



W.P.(MD)No.18883 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
20.12.2023	04.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No. 18883 of 2018

1. M.R.Ramesh
2. L.Anthony Jones
3. A.Ganesh Babu
4. R.Diwakar
5. L.Pushpa Rani

... Petitioners

vs.

The Commissioner,
Tiruchirappalli City Municipal Corporation,
Trichy.

... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Mandamus***, calling for the records of the respondent in Na.Ka.No.1821/2009/C1(Maiyam), dated 04.12.2015 insofar as it fails to regularise the services of the petitioners with effect from 01.01.2009 with consequential benefits and consequently direct the respondent to regularize the



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services of the petitioners as Technical Assistant with effect from 01.01.2009 with all consequential benefits of fixation of pay and arrears of pay.

For Petitioners : Mr.N.Balamurali Krishnan
For Respondent : Mr.R.Baskaran, Senior Counsel for
M/s.R.B.Law Associates

ORDER

This writ petition is filed for *Writ of Certiorarified Mandamus* to quash the impugned order, dated 04.12.2015 insofar as it fails to regularize the service of the petitioners with effect from 01.01.2009 with consequential benefits and consequential direction to the respondent to regularize the services of the petitioners as Technical Assistants with effect from 01.01.2009 with consequential benefits of fixation to pay and arrears of pay.

2. The petitioners were originally recruited as NMR Technical Assistant in the Respondent Corporation, through Employment Exchange in the year 1984 and are working without any break. Their initial appointments were made based on their Technical Educational qualification namely Diploma in Civil



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Engineering which is pre-requisite qualification for the said post. The Government has issued G.O.Ms.No.125 Municipal Administration & Water Supply (MAWS) Department, dated 27.05.1999 to regularize the service of daily wages employees who were working as on 01.10.1996 in various Municipalities including the then Trichy Municipality. The said G.O. directed the Municipalities to prepare a list of daily wage employees with service particulars.

3. The contention of the petitioners is that the list was not prepared as directed and the respondent included the persons who have not employed through employment exchange. Moreover, the list was prepared without any preference to the educational, technical qualification attached to the said post. In the year 2001, vacancy arose in the post of Technical Assistants. The petitioners are possessing technical qualification and were working for more than 7 years. However, the applicants who were not appointed through employment exchange were accommodated. This approach was contrary to the G.O.Ms.No.187 MAWS dated 24.07.1987 and G.O.Ms.No.21 MAWS dated 02.03.1998. As per these G.O.'s persons recruited through Employment exchange ought to be given first priority at the time of regularization. Hence, the petitioners have filed



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W.P(MD)No.4662 of 2001 seeking a direction to regularize their service by giving preference to them, since they were recruited through employment exchange. Two other writ petitions were also filed namely, W.P(MD)Nos.5174 & 5175 of 2001 whereby the action of regularizing ineligible persons was challenged. During the pendency of the writ petitions, in the year 2007, at least seven vacancies arose in the post of Technical Assistant.

4. The petitioners were under bonafide relief and they would be accommodated, however to the contrary, the petitioners were regularized as Mazdoor (unskilled category). In these circumstances, the petitioners have filed W.P(MD)No.2866 of 2009 challenging the G.O(D)No.274, MAWS dated 19.06.2007 and the consequential proceedings, dated 29.06.2007 with consequential relief of regularization and to give priority as per G.O.Ms.No.187 dated 24.07.1987 and G.O.Ms.No.21, MAWS dated 02.03.1998. All the writ petitions were heard and disposed of through a common order, dated 04.07.2014. The Hon'ble Court found that there was a proposal by the Municipal Administration on 10.10.2013, whereby the respondent corporation was permitted to fill up 12 posts of Technical Assistants and there is no impediment for the



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respondent to appoint the petitioners in those posts. On the above basis a direction was issued to complete the exercise of accommodating the petitioners in such vacancies. The petitioners submitted that they would not claim backwages provided they were given continuity of service from the date of filing of the writ petitions and the same was also recorded. Aggrieved over the same, the Respondent Corporation has preferred an appeal in W.A(MD)No.1763 to 1766 of 2014 before the Hon'ble Division Bench of this Court, the same were dismissed, vide order, dated 06.04.2015, confirming the order passed in the writ petitions. The Hon'ble Division Bench has observed that the direction of the Learned Single Judge was to regularize the petitioners' service from the date of filing of writ petition and not from date they were initially sought for in those writ petitions.

