

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-07-2026

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THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.A.Nos.8 & 9 of 2023 AND
C.M.P.Nos.109 to 101 of 2023

1. The Chief Secretary to Government
Personnel and Administrative Reforms (F)
Department,
Secretariat, Chennai – 9.
2. The Principal Secretary to Government
Rural Development and Panchayat, Raj
Department, Secretariat,
Chennai- 9.
3. The Director of Rural Development and
Panchayat Raj, Panagal Buildings,
Saidapet, Chennai - 15.

... Appellants

-VS-

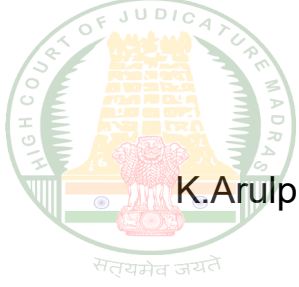
N.Nagaiah

..Respondent

W.A.No.9 of 2023

1. The Chief Secretary to Government
Personnel and Administrative Reforms (F)
Department, Secretariat,
Chennai – 9.
2. The Principal Secretary To Government
Rural Development and Panchayat Raj
Department, Secretariat,
Chennai -9.
3. The Director of Rural Development and
Panchayat Raj, Panagal Buildings,
Saidapet, Chennai - 15.

..Appellant(s)



-VS-

K.Arulpragasam

..Respondent(s)

W.A.No.8 of 2023

Prayer: To set aside the order dated 22.09.2017 made in Writ Petition No.4989/2014 and passed by this Hon'ble court

W.A.No.9 of 2023

Prayer: To set aside the order dated 22.9.2017 made in Writ Petition No. 4990 of 2014 and passed by this Hon'ble Court.

For Appellants: Mr.R.Sankar, Government Counsel

For Respondent(s): Mr.R.Prem Narayan
(in W.A.No.9 of 2023)
No Appearance in W.A.No.8 of 2023

COMMON JUDGMENT

(Judgment of the Court was delivered by N.Senthilkumar J.)

The present Intra Court appeals have been instituted under Clause 15 of Letters Patent by the State of Tamil Nadu, challenging the common writ order dated 22.09.2017 in W.P.Nos.4989 and 4990 of 2014. State preferred present appeals mainly on the ground that respondents herein had been engaged as Sweepers on daily wage basis and not completed 10 years of service, so as to consider their claim for regularization.

2. When these matters are taken up for hearing, learned counsel for the respondents fairly conceded that the issue on hand is covered by the earlier Division Bench judgment of this Court dated



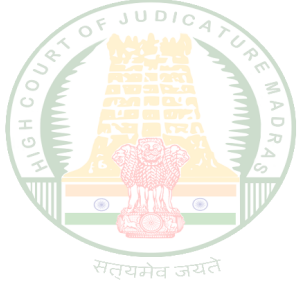
15.07.2024 passed in W.A.160 of 2021. He has also produced a copy of the said judgment before this Court. Relevant paragraphs of the judgment are extracted hereunder:

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“26. The crux of the issue and the constitutionality involved in the matter of appointment, regularization and permanent absorption are that, all appointments are to be made under the Constitutional scheme and by following the due process. Equal opportunity in public employment is the constitutional mandate. Back door appointments cannot be regularized infringing the fundamental rights of the candidates aspiring to secure public employment through open competitive process. Daily wage, temporary and contractual appointments are made without following the due process and the Recruitment Rules applicable to the posts. Such appointments are mostly not made against the sanctioned posts. Selections are done either at the choice of the Authorities or based on the recommendations of VIP-s and VVIP-s. Such appointments, if end with an order of regularization and permanent absorption, this Court has no hesitation in arriving at a conclusion that the fundamental rights of lakhs and lakhs of youth of our great nation is infringed and we are dishonoring the constitutional scheme of appointments. Therefore, any appointments made in violation of the service rules cannot end with an order of regularization and permanent absorption. However, such candidates may be granted liberty to participate in the recruitment process for securing employment on merits and through rule of reservations as per the Service Rules in force.

27. In the matter of irregular, illegal and back~door appointments in Judiciary, the three Judges Bench of the Hon-ble Supreme Court of India in the case of Renu vs. District and Sessions Judge, Tis Hazari Courts, Delhi¹ reiterated the constitutional principles asserted by the Constitution Bench in Umadevi-s case. In Renu-s case, the three judges Bench considered the equality clause in Article 14 in paragraph 7 onwards as extracted hereunder:

“6. Article 14 of the Constitution provides for equality of opportunity. It forms the cornerstone of our Constitution.



