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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN**

**W.A.No.3611 of 2024 and
C.M.P.No.28267 of 2024**

The Commissioner,
Tiruttani Municipality,
Tiruttani.

... Appellant

Vs.

1.Kanniyappan

2.S.Udaya Prakash

3.S.Munusamy

4.G.Venkatesan

5.M.Sankaran

6.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government
Municipal Administration & Water Supply
Department,
Secretariat, Fort St.George,
Chennai – 600 009.

7.The Commissioner of Municipal Administration,
Chepauk, Chennai – 600 005.

... Respondents



W.A.No.3611 of 2024

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 24.07.2024 made in W.P.No.25119 of 2021 on the file of this Hon'ble Court.

For Appellant : Mr.P.Srinivas

For R6 & R7 : Mr.T.Seenivasan
Special Government Pleader

J U D G M E N T

(Order of the Court is made by *R.SURESH KUMAR, J.*)

This intra court appeal has been filed against the order passed by the Writ Court dated 24.07.2024 made in W.P.No.25119 of 2021.

2. The respondents 1 to 5 were initially engaged as Sanitary Workers by way of NMR at the Appellant Municipality. Several years, they had been working in that capacity. At one point of time in the year 2015, there had been a move by the Municipality to go for recruitment of the Sanitary Workers by Advertisement dated 05.03.2015.

3. Under the said Advertisement dated 05.03.2015, 17 such Sanitary posts were earmarked to be filled up from among various communal categories as well as by inviting applications from open market.



W.A.No.3611 of 2024

WEB COPY

4. At that time, 3 out of 5 respondents herein had approached the writ Court and filed writ petition in W.P.Nos.9091 to 9093 of 2015, seeking to quash the said Advertisement/Notification issued by the Municipality dated 05.03.2015.

5. Their case before the writ Court was that they had been engaged long years back and had been working as Sanitary Workers in the Municipality for several years i.e., at least from the year 1998. Initially, their monthly pay was fixed at Rs.270/- and subsequently enhanced to Rs.500/- and thereafter, Rs.750/-. When that being the position, without regularizing their services even after 17 years, the Municipality now wanted to go for recruitment through open market candidates by calling for the applications. In order to challenge the same, the said writ petitions were filed.

6. The said writ petitions were opposed by the Municipality by stating the statistics that as of the year 2015, there were only 32 Sanitary workers working and as per the norms, 139 number of Sanitary workers are required and as of now, 24 sanctioned Sanitary workers posts are vacant and the Municipal Town namely Tiruttani being one of the main Pilgrimage Temple, where Lord



W.A.No.3611 of 2024

Murugan Temple is located, large number of devotees everyday come to the Municipality area to visit the Murugan Temple and therefore, it becomes imminent on the part of the Municipality to go ahead with the recruitment process. Hence, interim order granted by the writ Court against 05.03.2015 Notification was sought to be vacated.

7. The learned writ Court after hearing both sides, disposed of the said writ petitions in W.P.Nos.9091 to 9093 of 2015 by order dated 21.09.2015 and the relevant portion of the order of the writ Court is extracted herein for easy reference:

“By consent, all the Writ Petitions are taken up for final disposal.

2. The claim of the petitioners is that they are working as Temporary Motor Operators of Deep Bore Wells/Nominal Muster Roll ever since from 1998 and they were granted initially a sum of Rs.270/- per month and from the year 2004, it has been increased to Rs.500/- per month and subsequently with effect from 01.01.2009, it has been increased to 750/- per month. The petitioners would further state that they are working without any holiday for nearly 8 to 12 house per day. On account of long period of service, they sought for regularization and in this regard, also submitted representations dated 24.08.2010 and



since no orders have been passed, they came forward to file these writ petitions.

3. The learned counsel appearing for the petitioners has invited the attention of this Court to the resolution of the local body dated 22.02.2011 and would submit that as per local body resolution, recommendation has been made to regularize their services and in spite of it, no orders have been passed and hence, the petitioners are constrained to file these writ petitions.

4. When the writ petitions were listed on 30.03.2015, this Court has ordered notice of motion and also granted interim order directing the respondents to maintain status quo with regard to the service of the petitioners and the said interim order has been extended periodically from time to time.

5. The local body has filed M.P.Nos.2 to 2 of 2010 for vacating the interim orders contending among other things that as of now there are 32 Sanitary Workers are working and as per norms, 139 number of Sanitary Workers are required and 24 Sanitary Workers posts are vacant and on account of the fact that Thirutani is a place where pilgrims come and visit the Murugan Temple and their services are permanently required and on account of the interim order, they are unable to fill up the posts and hence, prays for vacating the interim orders.



