



W.P(MD)No.2991 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD).No.2991 of 2018

and

W.M.P(MD).No.3155 of 2018

The Commissioner,
Sivagangai Municipality,
Sivagangai.

... Petitioner

Vs

1. The Inspector of Labour,
Controlling Authority Under
Tamil Nadu Industrial Establishments
(Conferment of Permanent Status to Workmen) Act,
Sivagangai.

2. R.Ramalakshmi

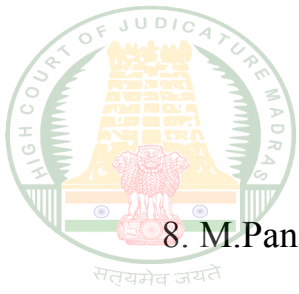
3. A.Sekar

4. M.Mariammal

5. A.Mariammal

6. A.Thamos

7. V.Meenatchi



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8. M.Pandiammal

9. M.Parvathi

10. N.Ilanchiyam

11. M.Seethalakshmi

12. S.Rani

13. R.Vasuki

14. M.Mari

15. M.Muthuraja

16. K.Ayyanar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, Certiorarified Mandamus, calling for the records of the first respondent in A/1355/2015 dated 17.08.2017 and quash the same and consequently forbear the respondents from in any manner seeking to gain permanent employment with the petitioner herein.



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For Petitioner : Mr.P.Srinivas,

For Respondent : Mr.G.V.Vairam Santhosh (R1)

Additional Government Pleader

: Mr.S.M.Mohan Gandhi

(R2 to R6, R8 to R14)

: No appearance (R7 & R15)

: Mr.PT.S.Narendravasan (R16)

ORDER

The Commissioner of Sivagangai Municipality has filed the present writ petition challenging the order passed by the first respondent herein, who is the Controlling Authority under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

2.The respondents 2 to 16 herein are said to be engaged by the petitioner Municipality for the purpose of collection of garbage. According to the private respondents, they are regularly engaged for more than four years



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and they have completed 480 days of continuous service without any break.

Despite several requests, their services have not been regularized by the petitioner Municipality. With the said grievance, they have approached the first respondent for conferment of permanent status.

3.The petitioner Municipality has filed a counter contending that all these applicants are engaged through self help group. Therefore, they are not the direct employees of the Municipality. That apart, the entire burden is upon them to establish the fact that they have completed 480 days of service. It was further contended that there are separate service rules governing the sanitary workers in the petitioner Municipality. Therefore, the applicants cannot be absorbed as sanitary workers in the petitioner Municipality without following the recruitment process. It was further contended that the collection of garbage on a door to door basis cannot be considered to be a manufacturing process. Therefore, the petitioner Municipality is not a factory and hence Tamil Nadu Act 46 of 1981 is not applicable.

4.The controlling authority under Tamil Nadu Act 46 of 1981, after considering the submissions on either side and the oral evidence let in by the



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Management and the workmen, has arrived at a finding that the private respondents herein have completed more than 480 days of service and they are entitled to be conferred with permanent status by the petitioner Municipality. Challenging the said order, the present writ petition has been filed.

5. According to the learned Counsel appearing for the writ petitioner, the controlling authority has not taken into consideration the fact that Municipality is a statutory body and therefore, the service rules applicable to them warrant appointment through a particular recruitment process. Without following the recruitment process, the private respondents herein cannot be conferred with permanent status. That apart, the rule of reservation as contemplated under the relevant statutory provisions have to be followed.

6. The learned Counsel appearing for the petitioner further submitted that as per the policy decision taken by the Government of Tamilnadu, 1/3rd of the posts have to be reserved for outsourcing in the last cadre of service. Out of 104 sanitary worker posts, 18 posts have to be filled through regular and 16 posts have to be outsourced through self help groups. The private



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respondents are not under the direct employment of the Municipality. They report duty only through self help groups. The attendance register and wage register are maintained by the said groups. The self help groups submit a report to the Municipality every month indicating the number of employees engaged by them. Depending upon the said information, salary is released to the self help groups directly so that it can be disbursed to the concerned employees. In such circumstances, the private respondents cannot call themselves as direct employees of the Municipality.

