

(2011) 02 MAD CK 0421

In the Madras High Court

Case No : Writ Petition No. 8737 of 2006

P. Murugan

APPELLANT

Vs

The District Collector, The Commissioner, The Additional Block
Development Officer and The Panchayat President
Nerkundram Panchayat Board

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0421

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : K. Venkatramani, for S. Srinivasan, for the Appellant; C.K. Vishnupriya, Additional Govt. Pleader for R1 and N. Subbarayalu, for R2 to R4, for the Respondent

Judgement

M. Jaichandren, J.—This writ petition has been filed praying that this Court may be pleased to issue a writ of Mandamus directing the Respondent to regularize the service of the Petitioner, in the cadre of supervisor for scavengers, in the office of the fourth Respondent, from 31.12.1992, which is the date of his initial appointment in service, with all consequential monetary and other benefits.

2. The Petitioner had stated that he had been appointed as a supervisor for scavengers, at the office of the fourth Respondent, on daily wages basis, from 1.1.1993, by the order of the Commissioner-cum-Special Officer, Nerkundram, Villivakkam Panchayat Union, at Ambattur, made in Na. Ka. No. 6440/92/A3, dated 31.12.1992. The Petitioner had been working till 10.4.1998, continuously, without any break in service.

3. The Petitioner had further submitted that he had joined as a supervisor, on 1.1.1993, on daily wages. While so, on 10.4.1998, the President of Nerkundram Panchayat Board, the fourth Respondent herein, had orally instructed the Petitioner not to continue in service, without any prior notice. In spite of several representations, the request of the Petitioner, to be continued in service, had not

been considered. In such circumstances, he had preferred the writ petition before this Court, in W.P. No. 16091 of 1998. This Court, by its order, dated 16.4.1999, had issued a direction to the Respondent there into appoint the Petitioner, as a supervisor for scavengers, on a permanent basis.

4. The Petitioner had further submitted that in the writ appeal filed by the President of the panchayat Board, the fourth Respondent in the present writ petition, a Division Bench of this Court, by its order, dated 12.9.2000, made in W.A. No. 748 of 1999, confirmed the order, dated 16.4.1999, made in W.P. No. 16091 of 1998. Even though the service of the Petitioner ought to have been regularized, as a supervisor for scavengers, in the fourth Respondent panchayat, from the date of his initial appointment i.e., from 1.1.1993, he should have been regularized from service, at least from 16.4.1999, as directed by this Court, by its order, dated 16.4.1999, in W.P. No. 16091 of 1998.

5. In the counter affidavit filed on behalf of the second Respondent, it has been stated that the Petitioner had been continuing in service from the date of his appointment, only on a temporary basis. Since, the appointment had not been made in accordance with the service Rules applicable to such appointment and as his appointment had not been made against a sanctioned vacancy, the services of the Petitioner cannot be regularized.

6. In view of the averments made in the affidavit filed in support of the writ petition and in the counter affidavit filed on behalf of the second Respondent and in view of the submissions made by the learned Counsels appearing on behalf of the parties concerned, it is seen that the Petitioner had been appointed, temporarily, on daily wages basis, in the fourth Respondent panchayat, from 1.1.1993. The Petitioner had been working, as a supervisor for scavengers and his services had not been regularized by the Respondents. Therefore, he had preferred a writ petition before this Court, in W.P. No. 16091 of 1998. This Court, by its order, dated 16.4.1999, had directed the fourth Respondent to appoint him as a supervisor for scavengers, on a permanent basis, from 16.4.1999. The writ appeal filed by the fourth Respondent, in W.A. No. 748 of 1999, challenging the said order, had been dismissed, by an order, dated 12.9.2000, confirming the order of the single Judge, dated 16.4.1999, made in W.P. No. 16091 of 1998. As such, the order, dated 16.4.1999, made in W.P. No. 16091 of 1998, had become final. In such circumstances, it is not open to the Respondents to claim that the services of the petitioner cannot be regularized, as he had not been appointed against a sanctioned vacancy, as per the applicable Rules of recruitment.

7. In such circumstances, it is clear that the services of the Petitioner, as a supervisor for scavengers, should be deemed to have been regularized and he should be considered as a permanent employee in the said post, from 16.4.1999. Therefore, he would be eligible for all the monetary and other service benefits, as per the service Rules applicable to the Petitioner. However, with regard to the regularization of his service, from 1.1.1993, to 16.4.1999, it would be open to the Petitioner to make a presentation to the first Respondent, within a period

of fifteen days from the date of receipt of a copy of this order. On receipt of such representation, the first Respondent shall consider the same and pass appropriate orders thereon, on merits and in accordance with law, within a period of four months thereafter.

8. The writ petition is ordered accordingly. No costs. Connected W.P.M.P. No. 9661 of 2006 is closed.