



W.P.(MD).No.17756 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 05.09.2024

ORDER PRONOUNCED ON : .09.2024

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P.(MD).No.17756 of 2023

Udaiyar

....Petitioner

Vs

1.The Principal Secretary to Government
Secretariat
State of Tamilnadu
Municipal Administration and Water Supply Department
Chennai 600 009

2.The Commissioner
Municipal Administration
No.3, M.R.C.Nagar
Raja Annamalaipuram
Chennai 600 028

3.The Commissioner
Corporation Office
113, Palayamkottai Road
Thoothukudi

...Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to sanction the pension as per old pension scheme and service to be calculated for pension from 11.08.1988 from the date of appointment of daily wage worker and other



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benefits based on the order passed in W.P.No.17569 of 1993 dated 17.12.1999 on the petitioner's representation dated 26.05.2023.

For Petitioner : Mr.P.Thirumahilmaran

For Respondents : Mr.S.S.Madhavan
Government Advocate for R1 & R2

: Mr.Veera.Kathiravan
Additional Advocate General
assisted by Mr.N.Anandkumar
Standing Counsel for R3

ORDER

The writ petition has been filed, by a Nominal Muster Roll employee (for short 'N.M.R.') who was later regularised and attained superannuation after working in Tuticorin Municipal Corporation, seeking a mandamus to grant pension as per old pension scheme and other benefits in the light of the order passed by this Court in W.P.No.17569 of 1993 dated 17.12.1999 based upon his representation.

(A)Facts leading to the filing of this writ petition are as follows:

2.The petitioner herein was appointed as an NMR in Tuticorin Municipality. Several NMRs have jointly filed W.P.No.17569 of 1993 before this Court seeking a mandamus directing the respondents to regularise the members of contingent staff working in Municipalities who have completed 5 years of service or more. After contest, the writ petition was disposed of on 17.12.1999 with a direction to the concerned local bodies to undertake the



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exercise of deciding each individual case where the NMRs have completed 240 days and they shall be reinstated with all back-wages and other benefits.

The Court has further directed the local bodies to regularise their services if they have completed 240 days.

3.This order was put to challenge by Tuticorin Municipality in W.A.No.1524 of 2000. While the writ appeal was pending, the services of most of the NMRs working in Tuticorin Municipality were regularised as per G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999. The Hon'ble Division Bench directed the Municipality to verify the number of days worked/completed by NMRs from and out of their records and proceeded to dismiss the writ appeal on 16.03.2006.

4.Based upon the above said G.O., Municipal Administration and Water Supply (MC3) Department passed a Government Order in G.O.(Ms).No.21 on 23.02.2006 regularising the services of the workers who were working on consolidated pay and NMRs on daily wages in the Municipality and Corporation except Chennai. A perusal of the said Government Order reveals that it directed the appointing authority namely Municipal Commissioners to issue regularisation order. It further reveals that the regularisation will take effect only from the date on which such a regularisation order is issued by the appointing authority. Pursuant to



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G.O.(Ms).No.21, the Municipal Commissioner, Tuticorin issued an order on 26.05.2006 regularising the services of the writ petitioner.

5. After regularising the services of the writ petitioner, a review came to be filed by the Commissioner of Tuticorin Municipality challenging the order of Division Bench in W.A.No.1524 of 2000. The said review application was numbered as Review Application No.28 of 2008. The review application was dismissed by the Hon'ble Division Bench on 25.02.2008. Challenging the order made in WA.No.1524 of 2000 and the order passed in Review Application No.28 of 2008, SLP.(Civil)No.11669 and 11670 of 2008 were filed by the Commissioner of Tuticorin Municipality. The Hon'ble Supreme Court was pleased to allow the SLP filed by the Municipality only with regard to the direction issued by the High Court relating to the payment of back-wages. In other respects, the order of the High was confirmed by the Hon'ble Supreme Court.

6. 17 years after the order of regularisation, in April 2023, representations were sent by the regularized employees seeking benefits under old pension scheme. Since the said representation was not considered, the present writ petition has been filed.



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(B) Contentions of the counsels appearing on either side are as follows:

7.The learned counsel appearing for the writ petitioner has contended that the petitioner is employed right from the year 1988 onwards. Under the directions of the High Court, order dated 17.12.1999, his services were regularised. The writ appeal, review application and S.L.P filed by the Municipality/Corporation have been rejected. Therefore, his services should be construed to have been regularised at least from the date on which the writ Court had passed the order.

8. The learned counsel for the writ petitioner had further contended that from 01.04.2003 onwards, the contributory pension scheme was introduced. However, even before the said date, this Court has directed the Government to regularise his services. However, when the Government Order was passed regularising his services, in G.O.(Ms).No.21 Municipal Administration and Water Supply (MC3) Department dated 23.02.2006, erroneously his services were regularised only from the date of regularisation order to be issued by the appointing authority.