7.The learned Counsel appearing for the petitioner herein further contended that the wage register and the attendance register are available only with the self help group. Unless those documents are produced before the controlling authority, the authority could not arrive at a finding that the private respondents have completed 480 days of service enabling them to get the benefits under Tamil Nadu Act 46 of 1981. Having not produced the same, the authority could not pass the order conferring the permanent status.

8.The learned Counsel appearing for the petitioner further submitted that the private respondents are not engaged in recycling of the garbage. They



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are just engaged to collect the garbage and aggregate the same. Therefore, there is no manufacturing process. In such circumstances the Municipality, which is a statutory body cannot be considered to be a factory and the outsourced employees cannot be regularized within the statutory body.

9.*Per contra*, the learned Counsel appearing for the private respondents submitted that the Junior Assistants of the petitioner Municipality has been examined on the said Management. He had categorically admitted that a copy of the wage register and the attendance register are maintained in the office of the Municipality. Even though an application was filed seeking a direction as against the Municipality to produce those records, they have failed to do so. In such circumstances, only we can presume that the private respondents have completed 480 days of service.

10.The learned Counsel for the private respondents relied upon the judgment of the Hon'ble Division Bench of our High Court reported in **2022 2 MLJ Pg 659** and contended that in the said judgment, the Hon'ble Division Bench was pleased to direct that the sanitary workers, who were employed in Madurai Corporation, to be regularized and the order of the controlling

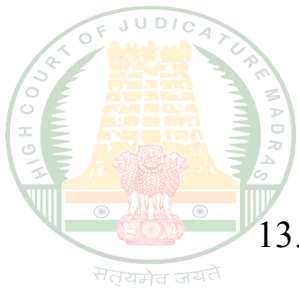


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authority under the Tamil Nadu Act 46 of 1981 was confirmed by the Hon'ble
Division Bench.

11.The learned Counsel for the private respondents further contended that when there are 16 vacancies available within the sanctioned post of the petitioner Municipality, the private respondents who are 15 in number could very well be regularized and conferred with permanent status and be regularized as employees of the petitioner Municipality. He further submitted that as per Ex.W4, salary was paid to the private respondents directly, before they were engaged through the self help group. Only due to the policy decision taken by the State Government for allocating 1/3rd work through out sourcing, suddenly self help group was introduced. Before that they were receiving salary directly from the petitioner Municipality. In such circumstances the rights of the private respondents cannot be taken away by a sudden change in policy of the State Government.

12.Heard both sides and perused the materials on record.



13.The primary contention of the learned Counsel appearing of the writ petitioner is that the private respondents are merely engaged in the process of collection of garbage on a door to door basis and therefore, there is no manufacturing process at all. This contention has been answered in the judgment of the Hon'ble Division Bench reported in **2022 (2) MLJ 659**.

Paragraph No. 24 of the judgment is extracted as follows:

"24. If we are to consider the case on hand in the light of the definition and the judicial pronouncements referred to above, it will be abundantly clear that the function of the disposal of garbage/sanitary works carried out by the Corporation by itself would bring it within the meaning of a factory. Section 2(k) which defines the 'manufacturing process' includes collection of an object for disposal. We have no doubt in our mind that collection of garbage for disposal would fall within the ambit of the definition of 'manufacturing process' under Section 2(k)(i) of the Factories Act, 1948. Once we conclude that collection of garbage for disposal by itself would amount to manufacturing process, automatically the Corporation would answer the description of a factory as defined under Section 2(m) of the Factories Act, 1948. Once we reach the conclusion that the Corporation would be a factory within the meaning of Section 2(m) of the Factories Act, 1948, it would automatically answer the description of 'industrial establishment' as defined under