5. After much delay and based on the repeated representations, the respondent, vide proceedings, dated 04.04.2015 appointed the petitioners as Technical Assistant, but their service was not regularized from the date of filing of the writ petition. Hence, the petitioners have submitted representations, dated 03.02.2016, 22.06.2017 followed by a legal notice, dated 04.12.2017. The inaction of the part of the respondent has caused loss of pay and loss of qualifying



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service for the promotion which has cascading effect in the future prospectus. Therefore, the petitioners have filed the present writ petitions for regularization with effect from 01.01.2009 with all consequential benefits of fixation of pay and arrears of pay.

6. The respondent has filed counter stating that the Hon'ble Division Bench had dismissed the writ appeal on 06.04.2015 upholding the direction of the Learned Single Judge and based on the direction of the Learned Single Judge the respondents had passed the impugned order, dated 04.01.2015 appointing the petitioners as Technical Assistants in the permanent post. The said post is governed by the Tamil Nadu Municipal Corporation in Subordinate service Rules Government Rules, 1996 and the post of Technical Assistants comes in Class III Category 2. Further under Rule 5, ratio between the direct recruitment and the promotion for the Technical Assistant post should be 1:2 i.e. one from direct appointment and two from promotion. Even though the respondent is the appointing authority, relaxation from the rules ought to be granted only by the Government. The post of Technical Assistants is allowed to be filled by the respondent only by way of G.O.(D)No.520 MAWS Department dated 10.10.2013.



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Hence the present prayers to regularize from 01.01.2009 is not maintainable as there was no permission to fill up the post before 10.10.2013. Moreover, the claim of the petitioners to regularize from 01.09.2009 was not granted in the earlier writ petitions. The petitioners were regularized in the cadre of unskilled workers with effect from 29.07.2007 in the regular time scale of pay as per G.O. (D)No.274 MAWS dated 19.06.2007. The cadre of unskilled worker is not a feeder category for the post of Technical Assistant, though the petitioners possess Diploma in Engineering, their services were regularized by the Government only as unskilled worker which comes under the Tamil Nadu Municipal Corporation Basic Service Rules, 1996 Class IV Category 5. Hence the claim of the petitioner to regularize them in the cadre of Technical Assistant is not maintainable as per rules. The petitioners who were not appointed in the feeder category were given appointment as per order of this Court.

7. It is very clear from the order of the High Court that the petitioners were appointed out of 12 posts permitted to the respondent corporation in G.O. (D)No.520 MAWS dated 10.10.2013 and as per the said G.O. the rules of reservation ratio is 1:2. Further there was no order by the High Court to grant any



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monetary relief as claimed by the petitioners in their representation dated 03.02.2016. The petitioners who were regularized in the year 2007 as unskilled workers were given appointment as per the direction of the Court to the post of Technical Assistant without reference to the recruitment rules for the post of Technical Assistant. The claim of the petitioners that initially they were appointed as Technical Assistants is false. In fact the petitioners were appointed by the erstwhile Municipality as daily wage employee under the scheme MUDF in proceedings, dated 18.05.1994. While appointing the petitioners in the scheme, no procedures were followed till the date of regularization i.e., on 28.06.2007 in G.O.(D)No.274 MAWS dated 19.06.2007. The petitioners were paid as daily wage employees and they were regularized as unskilled workers on par with other employees and granted time scale of pay in the cadre of unskilled workers.

8. Further the allegation stated in para 3 and 4 are denied as false. The G.O.Ms.No.125 Municipal Administration & Water Supply (MAWS) Department, dated 27.05.1999 was passed to regularize the service of employees at the entry level. The Government directed the respective Municipalities to submit the list of daily wage employees throughout the State. Based on the same,



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the Government has issued G.O.(D)No.274 MAWS dated 19.06.2007 regularizing all the NMRs as unskilled labourers in the year in the respective department with time scale of pay. Further the vacancies fell in the post of Technical Assistant are no way connected with the case of the petitioner. Even though, Technical Assistant post became vacant, the respondent cannot fill up the vacancy, unless the Government grant permission or direction to fill up the post. The vacancy will not create a right to the petitioners to appoint them in the post without reference to the rules or Government Order or without permission to fill up the post by the Government. The Government has granted permission to fill up the post only in the year 2013 through the G.O.(D) No.520 Municipal Administration and Water Supply Department dated 10.10.2013 and based on the direction of the High Court the petitioners were appointed in the vacancies, hence they were not appointed following service rules. In the absence of any direction by the Government to regularize the petitioners as claimed by the petitioners from the date of filing of the writ petition or any other date and the same cannot be considered.