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7. In I.R. Coelho v. State of T.N. [(2007) 2 SCC 1 : AIR 2007 SC 861] , the doctrine of basic features has been explained by this Court as under : (SCC p. 108, para 141)”

“141. The doctrine of basic structure contemplates that there are certain parts or aspects of the Constitution including Article 15, Article 21 read with Articles 14 and 19 which constitute the core values which if allowed to be abrogated would change completely the nature of the Constitution. Exclusion of fundamental rights would result in nullification of the basic structure doctrine, the object of which is to protect basic features of the Constitution as indicated by the synoptic view of the rights in Part III.”

8. As Article 14 is an integral part of our system, each and every State action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments rendered by this Court in Delhi Development Horticulture Employees- Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386] , State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] , Prabhat Kumar Sharma v. State of U.P. [(1996) 10 SCC 62 : 1996 SCC (L&S) 1331] , J.A.S. Inter College v. State of U.P. [(1996) 10 SCC 71 : 1996 SCC (L&S) 1339] , M.P. Housing Board v. Manoj Shrivastava [(2006) 2 SCC 702 : 2006 SCC (L&S) 422] , M.P. State Agro Industries Development Corpn. Ltd. v. S.C. Pandey [(2006) 2 SCC 716 : 2006 SCC (L&S) 434] and State of M.P. v. Sandhya Tomar [(2013) 11 SCC 357] .

9. In Excise Supt. v. K.B.N. Visweshwara Rao [(1996) 6 SCC 216 : 1996 SCC (L&S) 1420] , a larger Bench of this Court reconsidered its earlier judgment in Union of India v. N. Hargopal [(1987) 3 SCC 308 : 1987 SCC (L&S) 227 : (1987) 4 ATC 51 : AIR 1987 SC 1227] , wherein it had been held that insistence on recruitment through employment exchanges advances rather than restricts the rights guaranteed by Articles



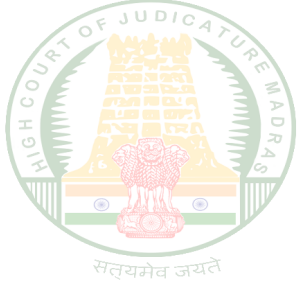
14 and 16 of the Constitution. However, due to the possibility of non~sponsoring of names by the employment exchange, this Court held that any appointment even on temporary or ad hoc basis without inviting application is in violation of the said provisions of the Constitution and even if the names of candidates are requisitioned from employment exchange, in addition thereto, it is mandatory on the part of the employer to invite applications from all eligible candidates from open market as merely calling the names from the employment exchange does not meet the requirement of the said articles of the Constitution. The Court further observed : (K.B.N. Visweshwara Rao case [(1996) 6 SCC 216 : 1996 SCC (L&S) 1420] , SCC p. 218 para 6)

“6...In addition, the appropriate department □ should call for the names by publication in the newspapers having wider circulation and also display on their office notice □ and employment news bulletins; and then consider the cases of all candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.”

10. In Suresh Kumar v. State of Haryana [(2003) 10 SCC 276] this Court upheld the judgment of the Punjab and Haryana High Court wherein 1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. The High Court reached the conclusion that process of selection stood vitiated because there was no advertisement and due publicity for inviting applications from the eligible candidates at large.

11. In UPSC v. Girish Jayanti Lal Vaghela [(2006) 2 SCC 482 : 2006 SCC (L&S) 339 : AIR 2006 SC 1165] this Court held : (SCC p. 490, para 12)

“12. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair



and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made...

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Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.

12. The principles to be adopted in the matter of public appointments have been formulated by this Court in M.P. State Coop. Bank Ltd. v. Nanuram Yadav [(2007) 8 SCC 264: (2007) 2 SCC (L&S) 883] as under : (SCC pp. 274~75, para 24)

(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

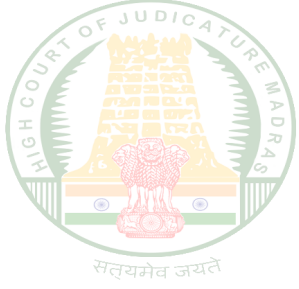
(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.