6. *Learned counsel appearing for the petitioners would submit that since the petitioners were in employment for more than 10 years, they are entitled to be regularized before considering the claim of the Direct Recruits from the post of Sanitary Workers and prays for appropriate orders.*

7. *Per contra, Mr.V.Subbiah, the learned Special Government Pleader appearing for the 1st respondent submits that the petitioner, as a matter of right, cannot claim regularization; however, long period of service is put in and unless and until, the 1st respondent sanctions the said post and pass an order for regularization, the petitioners in these writ petitions are not entitled to get regularization.*

8. *This Court has carefully considered the rival submissions and also perused the materials placed before this Court.*

9. *Though the petitioners prayed for a larger relief, this Court in the light of the facts and circumstances and without going into the merits of the claim projected by the petitioners, permits the petitioners to submit one more representation to respondents 1 and 2 by enclosing a copy of this order as well as the copy of the earlier representation within a period of two weeks from the date of receipt of a copy of this order and the respondents, on receipt of the same, are directed to consider the said representation on merits and in accordance with law and*



W.A.No.3611 of 2024

pass orders within a further period of eight weeks thereafter and communicate the decision taken, to the petitioners and till then, Status Quo as ordered by this Court on 30.03.2015 shall be maintained in so far as three posts of Sanitary Workers are concerned.

These Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.”

8. Therefore, by the said order of the writ Court dated 21.09.2015, a direction was given to the Municipality to consider the plea of the petitioners therein with regard to the regularization and decide the same on merits and in accordance with law. Till such time, the interim orders of *Status Quo* already been passed on 30.03.2015 shall continue.

9. The 4th and 5th respondents herein joined with some other similarly placed persons also had approached the writ Court by filing writ petition in W.P.No.35969 of 2015, of course challenging the very same Notification issued by the Municipality dated 05.03.2015. That writ petition also was disposed of by the writ Court on 17.12.2015, where the following orders have been passed:

“7. This Court has carefully considered the rival submissions and also perused the materials placed before this Court.



8. Though the petitioners prayed for a larger relief, this Court in the light of the facts and circumstances and without going into the merits of the claim projected by the petitioners, permits the petitioners to submit one more representation to respondents 1 and 2 by enclosing a copy of this order as well as the copy of the earlier representation within a period of two weeks from the date of receipt of a copy of this order and the respondents, on receipt of the same, are directed to consider the said representation on merits and in accordance with law and pass orders within a further period of eight weeks thereafter and communicate the decision taken, to the petitioners and till then, Status Quo as ordered by this Court on 05.11.2015 shall be maintained in so far as the posts of Sanitary Workers are concerned.

This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.”

10. Despite these orders having been passed by the writ Court, at least in two separate writ petitions, the plea of the respondents since have not been considered positively and the Municipality since was moving towards the recruitment process pursuant to the Notification dated 05.03.2015, again, these respondents had sent a representation on 14.12.2016. That representation given



W.A.No.3611 of 2024

to the Municipality since did not evoke any response, once again these respondents joined together and filed yet another writ petition i.e., W.P.No.2700 of 2018, seeking for a writ of Mandamus to consider the representation dated 14.12.2016 and appoint them on regular basis as Sanitary workers at the Appellant-Municipality.

11. This writ petition also was disposed of by the writ Court on 17.06.2019, where the learned Judge has given the following orders:

“9. In view of the submissions of the learned counsels appearing for the parties and also the pleadings, this Court would dispose of the present writ petition as under:

(i) The 3rd respondent is directed to pass orders on the representation of the petitioners dated 14.12.2016 on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

(ii) While passing orders, the 3rd respondent is also to take into consideration the long number of years of service rendered by the petitioners in the Municipality and consider their claim sympathetically. No costs. Consequently, connected Miscellaneous Petition is closed.”

12. Pursuant to the said order passed by the writ Court lastly on 17.06.2019, the representation of the respondents dated 14.12.2016 having



W.A.No.3611 of 2024

been considered, an order was passed on 20.09.2019 by the Municipality, whereby the request of the respondents was rejected. That was the order impugned before the writ Court in the last round of litigation, where they moved the present writ petition, seeking for a writ of Certiorarified Mandamus to call for records and quash the rejection order passed by the Municipality dated 20.09.2019 and a consequential direction.

