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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.04.2015

Pronounced on : 17.04.2015

CORAM

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.14 of 2015
and
M.P.No.1 of 2015

1. The State of Tamil Nadu,
rep. By its Principal Secretary to Government,
Labour and Employment (E2) Department,
Secretariat, Chennai - 9.
2. The Commissioner of Labour,
Teynampet, Chennai - 6.
3. The Inspector of Labour,
Tuticorin, Tuticorin District. ... Appellants/Respondents

Vs.

A.Velayutham ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 02.07.2012 made in W.P.No.11640 of 2012.

W.P.No.11640 of 2012 : Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records connected in G.O. Ms.No.187, Labour and Employment (E2) Department dated 17.09.2010 of the first respondent and quash the same in respect of the regularisation of the petitioner from the date of issuance of the Government Order in so far as the petitioner is concerned and directing the respondents to regularise the service of the petitioner in the post of Night Watchman from the date of completion of 10 years as given to others with all benefits.



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For Appellants : Mr.P.S.Siva Shanmuga Sundaram
Special Government Pleader

For Respondent : Mr.G.Elanchezhiyan

JUDGMENT

M.VENUGOPAL, J.

The Appellants have preferred the instant Writ Appeal as against the order dated 02.07.2012 in W.P.No.11640 of 2012 passed by the Writ Court.

2.The Writ Court, while passing the impugned order in W.P.No.11640 of 2012, on 02.07.2012, in paragraphs 6 & 7, has observed the following:

"6.It is relevant to note that the order in W.P.No.4859 of 2009 passed by T.S.S.J., was confirmed by the Division Bench of this Court in Writ Appeal No.1520 of 2010 on 25.10.2010 and in SLP.No.8231/2011 dated 12.05.2011 and it was also implemented in G.O.Ms.No.123 dated 17.08.2011. Pursuant to the same, this Court ordered regularisation from the date of appointment and the petitioner therein was granted regularisation from 1990 with arrears of pay on full time basis.

7.On perusal of the above referred orders, it is evident that persons similarly placed i.e., Part Time Sweepers employed in Government Schools were granted regularisation of their services on completion of 10 years of service by relaxing the rule whenever required in terms of G.O.Ms.NO.22, P&AR Department dated 28.02.2006 and they were paid arrears of full time salary. The Government having passed such an order has to be apply the same to all similarly placed persons without any discrimination."

and consequently, allowed the Writ Petition by setting aside the impugned order in G.O.Ms.No.187, Labour and Employment (E2) Department, dated 17.09.2010 of the 1st Respondent insofar as it restricts the regularisation of Petitioner's services from the date of the order and further directed the 1st Respondent to pass orders regularising the services of the Petitioner from the date of completion of 10 years of service with time scale of pay applicable at the relevant period and pay arrears of salary to him etc.



The Contentions of Appellants/Respondents:

3.The Learned Special Government Pleader for the Appellants/ Respondents submits that the order of the Writ Court is contrary to facts and law and therefore, the same is liable to be set aside.

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4.The Learned Special Government Pleader for the Appellants urges before this Court that the Writ Court had failed to consider that in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, the Government had only issued direction to the Departments of Secretariat to pursue action in regularising the services of daily wage employees working in all Government Departments who had rendered 10 years of service as on 01.01.2006 in consultation with the respective heads of Departments and wherever necessary in special cases wherein relaxation of rules is required proposal is to be sent to the Government.

5.The Learned Special Government Pleader for the Appellants contends that the Writ Court had omitted to consider that in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, the Government had not directed to regularise the services of the daily wage employees with effect from the date of completion of 10 years of service. Per contra, in the said Government order a direction was issued only to the Departments of Secretariat to consider the cases of daily wage employees and also to send proposal to the Government in case of relaxation of rules required.

6.On behalf of the Appellants, a plea is taken that the Writ Court had not taken into account of a very vital fact that where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rules 23(a)(ii) of the General Rule for the Tamil Nadu State and Subordinate Services mentioned in G.O.(Ms) No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 while superseding the G.O.(Ms) No.22, Personnel and Administrative Reforms Department, dated 28.02.2006.

