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W.P.No.12116 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:
THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.12116 of 2017
and WMP.No.12971 of 2017

M.Vijaya (Deceased)

1.M.Rajesh

2.M.Ashok

(P1 & P2 are substituted as Lrs. in the
place of deceased M.Vijaya vide order
dated 01.08.2023 made in
WMP.No.22956/2020 in
W.P.No.12116 of 2017 by CVKJ)

... Petitioners

VS.

1.Government of Tamil Nadu,
Rep. by its Secretary,
Environment and Forest Department,
Fort St. George,
Chennai – 600 009.

2.Chairperson,
Tamil Nadu Pollution Control Board,
No.26, Mount Salai,
Guindy, Chennai – 600 032.

3.Member Secretary,
Tamil Nadu Pollution Control Board,
No.26, Mount Salai,
Guindy, Chennai – 600 032.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the order of the



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1st respondent bearing G.O.(D).No.24, Environment (M) Forest (Su2) Department, dated 05.02.2011 in so far as directing to regularize the services of the petitioner only from the date of issuance of G.O. and the order of the 3rd respondent dated 14.03.2017 bearing Memo No.TNPCB/Per/P7/015595/2017 rejecting the request of the petitioner to regularize her services from the date of initial engagement as illegal, arbitrary and contrary to law and consequently direct the respondents to regularize the services of the petitioner from June 1987 being the date of initial engagement in the post of Sweeper as done in the case of V.Narasama (Sweeper) vide Proceedings No.Sa.P/LA1/29759/2012 dated 04.03.2013 for all attendant benefits, fixation of pay, pension, all service benefits, etc., and pass such other orders or directions as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioners : Mr.Balan Haridas

For R1 : Mr.K.Suresh,
Government Advocate

For R2 and R3 : Mr.Vijayakumari Natarajan
Standing Counsel

* * * * *

ORDER

The petitioner aggrieved by the order passed by the first respondent in rejecting the petitioner's claim for regularization of her services from the date of the initial appointment i.e. 15.06.1987 has filed the above writ petition.



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2.The petitioner was appointed as a full time sweeper in the second respondent Board from June 1987. As the petitioner's services were not regularized inspite of several requests made by her in this regard, the petitioner approached this Court by filing writ petition in W.P.No.7245 of 2005 for a direction to the respondents to regularize her services as Scavenger/Sweeper/Office Assistant in the second respondent Board. The said writ petition was disposed of vide order dated 06.11.2009, directing the respondent to regularize the services of the petitioner within the time stipulated therein and with a further direction that while regularizing the petitioner's services, the respondents should keep in mind the benefits given to the similarly placed persons so as to avoid arbitrariness in the matter of regularization. In pursuance of the order passed by this Court, the first respondent by G.O.(Niali) No.24, dated 05.02.2011, directed the second respondent Board to regularize the petitioner's services in the post of Sweeper from the date of issuance of the G.O. In pursuance of the said G.O. the second respondent Board issued an order on 26.05.2011, regularizing the petitioner's services in the post of Sweeper from 05.02.2011. According to the petitioner, the impugned order dated 05.02.2011, directing the second respondent Board to regularize the services of the petitioner from the date of the order was not only



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discriminatory but also in violation of the aforesaid order dated 06.11.2009 of this Court. The petitioner's grievance was that whereas similarly placed persons were regularised from the date of their original appointment, the petitioner's services were regularized only from the date of issuance of G.O. viz., 05.02.2011. The petitioner, hence prayed that the impugned order deserved to be set aside.

4.The respondent filed a detailed counter admitting that the impugned order was passed in obedience of the order passed by this Court on 06.09.2011 in W.P.No.7245 of 2005. The second respondent Board though admitted that in the case of one Tmt.R.Chellammal, Sweeper and Tmt.V.Narasamma, Sweeper, the Board and the Government regularized their services retrospectively, i.e. from the date of their initial appointment, according to the respondent, this was done in compliance of the orders passed by this Court in W.P.No.15424 of 2007 and W.P.No.4722 of 2008 and the opinion of the Board Standing Counsel. The respondent further stated that the board sought ratification from the Government for appointment of the said persons as sweepers with retrospective effect and the Government also ratified the same. The respondent stated that even in the case of the petitioner, the second respondent vide