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9. The Government has magnanimously considered the case of the petitioners and granted permission to regularize from the date of 10.10.2013. Therefore, the respondent submitted that the claim of the petitioners was considered based on the available rules and regulations by taking into consideration the financial crisis, therefore, the petitioners cannot have any grievance at all. Hence, prayed to dismiss the writ petition.

10. Heard Mr.N.Balamurali Krishnan, the Learned Counsel appearing for the petitioners, Mr.R.Baskaran, for M/s.R.B.Law Associates, the Learned Senior Counsel appearing for the respondent and perused the material documents available on record.

11. The Learned Counsel appearing for the petitioners submitted that as per the earlier order of the Hon'ble High Court passed in ***W.P(MD)Nos.2866 of 2009 and 4662 of 2001, dated 04.07.2014*** the petitioners are entitled to be appointed as Technical Assistants with effect from the date of filing of the writ petition in W.P.(MD)No.2866 of 2009 i.e. from January 2009 within a period of six weeks. The copy was made ready on 14.08.2014 and the period expired on



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01.10.2014. The respondent preferred an appeal after much delay, which was dismissed on 06.04.2015 confirming the order of Learned Singly Judge. As a consequence, the petitioners were entitled for appointment as Technical Assistants with effect from January 2009, fixation of pay with effect from the same date and regulation of present day emoluments accordingly. As far as arrears of such re fixed pay is concerned the petitioners are entitled to the same with effect from 01.10.2014 i.e. upon expiry of the time limit granted for appointing them or at least from 06.04.2015 when the Division Bench affirmed the order passed in writ petition and not from 04.12.2015. Such compliance would be keeping in line with the order of the Hon'ble Court in letter and spirit. The respondent is taking a plea that no such direction is issued in the order and such plea establishes that the respondent is attempting to over reach the order which is not expected from the respondent. The respondents are incumbent to give effect to the order. But the Learned Additional Advocate General submitted that there is no direction to regularize the petitioner from the date of filing of the writ petition. In order to resolve the issue raised by the parties it is necessary to peruse the order passed by this Court and the relevant portion is extracted hereunder:



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6. *It is at this point of time, Thiru P. Srinivas, learned counsel representing the 2nd respondent submitted before this Court that now the Government have proposed to fill up 12 posts of Technical Assistants in the second respondent Corporation and among these 12 vacancies since only 5 petitioners are before this Court, top priority will be given to them as they are already possessing the requisite qualification and have gained experience in the said post as NMRs and who came to be regularized in the year 2007.*

7. *Record also shows that a proposal has already been made in G.O. (D) No.520 Municipal Administration and Water Supply Department dated 10.10.2013. A reading of the said proposal clearly shows that the Government have permitted the Commissioner of Municipal Administration to fill up 263 posts. Sl.No.12 in the Annexure also shows that 12 posts of Technical Assistants had been agreed to be filled up. Therefore, there is no impediment for the respondents to appoint the petitioners in the post of Technical Assistants. Recording the above submissions, the first respondent is directed to complete the above said exercise, within a period of six weeks from the date of receipt of a copy of this order. Mr. Karthik, learned counsel appearing for the respondents fairly made a statement before this Court that the petitioners will not claim any back wages, if they are given the benefit of continuity of service from the date of filing these writ petitions, since there were vacancies even from June 2007.*



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8. For the reasons mentioned above, the Writ Petition Nos. 4662 of 2001 and 2866 of 2009 are allowed and W.P.Nos.5175 of 2001 are ordered accordingly.