7.The prime contention of the Appellants is that the regularisation of the Respondent/Petitioner from the date of completion of 10 years of service in daily wage basis could be made only by creation of supernumerary post and it would create heavy monetary loss to the Government because of the reason that the Respondent/Petitioner would claim pension and other benefits in future.

8.The other plea of the Appellants is that in fact the Government had taken a policy decision and modified the eligibility norms for the posts like Office Assistant, Watchman and imposed ban on all



kinds of recruitments in G.O.(Ms) No.666, Finance (Ze-bag) Department, dated 24.08.1992.

9.The Learned Special Government Pleader for the Appellants takes a categorical stand that the Writ Court had not considered the number of posts in the category of Office Assistant was found to be surplus in Labour Department and that the vacancies in the Tamil Nadu Basic Service, such as Office Assistant Watchman could not be filled up and therefore, the Respondent/Petitioner could not be considered for appointment in regular post.

10.Finally, it is the contention of the Learned Special Government Pleader for the Appellants that the Respondent/Petitioner could not seek appointment on permanent basis as a matter of right and it is the prerogative of the Government to decide whether to fill up vacancies in the Government Departments.

11.The Learned Special Government Pleader for the Appellants cites the Full Bench Decision of this Court in S.Dhanasekaran V. Government of Tamil Nadu reported in 2013 (6) CTC 593 (in which one of us, is a Member M.VENUGOPAL, J.) wherein it is observed that 'The Wisdom of Government to order regularisation from date of passing of Government Order regularising service is not arbitrary' and further held that 'The regularisation of sanitary workers covered under G.O.Ms.Nos. 101 and 71 were all governed by G.O.Ms.No.21 and their regularisation of service shall take effect only from 23.2.2006 and not from the date on which they had completed three years of service from the date of their initial entry into service.'

12.He also relies on the Division Bench Judgment of this Court in State of Tamil Nadu V. M.Seeniammal and others reported in 2014 (5) CTC 474, wherein it is observed that 'In the present case, Respondents' Writ Petitions seeking regularisation of service were allowed based on G.O.Ms.No.22, whereas on perusal it reveals that the said G.O.Ms. would apply only to full time daily rated employees appointed against sanctioned vacancies, who have completed 10 yeas of continuous service as on 1.1.2006.' Further, in the aforesaid decision at page 487, in paragraph 25, it is observed and held as under:

"25.Therefore, the State is entitled to succeed in all these Writ Appeals and Review Applications. However, we also wish to record the statement made by the learned Additional Advocate General to the effect that if Orders of regularisation have already been passed in respect of any of the individuals, those Orders



will not be recalled or cancelled, by virtue of the decision that we take in these batch of cases."

Respondent's Contentions:

13. Conversely, it is the submission of the Learned Counsel for the Respondent/Petitioner that the Respondent/Petitioner was initially appointed as 'Daily Wage Watchman' through the Employment Exchange in accordance with rules and further, he was posted in the office of Assistant Commissioner of Labour, Thenkasi 1st Circle on 26.08.1992 by means of an order of the Deputy Commissioner of Labour, Thirunelveli in A1/6994/92, dated 26.08.1992. Further, it is represented on behalf of the Respondent that the Respondent joined duty immediately in the existing vacancy in the said office and he was working continuously till 21.07.2008 and then he was transferred and posted in the office of the Inspector of Stamping, Tuticorin, Tuticorin District.

14. The grievance of the Respondent/Petitioner is that even after lapse of several years, the Appellants had not taken any steps to regularise his service in the said post or in the alternative post and further, the Government issued an order in G.O.Ms.No.528, P & AR Department dated 10.10.1988 in and by which instructions were issued to the Appointing Authority to regularise the daily rate service of the employee by appointing them in the vacancies arising in the same department by the same Appointing Authority. But the Appellants had not taken any action to regularise the Respondent/ Petitioner's service even after vacancies arose in terms of the aforesaid Government order.