9.The learned counsel had further contended that the writ Court had specifically directed the authorities to regularise his services on completion of 240 days. However, the Government Order had regularised him only from a future date and not from the date on which he had completed 240 days. He



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had further contended that the similarly placed persons have been brought under the old pension scheme. The delay on the part of the Municipality/Corporation in issuing the Government Order to regularise his services, cannot be put against the writ petitioner. Hence, he prayed for allowing the writ petition.

10.Per contra, the learned Additional Advocate General appearing on behalf of Standing Counsel for the Municipality had contended that as per G.O.(Ms).No.21 Municipal Administration and Water Supply (MC3) Department dated 23.02.2006 his services were regularised from the date on which the regularisation order was issued by the appointing authority. Admittedly, the petitioner herein was regularised only in the year 2006. By way of G.O.Ms.No.126 Municipal Administration and Water Supply (MA-3) Department dated 20.02.2004, the contributory pension scheme was extended to the employees of the Municipal Corporation also. As per the said Government Order, those who were recruited on or after 01.04.2003 are governed only under the contributory pension scheme. The petitioner is a member of the said contributory pension scheme and on his attaining superannuation, all of them have received pension under the said scheme. Thereafter, after a much delay, representations have been sent and the present writ petition has been filed. Therefore, the present writ petition is not maintainable and it is liable to be dismissed.



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11.I have considered the submissions made on either side and perused the material records.

(C) Discussion:

12.The petitioners who were Nominal Muster Roll employee of various Municipalities and Corporations have approached this Court seeking a mandamus for regularisation. The employees of Tuticorin Municipality have filed W.P.No.17569 of 1993 and the same has been disposed of on 17.12.1999 directing the Municipality to regularise their services with back-wages. The said order was confirmed in W.A.No.1524 of 2000 dated 16.03.2006 and the review application filed by the Municipality was also dismissed. The Hon'ble Supreme Court in SLP (Civil).No.11669 and 11670 of 2008 has confirmed the order of the Hon'ble Division Bench except setting aside the portion of the order which directed payment of back-wages to the employees.

13.While the writ appeal was pending before the Hon'ble Division Bench, Government Order was issued in G.O.Ms.No.125, Municipal Corporation and Water Supply Department dated 27.05.1999 issuing guidelines for regularisation of the employees. One of the condition in the said Government Order, as extracted in the order of the Hon'ble Supreme Court, indicates that the services rendered by an NMR before regularisation should not be taken into account for service benefits.



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14.Pursuant to G.O.Ms.No.125 dated 27.05.1999, G.O.(Ms).No.21

Municipal Administration and Water Supply (MC3) Department was passed on 23.02.2006 wherein the services of the writ petitioner was regularised. The said Government Order specifically reveals that the regularisation will take effect only from the date on which the orders were passed by the concerned appointing authority. In the present case, admittedly the regularisation order was passed by the Commissioner of Tuticorin Municipality on 26.05.2006 and 30.06.2006. Therefore, it is clear that the regularisation of this writ petitioner has been made only in May and June 2006. In view of G.O.Ms.No. 125, Municipal Administration and Water Supply Department dated 27.05.1999, past services of the writ petitioner cannot be taken into account for any service benefits.

15.The petitioner herein has not chosen to challenge either G.O.Ms.No. 125, dated 27.05.1999 or G.O.Ms.No.21 dated 23.02.2006 wherein his regularisation is to take effect only from the date of the order passed by the appointing authority and his past services should not taken into consideration for any service benefits. Without challenging the said Government Orders, the present writ petition seeking a mandamus as against the authorities to enroll the petitioner under the old pension scheme is not maintainable.



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16.The Government of Tamil Nadu introduced the Contributory Pension Scheme to all the Government Servants with effect from 01.04.2003.

The said scheme was extended to the Municipal employees by way of G.O.Ms.No.126 Municipal Administration and Water Supply (MA-3) Department dated 20.02.2004. A perusal of G.O.Ms.No.126 Municipal Administration and Water Supply (MA-3) Department dated 20.02.2004 reveals that all the employees who were recruited on or after 01.04.2003 would be governed by the New Contributory Pension Scheme. Therefore, the writ petitioner's services having been regularised only in 2006, were rightly brought under the New Contributory Pension Scheme. The petitioner continued under the Contributory Pension Scheme till his date of superannuation in the year 2022, without raising any objection for his enrollment under New Pension Scheme. After retirement, representations have been sent in April 2023 seeking to enroll him under Old Pension Scheme. Therefore, this Court is of the opinion that after having accepted the Contributory Pension Scheme and served in the Corporation for more than 17 years under the New Scheme, now cannot turn around and contend that he is eligible to be enrolled under the Old Pension Scheme.

17.In view of the Hon'ble Full Bench Decision of this Court reported in

2019 (6) CTC 705 (Government of Tamil Nadu Vs. R.Kaliyamoorthy), the



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petitioner's services having been regularised after 01.04.2003, he will not be entitled to count even half of his past services for the purpose of determination of qualifying service for pension.

18.In view of the above said deliberations, there are no merits in the writ petition and the writ petition stands dismissed. No costs.

.09.2024.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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