.11.2001, which was revoked on 07.02.2006, through G.O.Ms.No.14, Personnel and Administrative Reforms Department. Even otherwise, the temporary posts on consolidated pay were only for a maximum period of three years and thereafter, the 1st respondent herein cannot have a legal right to seek for regularization, which was the prerogative of only the Government.

3. Per contra, the learned counsel appearing for the 1st respondent submitted that when the 1st respondent's non-employment was challenged before the Labour Court, Cuddalore, in I.D.No.104 of 1993, an Award came to be passed for reinstatement and continuity of service. Thereafter, the services of three sanitary employees, who were similarly placed, were also regularized and brought under regular time scale of pay, with effect

from 16.06.2000. This apart, the Government, in G.O.(D) No.34, dated 23.01.2013, had ordered for regularization of persons similarly placed as that of the 1st respondent and accordingly, four posts were sanctioned for absorption of Nominal Muster Roll (NMR) work prior to 31.12.1996 and three similarly placed persons, who had the benefits of an Award dated 18.09.2001 in I.D.No.104 of 1993, were absorbed from the year 2000. Since the Industrial Dispute, as against the 1st respondent, was pending, he was not absorbed under the sanctioned post. Hence, the learned counsel submitted that since the 1st respondent and other three workmen, who had the benefits of the Award in I.D.No.104 of 1993, are similarly placed, denying the benefits to this respondent, on par with them would amount to discrimination. The learned counsel also submitted that since the calculation memo submitted by the appellant before this Court takes into account of the differential salary payable to the 1st respondent, with effect from 01.01.2001 only, the revision of salaries for the period between 16.06.2000 and 31.12.2000 may also be given effect to.

4. We have given careful consideration to the submissions made by the respective counsels.

5. It is not in dispute that the three workers, who are covered under the Award in I.D.No.104 of 1993, dated 18.09.2001, are similarly placed NMRs as that of the 1st respondent herein. It is also not in dispute that four regular posts were created in the appellant Town Panchayat for absorption of NMRs, who were working prior to 31.12.1996.

6. The Government Order in G.O.(D) No.34, dated 23.01.2013, orders the Executive Officers of the Town Panchayats to bring 123 panchayat employees, including sanitary workers, into regular time scale of pay from the date of completion of three years of their respective services on consolidated basis, pursuant to orders passed by an Hon'ble Division Bench of this Court in W.A.Nos.47 & 385 of 2010, dated 23.06.2010, together with arrears of pay and other benefits.

7. Since the Industrial Dispute raised by the 1st respondent herein was pending, the appellant herein had deferred his case, but had chosen to bring three other similarly placed workers, who were covered under the Award dated 18.09.2001 in I.D.No.104 of 1993, on regular time scale of pay. It is on appreciation of these facts that the learned Single Judge had directed the appellant to regularize the services of the 1st respondent

and bring him on regular time scale of pay, as done in the case of other three workers covered under the Industrial Dispute dated 18.09.2001. We do not find any infirmity or illegality in such a finding.

8. It is now brought to the notice of this Court that the service of one Lakshmanan, who was one of the petitioner's in I.D.No.104 of 1993, was regularized with effect from 16.06.2000. Thus, the services of the 1st respondent herein also requires to be regularized and brought into the regular time scale of pay, with effect from 16.06.2000.

9. At this juncture, the learned Additional Advocate General, on our directions, produced a copy of the comparative calculation table for the differential salaries payable from January, 2001 to April, 2023, setting forth the total amount of Rs.7,96,818/- that may be payable to the 1st respondent. He also submitted that, earlier the 1st respondent's service was regularized with effect from 01.11.2006 and therefore, he was enrolled under the New Contributory Pension Scheme and allotted with CPS Account No.925558 and both the appellant and the 1st respondent herein have been equally contributing to the said scheme. As on 28.07.2024, the pension amount accrued in the 1st respondent's CPS

Account with interest, including the appellant's contribution, was Rs.10,69,450/-.

10. When the services of the 1st respondent herein are regularized with effect from 16.06.2000 and brought into regular time scale of pay, the total number of qualifying years of service of the 1st respondent herein, for the purpose of computation of pension, would also require revision.

11. Now that this Court has found that the service of the 1st respondent has to be brought under regular time scale of pay with effect from 16.06.2000 and he has been continuously challenging his non-employment before the Labour Court and also had the benefit of Award for reinstatement with continuity of service, he is entitled to the benefit of Old Pension Scheme, since his regularization is prior to 31.03.2002, which is the cut off date prescribed under the New Contributory Pension Scheme. Thus, when he is brought under the New Contributory Pension Scheme, the appellant will be entitled for refund of his portion of the contribution already made in the 1st respondent's CPS Account. However, we have also taken note of the fact that the appellant herein has also

contributed 50% of their share to the 1st respondent's CPS Account and therefore, if they are granted liberty to deduct their share of contribution from and out of the differential wages to be paid to the 1st respondent herein, the ends of justice could be secured.

