



W.A(MD) No.542 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 05.06.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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&

C.M.P.(MD)No.5456 of 2023

The Commissioner,
Tirunelveli Corporation,
Tirunelveli-627 001.

... Appellant / 2nd Respondent

Vs

1.M.Mariappan

... 1st Respondent / Writ Petitioner

2.The Commissioner,
(Municipal Administration)
Chepauk,
Chennai-05.

... 2nd Respondent / 1st Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 31.10.2022 passed in W.P. (MD)No.20818 of 2017 on the file of this Court and allow the present writ appeal.



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For Appellant : Mr.S.P.Maharajan
Special Government Pleader

For Respondents : Mr.A.Jayarama Chandran
for R1
: Mr.N.Satheesh Kumar
Additional Government Pleader
for R2

ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

This intra-court appeal is filed against the order dated 31.10.2022 made in W.P.(MD)No.20818 of 2017 filed by the first respondent herein / Mariappan.

2.Thiru.M.Mariappan was engaged as NMR by the Tirunelveli Corporation on 05.02.1996. He was absent from service from 05.03.2004. Mariappan was implicated as A8 in a case of train robbery. He was eventually found guilty and sentenced to a term of imprisonment vide Judgment dated 26.03.2007 made in S.C.No.21 of 2005 on the file of the 1st Additional Assistant Sessions Judge, Tirunelveli. Aggrieved by the same, Mariappan filed Crl.A.(MD) No.217 of 2007. The persons



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who were convicted along with Mariappan had also filed similar appeals.

WEB COPY All the appeals were heard together and allowed by this Court on 22.10.2010. Mariappan was acquitted of the charges framed against him by giving him benefit of doubt. Thereafter, Mariappan applied to the corporation for reinstatement by regularizing his service. Since his request was not considered, he filed W.P.(MD)No.17216 of 2014. The writ petition was dismissed vide order dated 27.10.2014. Aggrieved by the same, he filed W.A.(MD)No.92 of 2015. The Hon'ble Division Bench vide order dated 02.03.2017 directed the corporation to consider Mariappan's representation. Paragraph Nos.3, 4 & 5 of the order of the Hon'ble Division Bench reads as follows:-

“3.Today when the appeal was taken up for consideration, the learned counsel for the appellant submitted that it would be suffice, if a direction is given to the second respondent to consider the representation given by the appellant.

4. The learned Government Advocate appearing for the respondents also submitted that the respondents are ready to consider the representation of the appellant on merits.

5. In view of the above said submission made by the learned counsel on either side, the order of writ Court dated 27.10.2014 made in W.P.(MD)No.17216 of 2014 is set aside. The appellant is directed to send a copy of the representation along with a copy of this order to the second respondent, within a period of two weeks from the date of



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receipt of a copy of this Judgment and on receipt of the same, the second respondent is directed to consider and dispose of the same on merits and in accordance with law, within a period of four weeks thereafter. However, it is made clear that this Court has not expressed any opinion with regard to the merits of the claim made by the appellant. It is for the second respondent to decide the representation on its own merits.”

Pursuant to the said direction, Mariappan's representation was considered and once again, the rejection order was passed. Challenging the same, the present W.P.(MD)No.20818 of 2017 came to be filed. The learned single Judge vide order dated 31.10.2022 allowed the writ petition in the following terms:-

“6. As per the fundamental rules, whenever an employee is acquitted in a criminal case, then the employee is entitled to regularize for the period where the employee was out of employment due to pendency of a criminal case. In the present case, since the petitioner was not regularized, the respondents have refused to apply the fundamental rules and therefore, the impugned order is set aside. Since as per G.O.Ms.No.341 the petitioner's name is in the list for regularization, the respondents ought to regularize the petitioner. Thereafter, the respondents are directed to regularize the period when the petitioner was out of employment period as per the Fundamental Rule 54, within a period of eight weeks, from the date of receipt of a copy of this order. However, it is made clear that the petitioner is not entitled to any back wages for the period of absence under the principle of “No Work No Pay”. The petitioner is entitled to continuity of service alone.”



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Challenging the same, the corporation has filed this writ appeal.

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3. The learned standing counsel for the corporation reiterated all the contentions set out in the grounds of appeal and called upon this Court to set aside the order passed by the learned single Judge and allow the writ appeal.

4. Per contra, the learned counsel appearing for the writ petitioner / R1 herein submitted that the order passed by the learned single Judge does not call for interference. He pointed out that when Mariappan was acquitted in the criminal case that too by the Judgment of this Court, the factum of his implication in the criminal case ought not to be put against him. He also drew our attention to G.O.(Ms).No.341, Municipal Administration and Water Supply (MC) Department, dated 24.07.2007 issued by the Government. He pointed out that in the annexure attached to the said G.O, Mariappan figured at Serial No.75. Only on the ground that the criminal cases are pending against him, Mariappan was not regularized during the relevant time. Since the criminal case had ended in his favour in October 2010, he ought to have been immediately



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regularized thereafter. He pointed out that the persons shown in the list were granted the benefit of regularization. Mariappan alone cannot be discriminated again.

5. We carefully considered the rival contentions and went through the materials on record.

6. Vide G.O.(Ms.)No.341, dated 24.07.2007, the Government called upon the Commissioner, Tirunelveli Corporation to send proposal for regularizing the services of the persons set out in the annexure. When this G.O was issued, Mariappan was nowhere in the picture. Mariappan was serving the corporation as NMR from 5.02.1996 till 04.03.2004. On account of his implication in the criminal case, Mariappan was not serving the corporation in any capacity. His name must have been included by mistake. It is well settled that only a person in service can seek regularization. A person who is out of service cannot seek regularization. When Mariappan was not serving the corporation as NMR since 05.03.2004, the question of directing his regularization 21 years later does not arise at all. The learned single Judge had not taken note of the principle that only a serving person can seek regularization.



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7. In this view of the matter, the order of the learned single Judge is set aside. The Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) (K.R.S., J.)
05.06.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To

The Commissioner,
(Municipal Administration)
Chepauk,
Chennai-05.



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