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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2012

CORAM:

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P. (MD) No.14071 of 2011

P.Saravanan

: Petitioner

Vs.

1.The Commissioner,
Municipal Administration,
Ezhilagam, Chepauk,
Chennai - 5.

2.The Commissioner,
Kadayanallur Municipality,
Kadayanallur,
Tirunelveli District.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in pursuance of the 2nd respondent's order in Na.Ka.No.5800/2000/A.1 dated 01.03.2006 and quash the same as devoid of merits and directing the respondents to regularise the petitioner Sweeper service from August 2001 in time scale pay of 2550-55-2600-60-3200 and to confer all the benefits within the period stipulated by this Court.

For Petitioner : Mr.A.Haja Mohideen

For Respondents : Mr.B.Pugalenthil, Special Govt.Pleader

ORDER

The petitioner was appointed as Sweeper in the second respondent Municipality on a consolidated pay on 17.07.1998 for a period of one year, based on the G.O.Ms.No.101 Municipal Administration and Water Supply Department, dated 30.04.1997. At the time of appointment, the 2nd respondent informed the petitioner that his appointment on the basis of consolidated pay was regularised and he would be brought to scale of pay on completion of three years service.

2.While so, the impugned order dated 01.03.2006 was passed granting him scale of pay from 01.03.2006 by the second respondent. The petitioner filed this writ petition, to quash the aforesaid order dated 01.03.2006 in granting him scale of pay from 01.03.2006 and has



sought a direction to grant him the scale of pay from 17.07.2001 on completion of three year of service.

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3.The second respondent filed counter affidavit refuting the allegations.

4.In the counter affidavit, it is stated that the Municipal Commissioners were directed by G.O.Ms.No.21, Municipal Administration and Water Supply Department dated 22.03.2006, to regularise the service of employees, who were on consolidated pay. In pursuant to the said G.O.Ms.No.21, the petitioner was regularised and granted scale of pay from 01.03.2006 by the second respondent, by the impugned order dated 01.03.2006.

5.Heard both sides.

6.As rightly contended by the learned counsel for the petitioner, the issue is squarely covered by the Division Bench decision of this Court dated 23.02.2011 in W.A.(MD) No.273 of 2011 in **Commissioner of Municipal Administration and another Vs. Mariappan**. The said order of the Division Bench is extracted hereunder:

"This writ appeal is preferred against the order of the learned single Judge dated 2.12.2010 made in W.P.(MD)No.5475 of 2008, wherein the respondent has prayed for issuing a writ of mandamus directing the appellants herein to regularise the respondent's service from 1.9.2002 as per G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.5.1999 and to pay the arrears of salary calculating from 1.9.2002 to 1.3.2006 with all attendant benefits.

2. The case of the appellants is that the respondent, who was employed as NMR from 1994 was given the post of Sweeper on 31.8.2001 in terms of G.O.Ms.No.125 Municipal Administration and Water Supply Department, dated 27.5.1999. However, before completion of one year, ban order was issued by the Government in G.O.Ms.No.463 Finance (CMPC) Department, dated 23.11.2001 and therefore, according to the appellants, only after lifting the ban order respondent's service can be brought under the time scale of pay and the same is also clarified in G.O.Ms.No.21 Municipal Administration and Water Supply (MC3) Department, dated 23.2.2006. Following the said Government Order, respondent's service was brought under time scale of pay from 1.3.2006 i.e, after lifting of the ban order.

3. The said contention cannot be accepted in view of the fact that the respondent was appointed as Sweeper on 31.8.2001 i.e, three months prior to imposition of ban order. Moreover, the ban order was



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issued only for fresh appointments. The respondent having been appointed as NMR in the year 1994 and in turn given the post of Sweeper on 31.8.2001, cannot be treated as fresh appointee. Hence the ban order cannot be applied to the respondent's case.

4. The learned single Judge considered the said aspect and allowed the writ petition giving direction to the appellants to give effect to the regularisation of the respondent's service from 1.9.2002 instead of 1.3.2006. We see no error in the said order warranting interference.

The writ appeal is dismissed. No costs. Connected miscellaneous petition is also dismissed."

7. In view of the same, the impugned order is quashed and the writ petition is allowed and a direction is issued to regularise the service of the petitioner from 17.07.2001, on completion of three years of service with monetary benefits as per the appointment order dated 17.07.2001 that was issued as per G.O.Ms.No.101, Municipal Administration and Water Supply Department dated, 30.04.1997 and also as per the decision of the Division Bench of this Court referred to above, within a period of 8 weeks from the date of receipt of a copy of this order.

8. The writ petition is disposed of with above direction. No costs.

Sd/-

Deputy Registrar(LA & Mediation)

/True Copy/

Assistant Registrar

To

1. The Commissioner,
Municipal Administration,
Ezhilagam, Chepauk, Chennai - 5.

2. The Commissioner,
Kadayanallur Municipality,
Kadayanallur, Tirunelveli District.

+1cc to the Special Govt. Pleader, Sr.No. 25358

arul

ssk/27.08.2012 /4c -3p/-

Order made in
W.P.(MD) No.14071 of 2011