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W.A.No.1092 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.1092 of 2020
and
C.M.P.No.13340 of 2020

1.The State of Tamil Nadu,
Rep by its Secretary,
Municipal Admn., & Water Supply (MC 3) Department,
Fort St. George, Chennai – 600 009.

2.Director of Town Panchayats,
Kuralagam, Chennai – 600 108
Presently at
Urban Administration Office Complex,
7th and 8th Floor, MRC Nagar,
Chennai – 28.

3.The Executive Officer,
Sirumugai Town Panchayat,
Sirumugai, Mettupalayam Taluk,
Coimbatore District.

... Appellants

Vs.

K.Ramakrishnan

... Respondent



W.A.No.1092 of 2020

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside order dated 03.02.2020 made in W.P.No.26482 of 2010 and allow the writ petition.

For Appellants : Mr.R.Neelakandan
Additional Advocate General
Assisted by Mr.S.John J.Raja Singh
Additional Government Pleader

For Respondent : Mr.R.Thanjan

J U D G M E N T

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The writ order dated 03.02.2020 passed in W.P.No.26482 of 2010 is under challenge in the present Intra-Court appeal.

2. The State is the appellant and the respondent instituted writ proceeding to quash the order of regularisation granted to the respondent with effect from 01.11.2007.

3. The respondent was initially engaged as daily wage employee for water cleaning in Water Supply Maintenance of Panchayat. The work was allotted for limited hours. The wage per day was increased periodically based



W.A.No.1092 of 2020

on the minimum wage stipulated by the District Collector.

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4. Mr.R.Neelakandan, learned Additional Advocate General appearing on behalf of the 'State' would submit that post of the Water Cleaner and Supplier is a part-time job and no post was sanctioned by the competent authority. Thus, the initial appointment of the writ petitioner was not in accordance with the Service Rules. However, considering the length of service of the respondent, the Government regularised the services of the writ petitioner with effect from 01.11.2007 in proceedings dated 31.10.2007. The petitioner attained the age of superannuation on 31.01.2011 and allowed to retire from service.

5. The learned Additional Advocate General would contend that the learned Single Judge granted retrospective regularisation of services of the respondent without considering the fact that the post was not sanctioned at the time of engaging the petitioner as daily wage water supplier. Thus, the writ order is to be set aside.



W.A.No.1092 of 2020

6. Mr.R.Thanjan, learned counsel for the respondent would submit that the initial appointment of the petitioner was made through District Employment Exchange and it is not illegal. When the respondent was appointed through District Employment Exchange on daily wages basis and considering the length of service, the benefit of regularisation was extended, it is to be extended from the date of initial appointment and not from the date of passing of the proceedings of regularization. Thus, the learned Single Judge has rightly considered the facts and circumstances and granted the relief and the writ appeal is to be rejected.

7. Considering the arguments as advanced between the parties to the *lis* on hand, the legal principles governing regularization and permanent absorption are no more *res integra*. The Constitution Bench of Hon'ble Supreme Court of India settled the legal principles in the case of ***State of Karnataka Vs. Uma Devi*** reported in ***(2006) 4 SCC 1***.

8. The appointment to the public posts are to be made scrupulously in accordance with the Service Rules in force. Equal opportunity in public employment is the constitutional mandate. Back door appointments at no



W.A.No.1092 of 2020

circumstances be regularised depriving the right of eligible candidates to get equal opportunity to participate in the open competitive process under the Constitutional Scheme of recruitments.

9. Equal opportunity in public employment is a mandate under the Constitution. In the event of grant of regularisation of irregular or illegal appointments, the Fundamental Right of a citizen to get equal opportunity is infringed. Thus, the Constitution Bench in unequivocal terms held that all appointments are to be made under Constitutional Scheme and mere length of services as temporary employee cannot be a ground to seek regularisation of services.

10. The Constitution Bench in the case of *Uma Devi* in unequivocal terms held in paragraph 54 that any judgments / decisions running counter to the principles settled by the Constitution Bench in the *Uma Devi's* case, denuded to loose its status as precedent. Therefore, based on any other judgments, the regularisation or permanent absorption of illegal or irregular or back door appointments cannot be regularised.



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11. The Hon'ble Supreme Court in subsequent judgment in the case of *Secretary to Government School Education Department, Chennai Vs. R.Govindaswamy and Others* reported in **2014 (4) SCC 769** reiterated the principles by referring the case of *State of Rajasthan and Others Vs. Daya Lal and Others* reported in **(2011) 2 SCC 429** that the High Courts in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee, which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.



W.A.No.1092 of 2020

12. The Hon'ble Supreme Court of India further continued by stating that mere continuation of service by temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. The Hon'ble Supreme Court further emphasised that sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

13. Therefore, Courts cannot grant regularisation or permanent absorption merely based on misplaced sympathy, which would infringe the Fundamental Right of all other lakh and lakh of youth of our great Nation, who all are aspiring to secure public employment through open competitive process under constitutional scheme.

14. In the present case, the Writ Court has not considered the factum that the post was not sanctioned by the competent authority at the time of



W.A.No.1092 of 2020

engagement of the petitioner as daily wage part-time employee. When the post itself was not sanctioned, the appointment of the daily wager is an irregularity. Therefore, the petitioner cannot seek regularisation with retrospective effect from his date of initial appointment as daily wage employee. However, the Government itself considered the case of the petitioner sympathetically and regularised his services with effect from 01.11.2007. The regularisation granted to the respondent itself is a concession given to him. Therefore, the respondent cannot further seek retrospective regularisation from the date of his initial engagement as daily wage part-time employee.

15. Therefore, we do not find any infirmity in respect of the decision taken by the appellants herein. The Writ Court has not considered the legal principles settled by the Constitution Bench of Hon'ble Supreme Court of India in Uma Devi's case and subsequent judgment of the Supreme Court in R.Govindaswamy's case (cited *supra*).



W.A.No.1092 of 2020

16. Thus, we are inclined to interfere. Consequently, the writ order dated 03.02.2020 passed in W.P.No.26482 of 2010 is set aside and the Writ Appeal stands allowed. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

[S.M.S., J.] [C.K., J.]
05.06.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes



WEB COPY



W.A.No.1092 of 2020

S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

Jeni

W.A.No.1092 of 2020

05.06.2024