

(2011) 09 MAD CK 0199

In the Madras High Court

Case No : Writ Petition No. 6369 of 2007 and M.P. No. 1 of 2009

Adhikesavan and Muniyandi

APPELLANT

Vs

The Executive Officer, Mamallapuram Town Panchayat,
Kancheepuram District and The Director of Panchayats,
Chennai - 600108

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Citation : (2011) 09 MAD CK 0199

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : R. Sankara Subbu, for the Appellant; V. Jayaprakash Narayanan,
Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice N. Paul Vasanthakumar

1. The prayer in the writ petition is to quash the order passed by the second Respondent dated 25.11.2006 and direct the Respondents to confirm the services of the Petitioners on time scale of pay as Sweepers in the first Respondent Town Panchayat.

2. The case of the Petitioners is that they are appointed as Sweepers in the first Respondent Town Panchayat on 29.9.2000 and they worked without any break in service till 3.8.2006 and that the first Respondent paid a sum of Rs. 900/- per month as salary on consolidated basis from the date of appointment with annual increments, and that provident fund contribution is also deducted from their salary. It is the grievance of the Petitioners that even though similarly placed persons were granted regularisation with time scale of pay, Petitioners' services were not regularised and they were also not permitted to work from 4.8.2006. Petitioners submitted representation on 7.8.2006 seeking permanent absorption and regularisation from the date of their initial appointment and the said

representation having not been considered, Petitioners filed W.P. No. 3605 of 2006 and this Court by order dated 27.9.2006 directed the first Respondent to consider the representation and pass orders in accordance with law within a period of four weeks. In the said representation the Petitioners have relied on G.O. Ms. No. 84 Municipal Administration and Water Supply Department, dated 21.5.1998 and prayed for absorption on time scale of pay. The second Respondent thereafter passed the impugned order on 25.11.2006 stating that G.O. Ms. No. 199 dated 12.8.1997 and G.O. Ms. No. 84 dated 21.5.1998 were issued to regularise the services of Sweepers, who were on service prior to 31.12.1996 and the Petitioners having been appointed in the first Respondent Town Panchayat only on 29.9.2000, they are not entitled to get regularisation of their services.

3. The said order is challenged in this writ petition on the ground that in spite of availability of three vacancies in the first Respondent Town Panchayat, the Petitioners were not made permanent and G.O. Ms. No. 84 dated 21.5.1998 is covering the appointments made even after 1.1.1997 by stating that such of those persons, who were appointed on or after 1.1.1997 shall be paid a sum of Rs. 900/- per month on consolidated pay for a period of three years with 10% increase per year i.e, Rs. 900/- for the first year; Rs. 990/- for the second year; and Rs. 1089/- for the third year, and on completion of three years, their performance can be appraised and time scale pay can be given and therefore the impugned order passed by the second Respondent is contrary to the said Government Order.

4. The first Respondent has filed counter affidavit stating that in the first Respondent Town Panchayat, 17 permanent posts of Sweepers are granted approval by the District Collector; that Mamallapuram being a Tourist spot and lot of tourists from all over the world are coming to visit Mamallapuram, necessity arose to appoint additional temporary Sweepers to clean the town; that Petitioners were appointed on temporary basis as Sweepers in the first Respondent Town Panchayat on 29.9.2000 on consolidated pay of Rs. 900/- per month without getting approval from the District Collector, Kanchipuram; that the Director of Town Panchayat in his proceedings dated 30.6.2006 stated that sanitary workers, who are appointed purely on temporary basis with consolidated pay are not entitled to be confirmed in their respective posts and they are not entitled to get time scale of pay and hence Petitioner's services were discontinued; that the persons whose services were regularised were appointed either in death vacancy or in permanent vacancy; and that the Petitioners have no right to seek regularisation and absorption with time scale of pay.

5. The Learned Counsel for the Petitioners submitted that the Petitioners having been appointed after sponsorship through the Employment Exchange and served for about six years, they have got a right to get regularisation as well as time scale of pay on completion of three years of service. The Learned Counsel relied on G.O. Ms. Nos. 199 dated 12.8.1997 and G.O. Ms. No. 84 dated 21.5.1998 in

support of his contention and pointed out that number of cases were decided by this Court on similar nature, particularly in W.A. Nos. 47 and 385 of 2010 order dated 26.3.2010 and the said order of the Division Bench was confirmed in SLP No. 26605 of 2010 dated 27.9.2010. In the said order the Division Bench ordered to regularise the services of Sweepers employed in Town Panchayat on completion of three years of service with time scale of pay. The Learned Counsel also submitted that since the Petitioners are out of employment, they may be restored to service with continuity of service without arrears of pay from 7.8.2006 till the date of restoration and affidavit to that effect is also filed by the respective Petitioners.

6. The learned Additional Government Pleader appearing for the Respondents on the other hand submitted that the Petitioners having been appointed after 31.12.1996, they are not entitled to get the benefit as per G.O. Ms. No. 84 dated 21.5.1998, which is only an amendment issued to the earlier Government Order. Therefore the order passed by the first Respondent is valid, which requires no interference.

7. I have considered the rival submissions made by the respective counsels.

8. The first Respondent appointed the Petitioners by order dated 29.9.2000. The Petitioners were directed to surrender their employment exchange registration at the time of joining, which was the first condition imposed in the appointment order. The first Petitioner registered his name in the Employment Exchange in the year 1997 and his registration number is 14315/97 and the second Petitioner registered his name in the year 2000 with registration No. 9690/2000. Even though in the said order of appointment it is stated that the appointment is temporary, admittedly the Petitioners were permitted to serve for about six years.

