

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2010

CORAM

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.NO.45296 OF 2006  
(O.A.NO.5954 OF 2000)

D.Ramadoss

.. Petitioner

Versus

1.The Commissioner of Municipal Administration  
Chepauk, Chennai - 600 005.

2.The Municipal Commissioner  
Pattukottai Municipality,  
Pattukottai.

.. Respondents

PRAYER: This writ petition came to be numbered under Article 226 of the Constitution of India by way of transfer of Original Application in O.A.No.5954 of 2000 from the file of the Tamil Nadu Administrative Tribunal with a prayer to call for the records of the 1<sup>st</sup> respondent in his proceedings No.O.Mu. 5538/2000/F3 dated 17.02.2000 which confirmed the order of the 2<sup>nd</sup> respondent in his proceedings No. Na.Ka.No.9725/C1/90 dated 06.09.1990 and quash the same and direct the respondents to reinstate the petitioner into service and treat the interregnum period as duty period with all monetary and other attendant benefits.

For Petitioner : Mr.K.Sanjay  
for Mr.V.Gomethagavelu

For Respondent-1 : Mrs.Lita Srinivasan  
Government Advocate

For Respondent-2 : Mr.P.I.Thirumoorthy

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O R D E R

The petitioner was recruited as N.M.R. in the second respondent Municipality on 16.03.1977. He served up to 24.03.1988. Thereafter, he remained absent. His absence was notified in the Tamil Daily viz., Dhina Thanthi on 03.10.1988. The notification directed him to report for duty within a month, as otherwise, he would be terminated from service. In spite of the said notification, he did not report for duty. Hence, the second

respondent passed an order dated 06.09.1990 terminating the petitioner from service.

2. In the meantime, the petitioner was regularised in service by the first respondent, by the proceedings dated 27.03.1989. But he was terminated from service by the second respondent, as stated above. After about two and a half year, he made a representation for reinstatement.

3. The second respondent wrote letters dated 07.02.1991 and 14.08.1991 to the first respondent recommending that the petitioner could be reinstated in service. In turn, the first respondent passed an order dated 31.12.1991 directing the second respondent to pass appropriate orders as per Rules. However, no order was passed and ultimately, the first respondent passed an order dated 17.02.2000 stating that as per G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999, the persons who are in service as on 01.10.1996 alone could be entitled to regularisation and since the petitioner stopped away from work, his request could not be considered.

4. The petitioner filed Original Application in O.A.No.5954 of 2000 (W.P.No.45296 of 2000) to quash the order dated 17.02.2000 of the first respondent and the order dated 06.09.1990 of the second respondent and for a consequential direction to reinstate him in service and to treat the interregnum period as "duty period".

5. Heard the submissions made on either side and perused the materials available on record.

6. The learned counsel for the petitioner submits that the petitioner was regularised in service, by the first respondent, by an order dated 27.03.1989. Therefore, the order dated 06.09.1990 of the second respondent, terminating the petitioner from service, without following the due procedure, is bad and illegal. The learned counsel further submits that when the first respondent issued the order dated 31.12.1991 directing the second respondent to pass appropriate orders as per Rules, no order was passed by the second respondent. According to him, the impugned order is illegal and the petitioner could not be denied relief on the ground that he stopped away from work on his own.

7. On the other hand, the learned Government Advocate submits that the petitioner was terminated from service by the second respondent, by an order dated 06.09.1990. According to her, the petitioner remained absent from 25.03.1988 and in spite of the notification given in the Tamil Daily viz., Dhina Thanthi on 03.10.1988 directing him to report for duty, he did not report for duty. Hence, there was no option for the second respondent, except to terminate his services. She further submits that though the

second respondent vide his letters dated 07.02.1991 and 14.08.1991 recommended for reinstatement, no order was passed, reinstating the petitioner in service. The petitioner also did not take any steps to secure employment. He kept idle for ten years. Only when the impugned order was passed in the year 2000, he sought to challenge the same. The learned Government Advocate further submits that when the petitioner filed the Original Application, he was aged about 49 years and hence, no useful purpose will be served in ordering reinstatement of the petitioner.

8. In reply, the learned counsel for the petitioner submits that the petitioner is entitled to continue in service after 60 years, as he belongs to the Tamil Nadu Basic Service. It is also submitted that the petitioner may be reinstated in service without any backwages.