15. The Learned Counsel for the Respondent brings it to the notice of this Court that the Respondent/Petitioner made a representation to the Appellants/Respondents to regularise his service in the existing vacancy as per the Government Order and after receiving the said representation, the Appellants had not passed any order.

16. The Learned Counsel for the Respondent contends that some of the Daily Wages Watchmen filed Original Applications before the Tamil Nadu Administrative Tribunal and obtained directions to consider their case for regularisation and passed orders on the same. However, after receipt of the Tribunal's Order, the Appellants had rejected their request for regularisation of their services by an order dated 29.10.2004, against which a Writ Petition was filed before this Court with a prayer to set aside the rejection order dated 29.10.2004 and to issue a direction to the Respondent in the Writ Petition to regularise their services in the respective posts. In fact, this



Court had admitted the said Writ Petition and ordered notice to the Respondents for filing counter affidavit. In the meanwhile, the Government issued G.O.Ms. No.22, P & AR Department, dated 28.02.2006 and issued instructions to all the Department that the Government had decided to regularise the service of the daily wage employees who had completed 10 years of service as on 01.01.2006 and also issued instructions to the Department to take action accordingly to regularise them so as to bring under the regular time scale of pay.

17.The Learned Counsel for the Respondent draws the attention of this Court that subsequently the Government issued an order in G.O.Ms.No.58, Labour and Employment (E2) Department, dated 21.05.2008, wherein the Appellants had brought 42 persons service under the time scale of pay and regularised 30 persons service in the post of night watchman from the date of issuing the Government order and also issued a direction to the authority to appoint the remaining 12 persons on time scale of pay and then sent a proposal to the Government for regularisation of service. Based on that, it is represented on behalf of the Respondent/Petitioner that the Respondent's service was regularised on 17.09.2010 as per G.O.Ms.No.187, Labour and Employment (E2) Department, dated 17.09.2010 with effect from the date of issuance of the Government Order.

18.The Learned Counsel for the Respondent submits that more than 15 persons aggrieved by the Government Orders filed W.P.Nos.27309 of 2010, 15775 to 15778 of 2010, 8183 and 8184 of 2011, 26411 to 26413 of 2009 and 8190, 8191 and 8192 of 2011 by challenging the regularisation order issued by the Appellants/ Respondents in G.O.Ms.No.58, Labour and Employment (E2) Department, dated 21.05.2008 and G.O.Ms.No.187, Labour and Employment (E2) Department dated 17.09.2010. Finally, this Court issued a direction to the Appellants/Respondents to regularise the service of the Petitioners in the Writ Petitions from the date of completion of 10 years of service with all benefits. In fact, the Appellants had complied with the order of this Court and regularised the service of 15 individuals and also granted benefits to them.

19.Therefore, it is the plea of the Respondent/Petitioner that based on the aforesaid decision of the Government, the Appellants in all fairness is to extend the benefits to other similarly placed persons. But insofar as the Respondent/Petitioner is concerned, the same was not followed and each employee was required to obtain order from the Court which amounts to discrimination and also violation of Article 14 and 16 of the Constitution of India.

20.According to the Learned Counsel for the Respondent/



Petitioner, since the Appellants had not extended the similar benefits to the Respondent/Petitioner, a representation was addressed by the Respondent/Petitioner requesting the Appellants to regularise his service from the date of completion of 10 years of service by extending the benefits granted to 15 individuals and since no reply was received, the Respondent/Petitioner was perforced to file the instant W.P.No.11640 of 2012 wherein the relief was sought to quash the order passed in G.O.Ms.No.187, Labour and Employment (E2) Department, dated 17.09.2010 pertaining to the regularisation of his service from the date of issuance of G.O. and also prayed for passing of a direction to the Appellants/Respondents to regularise his service in the post of Night Watchman from the date of completion of 10 years of service which was granted to others with all benefits. The said Writ Petition on 02.07.2012 was allowed by this Court whereby and whereunder the impugned order in G.O.Ms.No.187, Labour and Employment (E2) Department dated 17.09.2010 of the 1st Appellant/ 1st Respondent insofar as it restricts the regularisation of Respondent/ Petitioner's services from the date of order was set aside etc.