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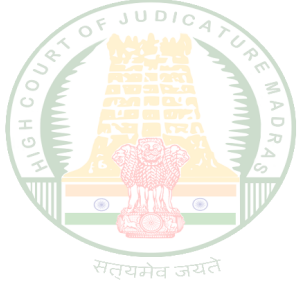
(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.”

13. A similar view has been reiterated by the Constitution Bench of this Court in *State of Karnataka v. Umadevi* (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753 : AIR 2006 SC 1806] , observing that any appointment made in violation of the statutory rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. □ Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment. □ The Court further rejected the prayer that ad hoc appointees working for long be considered for regularisation as such a course only encourages the State to flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.

14. In *State of Orissa v. Mamata Mohanty* [(2011) 3 SCC 436: (2011) 2 SCC (L&S) 83] this Court dealt with the constitutional principle of providing equality of opportunity to all which mandatorily requires that vacancy must be notified in advance meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates, thereby the right of equal opportunity is effectuated. The Court held as under: (SCC p. 452, para 36)

“36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the



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Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit”

15. Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it.

16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and



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clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.

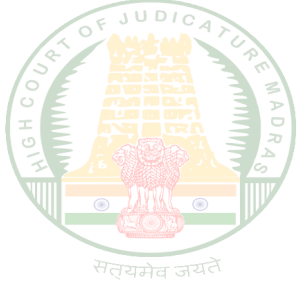
17. Thus, the aforesaid decisions are an authority on prescribing the limitations while making appointment against public posts in terms of Articles 14 and 16 of the Constitution. What has been deprecated by this Court time and again is back~door appointments or appointment dehors the rules”.

18. In *State of U.P. v. U.P. State Law Officers- Assn.* [(1994) 2 SCC 204 : 1994 SCC (L&S) 650 : (1994) 26 ATC 906] this Court while dealing with the back~door entries in public appointment observed as under : (SCC pp. 217~18, para 19)

“19... The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back door have to go by the same door. □ From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.”

19. In *Som Raj v. State of Haryana* [AIR 1990 SC 1176] this Court held as under : (SCC pp. 658~59, para 6)

“6...The absence of arbitrary power is the first postulate of rule of law upon which our whole constitutional edifice is based. In a system governed by rule of law, discretion when conferred upon an



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executive authority must be confined within clearly defined limits. The Rules provide the guidance for exercise of the discretion in making appointment from out of selection lists which was prepared on the basis of the performance and position obtained at the selection. The appointing authority is to make appointment in the order of gradation, subject to any other relevant rules like, rotation or reservation, if any, or any other valid and binding rules or instructions having force of law. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of rule of law. Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority.”

28. In view of the fact that the respondents were engaged as casual labourers and they have not completed their 10 years of service as on 01.01.2006, even as per G.O.Ms.No.22, which subsequently been withdrawn by the Government, the relief of regularisation and permanent absorption ought not to have been granted by the Writ Court. By encouraging such regularisation and permanent absorption, the rights of a citizen to secure public employment through open competitive process are infringed.

29. In respect of similar cases another Division Bench of this Court, by way of common order dated 16.08.2023 in Writ Appeal No.606 of 2019 considered the relief of regularization. Since we have elaborately considered the legal principles settled by the Constitution Bench and the decision taken which all are running counter to the principles settled, no further deliberations are required in respect of the findings in the Division Bench order. Since in the said Division Bench order, there is no discussion about the legal principles settled by the Constitution Bench of the Supreme Court of India in Umadevi-s case, the same need not be followed as precedent. Those judgements are individualisation of justice.

30. With the above observations, the common order in the Writ Petition Nos.29346 of 2014, etc., dated 22.09.2017 is set aside and the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.”

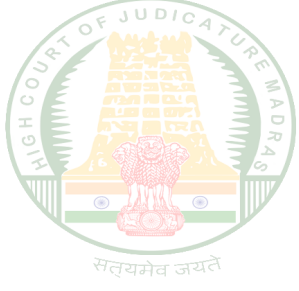


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3. Considering the fact that the issue on hand is squarely covered by the earlier judgment of Division Bench of this Court (supra), the present Writ Appeals are allowed. The impugned common writ order dated 22.09.2017 passed in W.P.Nos.4989 and 4990 of 2014 stands set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

(S.M.S.,J.) (N.S.,J.)
06-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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S.M.SUBRAMANIAM,J.
AND
N.SENTHILKUMAR,J.
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W.A.Nos.8 & 9 of 2023

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