



Abstract

Establishment – Regularisation of Services of Sanitary Workers of consolidated Pay and NMRs on daily wages in Municipalities and Corporations (except Chennai) - Orders Issued – Clarifications to the date of Regularisation – Issued.

Municipal Administration and Water Supply (ME.3) Department

G.O.(MS)No.166

Dated: 31.12.2014

Already Read:

- 1) G.O.(Ms) No.101, Municipal Administration and Water Supply (ME.3) Department, dated 30.04.1997.
- 2) G.O.(Ms) No.71, Municipal Administration and Water Supply (ME.3) Department, dated 05.05.1998.
- 3) G.O.(Ms) No.21, Municipal Administration and Water Supply (ME.3) Department, dated 23.02.2006.

Read also:

- 4) The Division Bench judgement order dated 04.10.2013 in Writ Appeal No.1942/2013.
- 5) Full Bench of Madurai Bench of Madras High Court, Judgement order No.2013 (6) CTC 593, dated 29.11.2013 in the case of Thiru.S.Dhanasekaran & 24 others of Madurai Corporation W.P.(MD) No.1083/2012 and E.Panneerselvam and 24 others of Nagercoil Municipality in W.A.(MD) No.555/2010 Vs Government of Tamil Nadu.

ORDER:

In the Government Order first read above, the Government have issued the guidelines and norms for creation of posts for sanitary workers in Municipalities and subsequently in the Government Order second read above, amendments were issued to the guidelines and norms for creation of posts for Sanitary Workers and they are as follows:-

(i) The sanitary workers services can be brought into the regular time scale of pay for all the posts which have been created before 30.04.1997 (i.e. the date of issue of Government Order first read above)

(ii) The NMRs who have completed 10 years in municipality before 31.12.1996 shall be paid Rs.2100/- as consolidated pay and after completion of one year their performances shall be estimated and considered to be brought into regular time scale of pay. Like for those who have completed 5-10 years and less than 5 years of service shall be considered after completion of 1 and half years term and shall be paid Rs.1500/- per month as consolidated pay.

(iii) The sanitary workers who has appointed after 1.1.1997 shall be kept under consolidated pay of Rs.1000/- per month and an increase of 10% every year for 3 years and then based on their performance they shall be considered to be brought into regular time scale of pay.

3. In the Government Order 3rd read above, the Government have issued orders o regularize the services of various workers who are on consolidated pay and the NMRs who are working on daily wages from the date of issue of order with certain conditions.

4. In the judgement 4th read above inrespect of regularization of sanitary workers in Municipalities/Corporations, the Division Bench in its order dated 04.10.2013, in W.A.No.1942/13, directed that the regularization has to be given to them after completion of 3 years of continuous service in term of G.O.(Ms) No.71, MA&WS Department, dated 30.04.1997.

5. In the judgement 5th read above, in controversy to the Division Bench order as indicated in para 4 above, the full Bench of Madurai bench of Madras High Court filed by the petitioners Thiru S.Dhanasekaran & 24 others of Madurai Corporation and appellants Thiru E.Panneer selvam & 24 others of Nagercoil Municipality Vs. Government of Tamil Nadu case 2013 (6) CTC 593 has ordered in W.A.No.555/10, dated 29.11.2013 as follows:

"The Full Bench of Madurai Bench is of the considered view, in the case of sanitary workers, who were appointed against the newly created posts in pursuance of G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997, their regularisation is governed by G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006. **Such a regularisation, as per the said Government Order, should take effect only from the date of Government Order** and not from the date on which they had completed three years of service from the date of their initial appointment.

Following are the reasons for the conclusion of Full Bench:-

- a) As already pointed out, appointments of the petitioners and the appellants herein, were not made as per the Tamil Nadu Municipal Corporations Basic Service Rules, 1996. As per the said Rules, sanitary workers can be appointed only by direct recruitment, in time scale of pay. There is no provision in the Rules to appoint sanitary workers on consolidated pay Therefore, there can be no doubt that the petitioners and the appellants herein, who were all ;appointed, not as per the Tamil Nadu Municipal Corporations Basic Service Rules, 1996, but outside the scope of the said Rules, however, governed by the Orders issued by the Government in G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997.
- b) As already pointed out, as per G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997, new posts of sanitary workers were all created, on need basis. The said Government Order permitted filling-up of such newly created posts, through Employment Exchanges, on consolidated pay. That is how the petitioners and the appellants herein came to be appointed.
- c) As per Clause 4(6) of G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997, the said appointment was initially for a period of one year, which could be extended upto three years. As we have already extracted, as per Clause 4(6), on completion of three years, the Government would decide whether to regularise the services of such employees, so as to bring them into regular time scale of pay. Therefore, as per this Government Order, it is fallacious to contend

that on completion of three years from the date of initial appointment, such appointed sanitary workers shall be regularised.