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Lr.No.TNPCB/PER/P7/01296/13 dated 03.12.2013 addressed the Government for necessary orders for retrospective regularization. The Government in its Lr.No.3869/EC.2/2014-1 dated 05.03.2014 directed that the matter be placed before the board in the first instance and thereafter to refer the same to the Government for further action. The proposal for regularization of services of the petitioner was placed before the Board in its meeting held on 30.11.2015 for consideration. The Board vide its resolution No.260-2-3 dated 14.12.2015 resolved to follow the orders dated 21.02.2014 of the Hon'ble Supreme Court of India in Civil Appeal No.2726-2729 of 2014 in Government Lr.No.3869/EC.2/2014 dated 05.03.2014 and the same was sent to the Government for information vide Lr.No.TNPCB/Per/P7/01296/2013, dated 06.01.2016. The petitioner vide Board Memo No.TNPCB/Per/P7/ 015595/2017 dated 14.03.2017 was intimated of the above. The respondent stated that the writ petition was bereft of merits and hence deserved to be set aside.

5.The learned counsel for the petitioner referring to the common Judgment of this Court in W.P.Nos.7245 & 7246 of 2005 dated 06.11.2009, submitted that this Court had passed specific orders directing the respondents to regularise the services of the petitioner keeping in mind



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the benefits given to similarly placed persons. The learned counsel further submitted that the Judgment rendered in Civil Appeal No.2726-2729 of 2014 by the Hon'ble Supreme Court was in respect of regularization of the services of Part Time Sweepers and the said issue had no application to the petitioner's claim, as the petitioner right from the beginning was working as a full time sweeper. The learned counsel therefore submitted that the impugned order deserved to be set aside for not properly considering the petitioner's case.

6.The learned standing counsel for the respondents on the other hand submitted that it was on the basis of the order passed by this Court and the Hon'ble Supreme Court that the impugned order was passed and the same did not call for any interference. The learned counsel further submitted that the petitioner was not entitled for regularization as the petitioner was not working against sanctioned post. The learned Standing Counsel further submitted that sympathy and sentiment could not be ground for regularizing the services of employees and that regularization could be granted only on legal grounds. The learned standing counsel for the respondents submitted that the impugned order did not call for any interference and therefore were no merits in the writ petition and the same deserved to be dismissed.



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7.I have heard both the learned counsels and I have perused the materials placed on record.

8.The petitioner filed writ petition in W.P.Nos.7245 & 7246/2005 praying for a writ of mandamus, directing the respondents to regularize the services of the petitioner as Scavenger/Sweeper or as Office Assistant in the second respondent Board on par with similarly placed persons whose services were regularised vide G.O.Ms.No.312 dated 21.07.1997 along with all monetary benefits.

9.In the said writ petitions specific directions were given to the respondents to address the grievance of the petitioner by regularizing her services keeping in view the benefits extended to similarly placed persons on their regularization. In spite of the said orders of this Court, the respondent passed the impugned order relying on the Judgment of the Hon'ble Supreme Court in C.A.Nos.2726-2729/2011. As rightly contended by the learned counsel for the petitioner the issue before the Hon'ble Supreme Court in the aforesaid Judgment was with reference to the regularization of part time employees whereas the petitioner in the present



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case is a full time employee. Moreover, the petitioner already approached this Court and this Court issued a positive direction to the respondent to regularize the services of the petitioner keeping in mind the benefits extended to similarly placed persons on their regularisation. The respondents not having challenged the said order are bound to comply with the same by extending the same benefits to the petitioner as were extended to similarly placed persons.

10.The respondents, in my view are therefore bound to regularize the services of the petitioner from the date of initial appointment as was done in the case of similarly placed persons. The impugned order is therefore set aside and a direction is issued to the respondents to pass orders regularizing the service of the petitioner from the date of her initial appointment and consequently extend all monetary benefits to the petitioner on such retrospective regularization, within a period of 12 weeks from the date of receipt of a copy of this order.

11.Accordingly, this writ petition is allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.



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Index : Yes/No

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Speaking order / Non-speaking order
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To

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Chennai – 600 009.
- 2.Chairperson,
Tamil Nadu Pollution Control Board,
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N.MALA,J.

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