The Court has taken note of G.O.(D)No.520 Municipal Administration and Water Supply Department, dated 10.10.2013 and has held since 463 posts are available and 12 posts are allotted to the Respondent Corporation, therefore, there is no impediment to the respondent to appoint the petitioners. The Court has recorded the submissions of both the parties and has held that the government had granted permission to fill up the posts and hence directed to accommodate the petitioners in the available vacancy and the said exercise shall be completed within a stipulated period. Also, the Court has recorded the submission of the Learned Counsel appearing for the petitioners that they may be granted continuity of service since the petitioners would give up the backwages. After recording the same the Court has observed that the Learned Counsel has fairly submitted to give up the backwages and has directed to accommodate the petitioners. Absolutely there is no direction from which date the petitioners should be accommodated or regularized etc. Therefore, the plea of the respondents that there is no direction to regularize the petitioners from the date of available of



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vacancy is right. There is no positive direction to regularize from the date of vacancy.

12. Further even if vacancy is available, the same will not give right to the petitioners to the said post. The employer has every right to decide whether any appointment has to be made to the said post. This is purely within the domain of the employer. The employee cannot force the employer to appoint anybody, even though there is vacancy. As rightly pointed out by the respondent the permission was granted to the Commissioner of Municipal Administration to fill up the vacancy of 263 posts only through G.O.(D)No.520 Municipal Administration and Water Supply Department dated 10.10.2013. Hence when there was no permission from the Government to fill up the said vacancy, then it has to be construed that there is no sanctioned post to accommodate the petitioners. When there is no sanctioned post then there is no question of granting continuity of service. After the permission was granted through G.O.(D)No.520 the respondent had rightly regularized the petitioners as Technical Assistant.



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13. The government servant is entitled to salary and other service benefits attached to the post only from the date of appointment and not prior to the said date of appointment. In other words, the government servant entitled to continuity of service only if he had rendered service to the said post. When the petitioners had not rendered the service to the post of Technical Assistant claiming any benefits attached to the said prior to 04.12.2015 is against service jurisprudence.

14. The Municipality and Corporation are Quasi Government. The Corporation or Municipality ought to pay salary from their own funds generated through property tax etc. and they cannot depend upon any grant from the Government. This is evident from G.O.Ms.No.21 Municipal Administration & Water Supply (MAWS) Department, dated 23.02.2006 wherein it has been categorically stated that the expenditure for salary payable to the employees shall not exceed 49% of the revenue. Therefore, the respondent has every right to take all these facts into consideration, before deciding for granting regularization.



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15. Any regularization will come into effect only from the date of granting regularization and the same had been held by the Hon'ble Full Bench of this Court rendered in *S.Dhanasekaran v. Government of Tamil Nadu* reported in 2013 (6) CTC 593, wherein it has been held categorically held that regularization will take effect from the date of granting regularization. The Judgment of Hon'ble Full Bench of this Court has

“Those sanitary workers, who were appointed as per G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997 or absorbed as per G.O.Ms.No.71, Municipal Administration and Water Supply Department, dated 05.05.1998, are all governed by G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006, in respect of their regularization in service and such regularisation shall take effect only from 23.02.2006 and not from the date on which they had completed three years of service from the date of their initial entry into service”

The issue was re-considered by another Hon'ble Full Bench in a Review Application in R.A.No.87 of 2014 wherein the review was allowed reversing the view originally taken. As against the same the State had filed a Special Leave Petition before the Supreme Court and obtained an order of stay on 14.08.2017. However as on date the proposition of law is whenever any G.O. has granted



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regularization within a prescribed period as given in G.O.Ms.No.71 Municipal Administration & Water Supply (MAWS) Department, dated 05.05.1998, then the daily wager is entitled to regularization on the date prescribed under the G.O. It is pertinent to state that in G.O.Ms.No.71 the regularization is granted on completion of three years provided the person had completed satisfactory service during the period of three years. If such period is not stated, then the regularization is on the date of passing G.O. granting regularization. In the present case the regularization was granted through proceedings dated 04.12.2015 and hence the petitioners are entitled to regularization and the consequential salary, service benefits etc. from 04.12.2015.

16. However, since the Government has granted approval in G.O. (D) No.520 MAWS on 10.10.2013, the Government may consider to regularize to the said post from the date of G.O. i.e., 10.10.2013 rather than granting regularization from 04.11.2015. The respondent may submit a proposal to the Government and the Government is at liberty to consider the same by taking all factors into consideration. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of the order.



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17. In view of the foregoing reasons, this Writ Petition stands dismissed with a direction. No Costs. Consequently, all miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

The Commissioner,
Tiruchirappalli City Municipal Corporation,
Trichy.



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S.SRIMATHY, J

ksa

Order made in
W.P.(MD)No. 18883 of 2018

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