21.Later, the Respondent filed Contempt Petition No.2661 of 2013 before this Court and this Court had directed the Government Advocate to obtain instructions from the Government as regards the disobedience of this Court's order. This Court granted sufficient time to implement the order of this Court for more than one year and the Appellants had filed the present Writ Appeal with a condone delay petition by assailing the orders passed by the Writ Court.

22.At this juncture, the Learned Counsel for the Respondent contends that this Court passed a common order in W.A.Nos.2911 of 2012 etc. batch dated 10.07.2014 after following the order passed by the Hon'ble Supreme Court in State of Tamil Nadu V. Govindasamy, reported in 2014 (4) SCC 769 and also Division Bench order of this Court in W.A.(MD).No.1157 of 2014 etc. and in fact, the Hon'ble Supreme Court and this Court had decided the issue relating to the part time employees regularisation and nowhere it was discussed and decided about the full time regularisation pursuant to G.O.Ms.No.22, P & AR Department dated 28.02.2006 and G.O.Ms. No.74, P & AR Department dated 27.06.2013. As such, it is the emphatic submission of the Learned Counsel for the Respondent that the said decision and the order are not applicable to the facts of the present case, inasmuch as the Respondent/Petitioner was appointed in accordance with rules and in the existing vacancy.

23.In fact, the stand of the Respondent/Petitioner is that his



case is one of retrospective regularisation from the date of completion of 10 years of service as granted to other similarly placed individuals and as such, the present Writ Petition filed by the Appellants is to be dismissed in the interest of Justice.

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24.The Learned Counsel for the Respondent contends that when the Writ Court passed the impugned order on 02.07.2012 in W.P.No.11640 of 2012, the G.O.Ms.No.22, P & AR Department dated 28.02.2006 alone was in force and G.O.Ms.No.74, P & AR Department, dated 27.06.2013 was not in force. Moreover, the G.O.Ms.No.74, P & AR Department dated 27.06.2013 came into force with effect from 27.06.2013 and it could not be given retrospective effect by nullifying the judicial pronouncement which was passed based on G.O.Ms.No.22, P & AR Department, dated 28.02.2006 which was in existence. As such, it is contended on behalf of the Respondent/Petitioner that G.O.Ms.No.74, P & AR Department dated 27.06.2013 can operate only in future cases and it cannot be given effect to, to the past cases. Therefore, the impugned order issued in G.O.Ms.No.187, Labour and Employment, dated 17.09.2010 of the 1st Appellant/1st Respondent is liable to be set aside insofar as it restricts the regularisation of service of the Petitioner from the date of issuing Government order.

25.The Learned Counsel for the Respondent cites the decision of the Hon'ble Supreme Court in Union of India and others V. P.Jagdish and others, (1997) 3 Supreme Court Cases 176, wherein it is held as follows:

"The special pay of Rs.35 per month is attached to certain identified posts in the category of Senior Clerks and, therefore, only those who are posted against those identified posts can claim the said special pay. The respondents who had already been promoted to the higher category of Head Clerks cannot claim that special pay even on notional basis merely because their juniors in the cadre of Senior Clerks were given that special pay on being posted against those identified posts carrying the special pay."

26.He also relies on the decision of the Hon'ble Supreme Court in Maharaj Krishan Bhatt and another V. State of Jammu and Kashmir and others, (2008) 9 Supreme Court Cases 24, at special page 25, wherein it is held as follows:

"The Government ought to have accepted and respected the decision of the Single Judge without filing intra-court appeal. No distinguishing feature was brought to the notice



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of the Division Bench, nor did the Division Bench set aside the judgment of the Single Judge on the ground that the appellants' case was different from that of ARR. Even before the Supreme Court, nothing special or extraordinary fact or circumstance was shown to distinguish the case of ARR from the appellants' case. The Single Judge was therefore wholly justified in allowing the writ petition and the Division Bench ought not to have interfered with the said decision.