13. The said writ petition is now disposed of through the impugned order dated 24.07.2024, whereby the earlier proceedings i.e., three round of litigations taken place between the employer and the employees had been taken note of by the learned Judge and after taking into account of these orders especially the order dated 17.06.2019 made in W.P.No.2700 of 2018 and also the orders passed in W.P.Nos.7009 and 7010 of 2016 dated 19.09.2022, the learned Judge has taken the view that the rejection made on the plea raised by the writ petitioner was found to be unlawful and a direction to that effect was issued that out of the 17 vacancies, since only 8 vacancies have been filled up and the remaining 9 vacancies still are to be filled up and in those vacancies, since these respondents have already attended the interview and became eligible for appointment to the post of Sanitary workers, they shall be considered to fill up the remaining vacancies notified in the Advertisement



W.A.No.3611 of 2024

dated 05.03.2015 and appropriate orders to be passed as expeditiously as possible within a time frame. That was the direction given by the learned Judge through the impugned order.

14. Assailing the said order, Mr.P.Srinivas, learned Standing counsel appearing for the Appellant-Municipality would contend by relying upon the counter affidavit filed before the Court as well as the stand now taken before this Court, on getting instructions from the Appellant-Municipality that out of the 17 vacancies, only 8 could be filled up as the remaining vacancies could not be filled up by the Selection Committee for want of fitment in the roster i.e., 200 point roster.

15. In this context, during the last hearing, on 10.12.2024, we directed the learned Standing Counsel for the Appellant-Municipality to produce the 200 point roster and also to explain by filing supporting documents as to how the respondents are not fit in in the 200 point roster meant for respective communal categories, which they belong.

16. In response to the said directive issued by us dated 10.12.2024, the appellant/Municipality has filed additional typed set of documents, where



W.A.No.3611 of 2024

Government Order in G.O.Ms.No.55, Personnel and Administrative Reforms

(S) Department dated 08.04.2010 has been filed, which contains the 200 point roster.

17. Relying upon this Government Order as well as 200 point roster, the learned Standing counsel appearing for the Appellant-Municipality would contend that since there has been no recruitment for more than a decade, after the 200 point roster have been brought in by the Government Order dated 08.04.2010, first time only in this recruitment, pursuant to the Notification dated 05.03.2015, the 200 point roster has been given effect to thereby the first 17 turns have been taken into account for earmarking the vacancy. That is how the Notification was issued.

18. We have verified the Notification dated 05.03.2015, where the 17 vacancies have been distributed among various communal categories including the open competition quota.

19. Out of the 17 vacancies, 4 vacancies are earmarked for General Turn(GT), 4 vacancies are earmarked for Backward Class (BC), 1 vacancy is earmarked for Backward Class Muslim [BC(M)], 4 vacancies are earmarked for



W.A.No.3611 of 2024

Most Backward Class (MBC) and 4 vacancies are earmarked for Scheduled Caste (SC).

20. Out of these 17 vacancies, during the recruitment process, it is an admitted case on the part of the Appellant-Municipality, only 8 posts were filled up. Out of the 8 posts, where, 2 posts for Backward Class(BC), 2 posts for Scheduled Caste (SC), 2 posts for General Turn (GT) and 2 posts for Most Backward Class (MBC).

21. Therefore, insofar as the remaining vacancies are concerned, apart from one vacancy which is specifically reserved for Backward Class Muslim [BC(M)], where none of these respondents have competed, the remaining 8 vacancies are still available. The 8 vacancies would be distributed as General Turn (GT) -2, Most Backward Class (MBC) -2, Backward Class (BC) -2 and Scheduled Caste (SC)-2.

22. As far as the candidature of the respondents are concerned, the first respondent belongs to Backward Class (BC) and the respondents 2, 3 and 4 belong to Scheduled Caste (SC) Community and the fifth respondent belongs to MBC i.e., Most Backward Class / Denotified Communities.



W.A.No.3611 of 2024

23. Now the vacancy position is General Turn (GT) – 2. Even in General Turn (GT), all the five candidates since can compete based on the merit, at least two candidates can be filled up. That apart, there are two vacancies in Backward Class (BC) and two vacancies in Most Backward Class (MBC) and two vacancies in Scheduled Caste (SC), whereas only one Backward Class (BC) candidate among the respondents are now left with. Like that one Most Backward Class (MBC) candidate and three Scheduled Caste (SC) candidates are left with. However, if one Backward Class (BC) candidate is fit in one out of the two, the said community quota in so far as the remaining three Scheduled Caste (SC) candidates i.e., the respondents 2, 3 and 4 are considered, since there are two vacancies already available under Scheduled Caste (SC) quota, either any of the two among three based on the merit could have been filled up. The remaining one Scheduled Caste (SC) vacancy also can be filled up as there had been no other candidate available before us as nothing has been filed before us to compete with the remaining one Scheduled Caste (SC) candidate even to be filled up in open competition quota.