12. This apart, the 1st respondent herein would also be entitled for the differential salary with effect from 16.06.2000, which shall also include the revision of salaries as per the 6th Pay Commission recommendations.

14. The learned counsel for the 1st respondent submitted that the 1st respondent had retired from services on 30.04.2023 and only a sum of Rs.2,05,000/- alone was disbursed to him towards encashment of Earned Leave Salaries and that he is entitled for the differential amount on this head also. We are in agreement with such a submission.

15. Since the Commissioner of Treasuries and Accounts, Nandanam, Chennai, is the competent authority for admitting the 1st respondent herein in the Old Pension Scheme, as well as for cancelling his enrolment in the New Contributory Pension Scheme and for refund of

the contributions made to the 1st respondent's CPS Account, the authority is *suo motu* impleaded as a party respondent in the present Writ Appeal.

16. In the light of the above observations and findings, the following orders are passed:-

(i) The order of the learned Single Judge passed in W.P.No.10629 of 2015, dated 20.04.2023, is upheld.

(ii) There shall be a direction to the appellant and the 3rd respondent herein to forthwith bring the services of N.Periyasamy/1st respondent herein on regular time scale of pay, with effect from 16.06.2000 and pay the arrears of differential salaries, by extending the benefits of the revision of salaries ordered under the 6th Pay Commission.

(iii) Since the services of the 1st respondent herein is now being regularized prior to 31.03.2002, he would fall under the Old Pension Scheme and hence, the Commissioner of Treasuries and Accounts, Nandanam, Chennai, shall pass appropriate orders, within a period of four weeks from the date of receipt of the proposal referred to in Clause (iii) above, admitting the 1st respondent herein under the Old Pension Scheme, by cancelling his enrolment under the New Contributory Pension Scheme.

(iv) The Commissioner of Treasuries and Accounts, shall refund the entire amount of the contributions made by both the appellant and 1st respondent herein, together with interest as on date, to the 1st respondent, within a period of four weeks from the date of receipt of a copy of this order.

(v) Thereafter, the appellant herein will be at liberty to deduct 50% of their contributions already made to the 1st respondent's CPS Account No.925558, while disbursing the difference of salaries, with effect from 16.06.2000.

(vi) There shall be a further direction to the appellant herein to disburse the eligible balance amount towards the encashment of the 1st respondent's earned leave, over and above the sum of Rs.2,05,000/-, which was earlier received by him.

(vii) There shall be a direction to the appellant herein to forthwith send a proposal to the Commissioner of Treasuries and Accounts, Nandanam, Chennai, re-fixing the total number of qualifying years of the 1st respondent herein, for the purpose of computation of pension and the proposed revised pension payable to him, with effect from 16.06.2000, within a period of four weeks from the date of receipt of a copy of this order.

(viii) The directions to the Commissioner of Treasuries and Accounts, to release the entire CPS contributions to the 1st respondent, shall be done within a period of four weeks from the date of receipt of the proposal from the appellant herein.

(ix) The disbursement of the differential wages, including the encashment of earned leave, after deducting 50% of the 1st respondent's contributions to the CPS Account No.925558, shall be done within a period of four weeks from the date on which the Commissioner of Treasuries and Accounts refunds the entire contributions to the 1st respondent.

(x) The 1st respondent herein is granted liberty to give a representation to the appellant, as well as to the Commissioner of Treasuries and Accounts, seeking for inclusion of his difference of salaries for the period between 16.06.2000 and 31.12.2000 and on receipt of such a representation, the concerned authority shall consider the same, in the light of the observations and findings made in this order, and pass appropriate orders, within a period of four weeks from the date of receipt of such a representation.

17. In the result, the Writ Appeal stands dismissed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.R., J] **[S.M., J]**
02.08.2024

Index:Yes
Neutral Citation:Yes
Speaking
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To

1.The Secretary to Government,
Tamil Nadu Municipal Administration
& Water Supply Department,
Secretariat, Chennai – 600 009.

2.The Director of Town Panchayats,
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Chennai – 600 108.

3.The Commissioner of Treasuries and Accounts,
Nandanam, Chennai.

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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Pre-delivery judgment made in
W.A.No.2182 of 2024

02.08.2024