9. I have considered the submissions made on either side.

10. In this case, the petitioner was employed as N.M.R from 16.03.1977 till 24.03.1988. He remained absent from 25.03.1988. Hence, he was terminated from service by an order dated 06.09.1990. When he was terminated from service by the second respondent, the petitioner was regularised in service by the first respondent, by an order dated 27.03.1989. Since the petitioner became a regular employee, the second respondent was not correct in terminating the services of the petitioner, treating him as a daily wages employee. The impugned order dated 06.09.1990 proceeds that the petitioner was a daily wages N.M.R employee. Since the petitioner was regularised in service by the order dated 27.03.1989 of the first respondent, the second respondent should have followed the procedure, before terminating the petitioner from service, if he was sought to be terminated on the ground of absence. Even if the petitioner is a N.M.R employee, if the second respondent wanted to dispense with the services making allegation that he was unauthorisedly absent, the second respondent ought to have followed the procedure, by issuing charge sheet, seeking his explanation and conducting enquiry and thereafter, passing appropriate orders thereon. It is a different matter, if no allegations are made. But the allegation made against the petitioner was that he was unauthorisedly absent from 25.03.1988. As stated above, since the petitioner was regularised in service, by an order dated 27.03.1989 of the first respondent, the impugned order dated 06.09.1990 of the second respondent is illegal.

11. As rightly contended by the learned counsel for the petitioner, the second respondent wrote letters dated 07.02.1991 and 14.08.1991 to the first respondent, recommending reinstatement of the petitioner. The second respondent stated that the petitioner could be reinstated as there were vacancies in the second respondent Municipality due to ban on recruitment. The first respondent passed the order dated 31.12.1991 directing the second



respondent to pass appropriate orders as per Rules relating to the claim for reinstatement of the petitioner. But the second respondent did not pass any orders. Thereafter, the petitioner made a representation dated 18.01.2000 to the second respondent. In the said representation, he referred to the various letters written by him to the second respondent, requesting to reinstate him in service, pursuant to the order dated 31.12.1991 of the first respondent. But the second respondent did not pass any order. In the said circumstances, the petitioner could not be blamed for not approaching the Court.

12. Since the second respondent recommended for reinstatement vide his letters dated 07.02.1991 and 14.08.1991, as rightly contended by the learned counsel for the petitioner, the petitioner was under the impression that he could be reinstated in service. Under such circumstances, he made various representations dated 16.08.1993, 15.05.1996, 12.05.1997, 28.07.1998 and 20.01.1999 to the second respondent to reinstate him in service, pursuant to the order dated 31.12.1991 of the first respondent. But no order was passed. Thereafter, he made another representation dated 18.01.2000 to the second respondent. At this juncture, the petitioner's representation dated 18.01.2000 was rejected by the first respondent, by the impugned order dated 17.02.2000. The impugned order refers to G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999, for rejecting the claim made by the petitioner.

13. G.O.Ms.No.125 relates to regularisation of the services of the N.M.R workmen. In this case, already the petitioner was regularised in service, by an order dated 27.03.1989. Therefore, the said G.O., is not applicable to him. In fact, the first respondent should have taken into account the letters dated 07.02.1991 and 14.08.1991 of the second respondent and his own earlier order dated 31.12.1991 in this regard. Without applying mind to the facts of the case, the first respondent passed the impugned order dated 17.02.2000, as if the relief claimed could not be granted under G.O.Ms.No.125. Another reason given in the impugned order is that the petitioner himself stopped away from duty. As stated above, he was terminated from services for unauthorised absence without enquiry and therefore, the termination is not legal as held above. The first respondent failed to take into account the entirety of the facts and circumstances of the case, particularly the recommendation of the second respondent dated 07.02.1991 and 14.08.1991.

14. For all these reasons, the impugned orders are quashed and the respondents are directed to reinstate the petitioner in service, within a period of four weeks from the date of receipt of a copy of this order. Further, it is made clear that the petitioner is not entitled to any backwages from 24.03.1988 till reinstatement. However, the petitioner is entitled to notional

fixation of pay for the period of non-employment.

15.The writ petition is allowed in the above terms. No costs.

TK

Sd/-  
Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

1.The Commissioner of Municipal Administration  
Chepauk, Chennai - 600 005.

2.The Municipal Commissioner  
Pattukottai Municipality,  
Pattukottai.

+ 1 cc to Mr. V. Gomethagavelu, Advocate SR No.78113

+ 1 cc to Government Pleader, SR No.78552

VD(CO)  
SR/22.11.2010

W.P.NO.45296 OF 2006  
(O.A.NO.5954 OF 2000)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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