

WA No. 1946 of 2026

IN THE HIGH COURT of JUDICATURE AT MADRAS

DATED: 28-07-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

WA No. 1946 of 2026

AND

CMP NO. 17187 of 2026

1. The Secretary to Government
Highways Department, Secretariat,
Chennai-09
2. The Chief Engineer (General)
Highways Department,
Secretariat, Chennai-09
3. The Divisional Engineer
Highways Division,
Vaniyampadi, Thirupatur District
4. The Assistant Divisional Engineer
Highways Construction and Maintenance,
Gudiyatham Division,
Gudiyatham, Vellore District

..Appellant(s)

Vs

1. L. Mageswaran, S/o.R.Lingam,
No.123, Nehruji Nagar,
Sethukarai, Gudiyatham,
Vellore District
2. The Senior Accountant Officer



WA No. 1946 of 2026

Office of TamilNadu Govt.Account General,
No.361, Annasalai, Teynampet , Chennai.

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..Respondent(s)

Prayer: Appeal filed under clause 15 of the Letters Patent to set aside the order dated 12.01.2024 made in WP No.14825 of 2021 and allow the above Writ Appeal.

For Appellant(s): Dr.R.Gouri,
Government Counsel

For Respondent(s): Mr.L.S.M.Hasan Fizal
for Mr.J.Stalin for R1,

R2- Not Ready in Notice

JUDGMENT

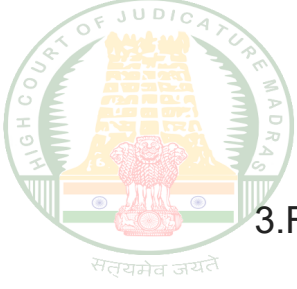
(Judgment of the Court was delivered by S.M.Subramaniam J.)

Under assail is the writ order dated 12.01.2024 passed in WP.No.14825 or 2021.

2.State preferred the present Writ Appeal. The respondent filed a Writ Petition seeking retrospective regularisation with effect from 30.06.1998, the date on which he has completed three years of daily wage engagement. The respondent was engaged as NMR (Nominal Muster Roll) in the highways department. Subsequently, the service of

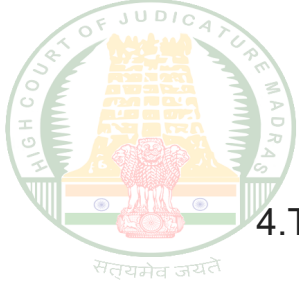


the respondent was regularised with effect from 06.05.2013 in the post of Gang Mazdoor in the sanctioned post in the time scale of pay. The said order of grant of regularisation was issued by relaxing Special Rules 4(a), 51 and 22 for grant of regularisation. The order of regularisation remains unchallenged. Accepting the order of regularisation, the respondent continued in silence. He made a representation after a lapse of three years from the date of regularisation on 29.12.2016, claiming that his services should be regularised retrospectively with effect from 30.06.1998. The said representation was rejected by the respondents mainly on the ground that the order passed by the High Court in the year 2003 is of no avail to the respondent to seek retrospective regularisation. That apart, the case of the respondent was regularised by relaxing the necessary rules, since initially he was not engaged or appointed under the recruitment rules in force. Even no appointment order was issued to the respondent. He was engaged only as an NMR on a need basis. Thus, the regularisation itself is a concession extended by the Government and seeking retrospective regularisation is beyond the scope of the service rules applicable.



WA No. 1946 of 2026

3.Regularisation and permanent absorption are to be granted strictly in accordance with the service rules. Irregular, illegal and backdoor appointments cannot be regularised, since such regularisation would result in infringement of the basic rights of the eligible meritorious candidates who are aspiring to secure public employment through open competitive process in accordance with the rules and through the rules of reservation. Constitutional schemes of appointment are to be made in order to preserve the constitutional mandate of equal opportunity in public employment. Large scale illegal appointments would result in affecting the rights of many eligible candidates.