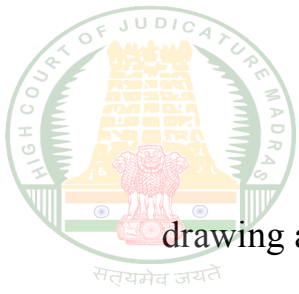
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Section 2(3)(a) of the Act 46 of 1981 "

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14.In view of the specific findings of the Hon'ble Division Bench, even collection of garbage for the purposes of aggregating the same for their disposal should be considered to be a manufacturing process and in the light of the said findings of the Hon'ble Division Bench, the petitioner Municipality would be covered under the definition of factory as contemplated under Section 3(A) of Tamil Nadu Act 46 of 1981.

15.As far as the contention of the petitioner that the private respondents have not established the fact that they have completed 480 days of service is concerned, a perusal of the cross examination of the employee of the Municipality reveals that the private respondents have filed an application seeking a direction as against the Municipality to produce the wage register and the attendance register maintained by them. However, the Municipality has not chosen to file those documents. From the cross examination, it is also clear that a copy of the wage register and the attendance register maintained by the self help group are retained by the Municipality. In such circumstances, the non-production of these records would only result in

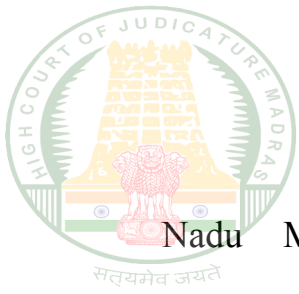


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drawing adverse inference as against the Municipality. In such circumstances, there are no grounds to doubt or dispute the contentions of the private respondents that they have completed 480 days of service.

16.It is further contented on the side of the petitioner Municipality that the private respondents are being engaged through a self help group by way of a policy decision taken by the State Government to out source 1/3rd of the last grade servants. A perusal of Ex.P4 reveals that the private respondents have been paid salary directly by the petitioner Municipality during the initial period. Thereafter, due to shift in the policy of the State Government, a self help group has been introduced and the direct employees of the Municipality have been brought under the self help groups. In such circumstances the private respondents can never be considered to be the employees of the self help groups, but only employees of the Municipality, who were later shifted under the self help group due to the shift in the policy decision of the State Government.

17.It is the further contention on the side of the petitioner Municipality that recruitment and appointment of sanitary workers are governed by Tamil

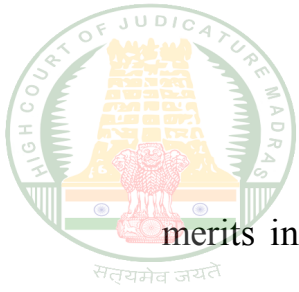


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Establishment Regulations Act 1976. Therefore, the educational qualification, the rule of reservation and the age limits have to be strictly followed as contemplated under the said regulations. Without following any recruitment process as contemplated under the said regulations, the private respondents, herein, can never be brought into the regular service of the Municipality. A perusal of the said service regulations reveals that as far as the sanitary workers are concerned, the appointing authority is the executive authority, namely, the Commissioner of the Municipality. As far as age limit under 9 of the Regulation is concerned, no upper age limit has been prescribed for a sanitary worker. As far as the education qualification is concerned, no such qualification has been prescribed for the post of sanitary worker under 9(b) of the Regulation. Further, when the Municipality contends that the Government has taken a policy decision to fill up 1/3rd of the post through outsourcing, they cannot rely upon the service regulations in order to deny the rights of the private respondents herein.

18. In view of the above said deliberations, there are no reasons to interfere in the order passed by the first respondent herein. There are no



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merits in the writ petition. Accordingly, the writ petition stands dismissed.

No costs. Consequently, the connected miscellaneous petition is closed.

12.06.2025

Index : Yes / No

Internet : Yes/ No

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To

The Inspector of Labour,

Controlling Authority Under

Tamil Nadu Industrial Establishments

(Conferment of Permanent Status to Workmen) Act,

Sivagangai.



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R.VIJAYAKUMAR, J.

lr

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