24. Therefore, the only reason, which according to the learned Judge, who recorded in the impugned order that for want of fitment in the communal category of 200 point roster, since these vacancies have not been filled up and



W.A.No.3611 of 2024

these respondents have not been selected does not have any legs to stand as absolutely there is no scope for such a reason.

25. That apart, some more grounds also now been urged by the learned Standing counsel for the Appellant-Municipality would submit that these respondents are not the direct employees of the Municipality and there have been outsiders or strangers. However, in the very impugned order before the writ Court dated 20.09.2019, the Municipality has stated that they have been working from the year 1998 through the contractors.

26. However, the fact remains that as has been recorded by the learned Judge in the first round of litigation in W.P.Nos.9091 to 9093 of 2015 dated 21.09.2015, which order had already been extracted hereinabove, these respondents were engaged by the Appellant-Municipality on consolidated pay in the year 1998 at the monthly payment of Rs.270/-, which has been enhanced to Rs.500/- and thereafter, further enhanced to Rs.750/- per month from the year 2009 onwards. Therefore, it has been crystal clear that these respondents had been working directly at the Appellant-Municipality at least from the year 1998 on consolidated pay. That is the reason why after working for nearly about 17 years, since they have not been regularized and when the Municipality was



W.A.No.3611 of 2024

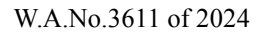
making an attempt to fill up the vacancies by inviting applications from the open market that Notification dated 05.03.2015 has been questioned in the first round of litigation and also in the yet another writ petition filed by two of the respondents in W.P.No.35969 of 2015.

27. In fact before the writ Court in the first round, the Municipality took a stand, which has been recorded in Paragraph 7 of the order dated 21.09.2015 that the petitioners i.e., the respondents herein as a matter of right cannot claim regularization. However, long period of service is put in and unless and until the first respondent sanctions the said posts and passes an order for regularization, the petitioners in those writ petitions are not entitled to get regularization. This was the exact stand taken by the Municipality in the year 2015 in W.P.Nos.9091 to 9093 of 2015, which a learned Judge has recorded as stated supra.

28. However, in the very same order, the learned Judge also recorded in Paragraph 5 that, as per the norms, the present requirement is 139 number of Sanitary Workers. However, there were only 24 Sanitary Workers posts are vacant i.e., sanctioned posts of 24 Sanitary Workers had been vacant during 2015, out of which, only they wanted to fill up 17 posts, for which, the Notification dated 05.03.2015 was issued.



29. Therefore, two things have been clear. One is that since from the year 1998, the respondents have been working temporarily on a consolidated pay at the Appellant-Municipality uninterruptedly. The second thing is that there was atleast 24 sanctioned posts of Sanitary Workers kept vacant in the Appellant-Municipality in Tiruttani, when the 05.03.2015 Notification was issued. However, the Notification had confined only to 17 vacancies to be filled up. When the municipality wants the posts to be filled up through recruitment process, these respondents have applied for the post of Sanitary Workers and they have been processed and they were called for interview for completing the recruitment process. The Municipality stopped recruiting only with 8 posts that is filling up only 8 posts and the remaining 9 posts were kept vacant for want of fitment by these candidates, in the communal roster of 200 point roster. The said reason cited by the Municipality is completely bereft of any substance, which we have discussed herein above. Therefore, the reason cited by the Municipality in not selecting these people is without basis and therefore, since on the only reason, the order impugned before the writ Court dated 20.09.2019 was passed, rejecting the plea of the respondents/writ petitioners that order would not stand in the legal scrutiny. Hence, to that extent, the conclusion reached by the learned Judge through the impugned order is to be approved.



31. However, insofar as the policy of the Government, which has come into effect from the year 2018, it has to go for Outsourcing is concerned, as found out by the learned Judge through the impugned order, such a policy cannot be implemented retrospectively from 2015 recruitment as we are discussing about the recruitment of 2015 and 2016 that is well before the policy decision taken by the Government in 2018.