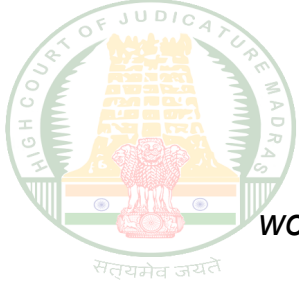


4. The practice of appointing daily wage employees and granting regularisation was deprecated by the Constitution Bench of the Hon'ble Supreme Court of India in the case of *Secretary, State of Karnataka and others Vs. Uma Devi and others* ¹. More specifically in the case of *State of Rajasthan and Others Vs. Daya Lal* ², the Supreme Court in clear terms reiterated that the High Court in exercise of the powers of judicial review cannot issue a direction to regularise the services of temporary, contractual or illegal appointments. Relevant paragraph is extracted hereunder:

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, 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

¹ 2006 (4) SCC 1

² 2011 (2) SCC 429

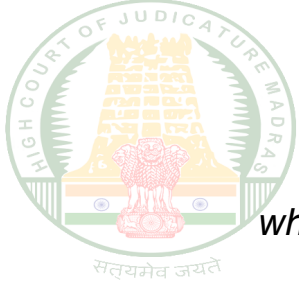


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would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a 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. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons

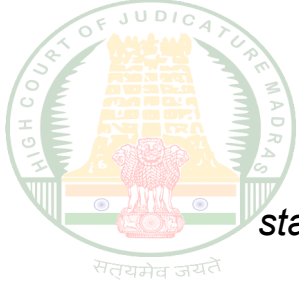


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who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a



statute.”

WA No. 1946 of 2026

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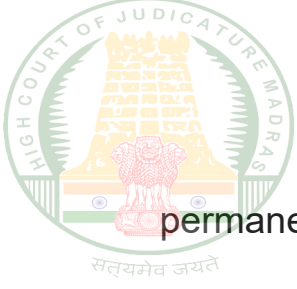
5.The Courts are expected to consider the ill effects of issuing a direction to regularise the illegal, irregular and backdoor appointments. All appointments are to be made only under the constitutional schemes. Even in paragraph 53, the Constitution Bench has reiterated that the proposals pending during the relevant point of time in the year 2006 are allowed to be considered as one time measure. However, even such one time measure regularisation is to be granted only if the appointments are made in accordance with the rules. However, regularisation of illegal, irregular or backdoor appointments at no circumstances been done. In paragraph 54 of the Constitution Bench in unequivocal terms has reiterated that those decisions which run counter to the principle settled in this decision or in which directions running counter to what the Constitution Bench held will not stand denuded of their status as precedents.

6.All such legal principles are settled by the Constitution Bench as well as by the High Courts across the country only with an idea to



preserve the equal opportunity clause in public employment to all the citizens. It is not as if, any person having an acquaintance with an officer of a department or a prominent person in the society can secure a temporary appointment and thereafter, get regularisation and such practice is not only unconstitutional, but results in committing a constitutional sin by depriving the rightful and meritorious candidates to secure public employment through open competitive process.

7.The Government also subsequently realised that such temporary engagements ought to be made on a need basis and on terms and conditions. Mere temporary engagements/appointments *per se* would not confer any right to an employee to seek regularisation. Pertinently, these employees accepting the terms and conditions of temporary/contractual/casual employment joined the Department, and after serving for some time, they cannot turn around and claim regularisation in violation of the terms and conditions agreed by them to serve as contractual/temporary/casual employees. Once the terms and conditions are accepted, it is binding on the parties and therefore, the length of services *per se* would not constitute a ground to seek



permanent absorption in the Department.

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8.In the present case, the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court has not been considered by the Writ Court, The very noble principle of equal opportunity in public employment is the mantra to be adopted by all Courts to ensure that every citizen from a remote, rural area of this country and the downtrodden are provided with an opportunity to secure public employment. Therefore, the colonial or patriarchal approach in engaging persons on temporary basis and grant regularisation must be dispensed with forthwith to uphold the constitutional mandates, values, philosophy and ethos.

9.In view of the facts and circumstances, the writ order dated 12.01.2024 made in WP No.14825 of 2021 is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected Miscellaneous Petition stands closed.

(S.M.S.,J.) (N.S.,J.)
28-07-2026



Index: Yes

Speaking order

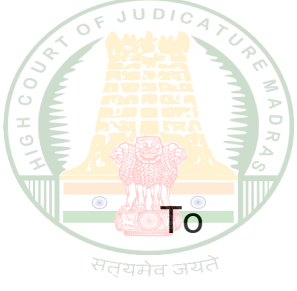
Neutral Citation: Yes

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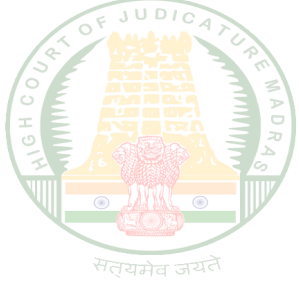
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