- d) As narrated above, the Government thereafter examined the question of regularisation only in the year 2006 and accordingly issued G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006. **The said Government Order directs that the regularisation shall be from the date of issue of the Government Order, namely 23.02.2006.**

- e) Thus, a conjoint reading of G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997 and G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006, would go to clearly show that on completion of three years of service from the date of initial appointment, the Government had an option to examine the question of regularisation, which the Government did only in 2006 and it is the wisdom of the Government to give regularisation from any date. (Vide judgement of the Supreme Court in K.Madalaimuthu and another vs. State of Tamil Nadu And others - (2006) 6 SCC 558). Unless such date fixed by the Government, giving effect to the regularisation, is proved to be arbitrary and violative of Article 14 of the Constitution of India or any other constitutional provision, it cannot be held, in vacuum, that the said norms prescribed in G.O.Ms.No.21 for the purpose of regularisation is either illegal or unconstitutional. Therefore, we have no hesitation to hold that regularisation of such sanitary workers, who are governed by G.O.Ms.Nos.101, 71 & 21, Municipal Administration and Water Supply Department, dated 30.04.1997, 05.05.1998 and 23.02.2006, respectively, shall be only from 23.02.2006. The contrary view expressed elsewhere in the judgements referred to above, in our respectful view, are not correct".

6. Based on the above Full Bench order the sanitary workers services for whom were not regularised was regularised with effect from 23.02.2006 being the date of issue of G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006. Aggrieved by the above order most of the sanitary workers have approached the High court and without enlightening the Full bench order, had obtained order to regularize their services after completion of 3 years period mentioning the orders of Division Bench ordered in W.A.No.1942/2013, dated 04.10.2013. Now the controversy in this case is whether the services of sanitary workers should be regularized from the date of issue of Government Order i.e.23.02.2006 or after completion of 3 years was examined.

7. The applicability of the controversial judgements 4th and 5th read above, were consulted with Advocate General of Tamil Nadu. Taking into consideration of the said two different orders of Division and Full bench of Madurai Bench of Madras High Court, the Advocate General has opined that as this is an authoritative pronouncement made by the Full Bench, and hence he is of the considered opinion that the Government to pass necessary order pursuant to the Division Bench's direction in W.A.No.1942/13, dated 04.10.2013, in line with the ratio laid down by the Full Bench in the S.Dhanasekaran case reported 2013(6) CTC 593.

8. The authoritative judgement of the Full Bench in 2013 (6) 593 CTC S.Dhanasekaran & 24 others Vs. Government of Tamil Nadu case, dated 29.11.2013 and the opinion obtained on the above judgment from the Advocate General of Tamil Nadu dated 21.07.2014 was examined in detail. After examination, the Government hereby issue clarification to the **Government Orders first & second read above that the date of completion of 3 years from the date of initial appointment of sanitary workers shall not be considered for their regularisation who are appointed as per the above Government Orders, but the date of issue of G.O.(Ms)No.21, Municipal Administration and Water Supply Department, dated 23.02.2006 shall be the date of regularisation to all the Sanitary Workers in Municipalities / Corporations for whom services are not regularised.**

9. The Director of Municipal Administration is requested to take action accordingly.

(BY ORDER OF THE GOVERNOR)

**K.PHANINDRA REDDY
PRINCIPAL SECRETARY TO GOVERNMENT**

To
The Director of Municipal Administration, Chepauk, Chennai - 600 005.
All Commissioner of Municipal Corporations (except Chennai),
(Through the Director of Municipal Administration, Chepauk,
Chennai - 600 005)
All the Municipal Commissioners,
(Through the Director of Municipal Administration, Chepauk,
Chennai - 600 005)
The Director of Local Fund Audit, Chennai - 600 108.
Copy to :
The Finance (Municipal Administration and Water Supply) Department,
Chennai - 600 009
The Personal Assistant to Minister (Municipal Administration, Rural
Development, Law, Courts and Prisons) Department, Chennai - 600 009.
The Private Secretary to Principal Secretary, Municipal Administration and Water
Supply Department, Chennai - 600 009.
The Municipal Administration and Water Supply
(MC III/MC IV/MC V/MC VI/OP 2) Department, Chennai - 600 009.
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Section Officer