W.A.No.3611 of 2024

32. That apart, it is a fact to be taken judicial notice that in the Local bodies like the appellant i.e., in the geographical limit of every local body, these kind of Sanitation work is permanent and perennial in nature. The filling up of such sanitary workers would get increased day-by-day and over the years, such a requirement of more number of Sanitary Workers become imminent and in order to meet that contingency, the Government must come forward to sanction the posts of Sanitary workers on permanent basis.

33. Assuming that as a one time measure, the Government has taken a policy decision not to engage any Sanitary Workers on permanent basis and instead only outsourcing can be undertaken by which such a sanitation work to be carried out as stated by the Government through the Government order in G.O.Ms.No.116, Municipal Administration and Water Supply (ME.3) Department dated 24.08.2022, insofar as the said policy decision is concerned, this Court would wish to express its opinion that since the sanitation work is permanent and perennial in nature and every nook and corner of the geographical area of a town/Municipality, Metropolitan area or Town Panchayat, if it is to be sanitized properly by cleaning the roads, public places and public utility areas, certainly adequate number of Sanitary workers are required.



W.A.No.3611 of 2024

34. The mere outsourcing by way of contract employees or entrusting work to the contractors would not augment well to maintain the hygienic nature and conditions of the area concerned with the local bodies and therefore, in the years to come, we hope and trust the Government of Tamil Nadu would evolve the policy decision to restore the system of appointment of Sanitary workers on permanent basis as they are the main pillars of maintaining the hygienic standard of living by providing of civic facilities to be attended to by a local authority, their services should not be dispensed with by handing over the same to the contractors by way of outsourcing.

35. Coming to the facts of the present case, insofar as the posts of 24 Sanitary workers sanctioned appropriately as admitted by the Appellant-Municipality in the year 2015, for which the recruitment was commenced on 05.03.2015 at least for 17 posts, which are permanent in nature and therefore, in order to fill up the said posts, the Municipality have crossed half way and 9 vacancies kept vacant out of which one is for Backward Class Muslim [BC(M)] and the remaining 8 vacancies as discussed above are meant for General Turn (GT), Backward Class (BC), Most Backward Class (MBC) and Scheduled Caste (SC) [two each]. Therefore, these five respondents can very well be accommodated as no other candidates have come before this Court to compete



W.A.No.3611 of 2024

with them with higher performance in the interview and hence, absolutely, we have no hesitation to hold that the respondents 1 to 5 are entitled to get appointment as Sanitary worker at the Appellant-Municipality.

36. The policy decision of the Government taken in the year 2018 to have the outsourcing would not stand in the way to make these appointments as these all are permanent vacancies sanctioned already by the Government as positioned in the year 2015.

37. It is also to be taken note of the fact that from 1998 onwards, these respondents have been working continuously in the Appellant-Municipality that shall also be taken as an added feature for making such a claim of appointment by these respondents. This discussion and observation would also go in consonance with Article 43 of the Directive principles of State Policy as enshrined in the Constitution of India and therefore, for all these reasons, we have discussed herein above, the following orders are passed in this writ appeal:

(1) That the order passed by the writ Court is to be sustained, accordingly, it is sustained.

(2) As a sequel, this writ appeal fails, hence it is to be dismissed and



W.A.No.3611 of 2024

accordingly, it is dismissed.

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(3) Therefore, there shall be a direction to the Appellant-Municipality either to regularize the services of the respondents 1 to 5 from the date of the appointment that has been made in respect of the other 8 vacancies pursuant to the Notification dated 05.03.2015 or give a fresh appointment to these respondents immediately within a period of thirty (30) days from the date of receipt of a copy of this order as Sanitary Worker of the Appellant-Municipality.

(4) Once such an appointment is made or regularization is made as directed above, the respondents 1 to 5 are entitled to get the salary and other perquisites on par with the Sanitary Workers, who are permanently working as the permanent employees of the Municipality.

38. With these directions, the writ appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (C.S.N., J.)
17.12.2024

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Index	:	Yes
Speaking Order	:	Yes
Neutral Citation	:	Yes



W.A.No.3611 of 2024

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- To
- 1.The Principal Secretary to Government,
Municipal Administration & Water Supply
Department,
Secretariat, Fort St.George,
Chennai – 600 009.
 - 2.The Commissioner of Municipal Administration,
Chepauk, Chennai – 600 005.



WEB COPY



W.A.No.3611 of 2024

R.SURESH KUMAR, J.
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W.A.No.3611 of 2024
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17.12.2024