



WA(MD). No.815 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 09/07/2024

CORAM

Justice N.SESHASAYEE

and

Justice P.VADAMALAI

**WA(MD). No.815 of 2020 and
WMP(MD) No.4556 of 2020**

The Commissioner
Bodinayakkanur Municipality
Bodinayakkanur

... Appellant/
3rd respondent

Vs

1.G.Muniyandi

... respondent/
writ petitioner

2.The Principal Secretary to Government
Municipal Administration and Water Supply Department
Fort St. George, Chennai 9

3.The Commissioner of Municipal Administration
And Water Supply Department
Chepauk, Chennai 5.

... Respondents 2&3/
Respondents 1 & 2

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent
against the order dated 23.01.2020 in WP(MD) No.16289/2014.

For Appellant : M/s.M.Karuppasamypandian
For Respondents : Mr.J.Parekh kumar for R1
Mr.A.Baskaran for R2 & R3
Additional Government Pleader



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JUDGMENT

(Judgment of the Court was delivered by N.SESHASAYEE, J.)

Challenging an order dated 23.01.2020 allowing WP(MD) No. 16289/2014, the third respondent therein has preferred this appeal.

2. The facts that give rise to this appeal can be stated as follows:

(a) The first respondent's herein was appointed as a gang Coolie/Sweeper on 19.06.1989 in the appellant Municipality on compassionate appointment. He has been approaching the authorities regularly for regularizing his services. The appellant turned the other way. This forced the first respondent to file OA No.1261 of 2004 before the State Administrative Tribunal. That was disposed of by the tribunal vide its order dated 24.03.2004. In its order, the Tribunal had noted that the appellant Municipality has forwarded its proposal for regularizing the services of the first respondent to the Directorate of Municipal Administration even in 1998 and issued a direction that the first respondent's post be regularized and if it has to be rejected on any other grounds, then,



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to communicate the same to the first respondent within a period of three months from the date of the order. Indeed, the tribunal has also noted that a compassionate appointment should have been made to a regular vacancy. Following this, on 10.09.2004, the Government passed G.O.Ms.No.478 dated 10.09.2004 granting exemption from the moratorium imposed for making fresh appointments under G.O.Ms.No.212 dated 29.11.2001. Following this, the appellant issued an order of appointment dated 20.09.2004 appointing the first respondent as a sanitary worker temporarily.

(b) Subsequently, the first respondent has been approaching the municipality to regularize the services from the date of his original appointment and that came to be rejected by the appellant on 24.12.2013.

(c) This order dated 24.12.2013 of the appellant came to be challenged by the first respondent before the learned Single Judge in WP(MD) No.16289/2014 and this was resisted by the municipality. But rejecting the resistance, the learned Single



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Judge allowed the petition. The line of reasoning of the learned Single Judge was that the tribunal indeed has passed an order to regularize the services of the first respondent from the date of his initial appointment and hence it is not given to the appellant herein to add a rider to the same. This order is now under challenge.

3. Heard the learned counsel for the appellant, the learned counsel for the first respondent and the learned Additional Government Pleader for the respondents 2 and 3.

4. On careful reading of the order passed in OA No.1261/2004, this Court is satisfied that the Tribunal has not directed regularizing the first respondent from the date of initial appointment, but has only directed the Directorate of Municipal Administration to pass an order on the recommendations of the appellant made by it on 01.09.1998 for regularizing the services of the first respondent. Unfortunately, the Government had sit over it till 10.09.2004 to pass partially due to the fact that in the interregnum, the Government passed G.O.Ms.No.478 dated 10.09.2004 granting exemption from the moratorium imposed for making



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fresh appointments under G.O.Ms.No.212 dated 29.11.2001 for a period of five years.

5. This Court finds that the appellant itself made a recommendation on 01.09.1998 and followed it with another recommendation dated 02.12.1998 for regularizing the services of the first respondent and it is unfortunate that despite the orders passed by the Tribunal in OA No. 1261/2004, wherein, it has observed that the first respondent ought to have been appointed in a regular vacancy, the appellant had issued an order of appointment dated 20.09.2004 appointing the first respondent only temporarily.

6. The design is far too evident and it cannot be appreciated. However, inasmuch as the tribunal itself has required the Government to pass necessary orders only on the recommendations made to it in 1998, this Court deems it appropriate to reckon the date of regularization from 01.09.1998.



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7. To conclude, this writ appeal is partially allowed and the first respondent's services will stand regularized from 01.09.1998 and the period from 01.09.1998 will be reckoned for all pensionary benefits. No costs. Consequently connected Miscellaneous Petition is closed.

(N.S.S.,J.) (P.V.M.,J.)
09.07.2024

NCC : Yes/No
Index : Yes/No
RR

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