9. Petitioners submitted joint representation dated 7.8.2006 seeking regularisation pointing out the regularisation granted to other persons. The said representation having been not considered, the Petitioners filed W.P. No. 3605 of 2006 along with one other person and this Court gave a direction to the first Respondent to consider the claim of the Petitioners therein and pass appropriate orders. In the said writ petition also Petitioners claimed their right under G.O. Ms. No. 84 dated 21.5.1998 amending G.O. Ms. No. 199 dated 12.8.1997. The impugned order was passed by the first Respondent stating that the said Government Orders can be applied to persons joined in Town Panchayats on or before 31.12.1996 and the Petitioners having joined in the year 2000, their services cannot be made permanent.

10. For determining the Petitioners' right, the scope of G.O. Ms. No. 199 dated 12.8.1997 and G.O. Ms. No. 84 dated 21.5.1998 are to be considered. In the Government Order dated 12.8.1997 it is stated that in newly sanctioned posts numbering 3415 in various Town Panchayats, persons serving as NMRs as on 31.12.1996 have to be regularised and if any balance posts are available the same can be filled up after inviting list from the Employment Exchange. New

appointees can be paid a sum of Rs. 900/- per month as consolidated salary with 10% additional pay each year and the newly appointed persons can serve for one year and renewal can be granted upto three years and on completion of three years, their performance can be assessed and they can be absorbed in regular time scale basis. In G.O. Ms. No. 84 MA&WA Department dated 21.5.1998 it is further stated that persons appointed on or after 1.1.1997 for one year with consolidated salary of Rs. 900/- per month with 10% increase for every year upto three years, can be regularised on completion of three years. Thus, it is beyond doubt that even the persons appointed in Town Panchayats after 31.12.1996, i.e, from 1.1.1997 are also entitled to get regularisation and time scale of pay, on completion of three years of their respective services and they can get only Rs. 900/- for the first year; Rs. 990 for the second year; and Rs. 1089/- for the third year.

11. The issue as to whether on completion of three years person employed in Town Panchayats are to be regularised with time scale of pay was considered by the Division Bench of this Court in W.A. No. 47 and 385 of 2010 by judgment dated 23.6.2010, wherein the Division Bench held as follows:

2. The short facts leading to the filing of these appeals are stated hereunder:

The Petitioners in both the writ petitions were appointed as Sweepers / Sanitary Workers by the concerned Town Panchayats, on a consolidated pay of Rs. 900/- with effect from 27.3.1998 and 30.4.1998 respectively. They joined duty on different dates in the year 1998. As per the Government Orders, dated 17.8.1999, on completion of three years of service on consolidated pay, they should have been brought under the time scale of pay with effect from the date when they completed three years. But by means of the orders impugned in the writ petitions, they were brought under the time scale of pay only with effect from 23.2.2006 in so far as W.A. No. 47 of 2010 is concerned and with effect from 23.6.2006 in so far as W.A. No. 385 of 2010 is concerned. The said orders were challenged in the writ petitions.

3. The learned Single Judge, on the basis of the judgment rendered by a Division Bench of this Court in W.A. No. 1454 of 2007, dated 19.12.2008 in the case of Director of Town Panchayat, Kuralagam, Chennai and two others v. R. Sundaradas, allowed the writ petitions and held that the writ Petitioners are entitled to the time scale of pay only from the date when they completed three years on consolidated pay and not from any subsequent dated. Aggrieved by the same, the respective Panchayats have filed the above appeals.

4. We have perused the judgment, dated 19.12.2008 rendered by the Division Bench of this Court in the aforementioned appeal. In our view, as rightly held by learned Single Judge, the present cases are squarely covered by the said Division Bench judgment. We do not find any reason to differ with the view taken by the learned Single Judge. There being no merit in the appeals they stand dismissed.

The Respondents in the above writ appeals were also appointed as Sweepers

after 1.1.1997 i.e, on 27.3.1998 and 30.4.1998 respectively. Still the Division Bench confirmed the order of the learned Single Judge ordering regularisation with time scale of pay on completion of three years of service as per the Government Order.

12. The said decision of the Division Bench was challenged before the Honourable Supreme Court in SLP(C) No. 26605 of 2010, which was dismissed by the Supreme Court on 27.9.2010. The said order was also implemented by the Government by issuing G.O. Ms. No. 570 MA&WS Department dated 15.11.2010. The said judgment was followed by me in W.P. No. 8400 of 2011 order dated 18.4.2011 and allowed the claim of the Sweepers seeking regularisation on completion of three years in terms of the Government Orders. The said order was passed by following the earlier orders as well as the order passed by the first Bench in W.A. No. 385 of 2010 dated 23.6.2010. The only difference in this case is, the Petitioners are not in service from 4.8.2006, whereas the Petitioners in those cases were granted regularisation after completion of several years and not on completion of three years of service.

13. The Petitioners have given up their salary from 4.8.2006 till the date of reinstatement. Since the impugned order passed by the second Respondent is found illegal and the same is contrary to the Government order, the impugned order is set aside and the writ petition is allowed with direction to the Respondents to regularise the Petitioners' services as Sweeper in the first Respondent Town Panchayat from 29.9.2003 i.e, on completion of three years of their respective service with time scale of pay and other benefits till 3.8.2006 and they should be restored to duty as regularly appointed Sweepers, within a period of four weeks from the date of receipt of copy of this order with continuity of service from 4.8.2006. Necessary order is directed to be passed by the first Respondent within a period of three weeks. It is made clear that from 4.8.2006 till the date of restoration of Petitioners' services, Petitioners are not entitled to get backwages alone. However, the period from 29.9.2003 shall be calculated for all other purposes including fixing of increment, selection grade, special grade and all other benefits. No costs. Connected miscellaneous petition is closed.