The respondent State is correct on the legal proposition that Articles 14 and 16 do not warrant that illegality should be perpetuated by extending wrong decision in other case, but this is not the case here. The decision given earlier in ARR's case could not be considered as illegality when this decision has been upheld by the Division Bench of the High Court and the Supreme Court. The Single Judge in the present case was right in following the earlier decision in ARR's case. Once the decision in ARR's case had attained finality, the State authorities ought to have gracefully accepted it by granting similar benefits to the present writ petitioners. The Division Bench in the present case ought to have dismissed the LPA."

27.Added further, the Learned Counsel for the Respondent refers to the decision of the Hon'ble Supreme Court in Ajmer Vidyut Vitran Nigam & others V. Navin Kumar Saini, 2010 (7) Supreme 361, at special page 366, wherein in paragraph 15, it is observed as follows:

"15.We are of the opinion that the case of the workmen ought to have been considered for regularisation as Lower Division Clerk when the case of other persons similarly situated were considered by the Selection Committee. Persons junior to the workmen have been given the regular pay scale of the post of Junior Clerk with effect from 1st April, 1982 whereas the workmen herein were appointed as Junior Clerks by order dated 26th June, 1984. They cannot be allowed to suffer only because they qualified in written examination and appointed as Junior Clerks by order dated 26th June, 1984."

28.That apart, the Learned Counsel for the Respondent cites the



decision of the Hon'ble Supreme Court in S.Thilagavathy V. State of Tamil Nadu and others, (2011) 6 Supreme Court Cases 365, at special page 368 wherein in paragraphs 13 to 15, it is observed and laid down as follows:

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"13. However, we have noticed that the learned Judges of the Division Bench have not dealt with the case of the appellant in so far as her appeal arising out of writ petition No 4318/97 is concerned, wherein the appellant had challenged her reinstatement on grade II post and had preferred the appeal clearly contending that she should have been reinstated on grade I post on which she initially claimed to have been appointed in the year 1986. But it appears that this plea has not been dealt with by the Division Bench at all, which amounts to non-consideration of the appeal directed against the order passed in writ petition No. 4318/97.

14. But, in the aforesaid circumstance, the appellant in our considered view ought to have taken steps in the High Court by way of a review petition before the Division Bench wherein it was open to the appellant to point out the error that her appeal arising out of writ petition No.4318/97 has not been dealt with at all one way or the other by the Division Bench and this was a factual error on the part of the Division Bench. Although it is quite possible to infer under the circumstance, that the Division Bench has impliedly dismissed the writ appeal arising out of writ petition No. 4318/97 by a non-speaking order, in view of the observation of the single Judge that the plea of the appellant on this count was an afterthought on the part of the appellant claiming reinstatement on grade I post, since she had discharged duties on grade II post for a long period of three years and thereafter by way of an afterthought, filed a writ petition challenging that her reinstatement on grade II post was illegal and arbitrary, yet it was necessary for the Division Bench to expressly state whether the appeal arising out of writ petition No.4318/97 was rejected.

15. However, since the learned Judges of the Division Bench have not passed any order in the



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writ appeal dealing with this plea of the appellant arising out of writ petition No. 4318/97, we leave it open to the appellant to approach the Division Bench by way of a review petition pointing out the error apparent on the face of the record to the effect that her appeal directed against the order in writ petition No.4318/97 has not been dealt with at all and has been dismissed without indicating any reason whatsoever. If a review petition to that effect is filed, the same shall be dealt with in accordance with law. Subject to this liberty, we dismiss this appeal but in the circumstance without any order as to costs."

29.Also, he relies on the decision in Ad hoc Committee V. K.S.Mohamed Nazar and others, (2009) 7 MLJ 817 at page 818, wherein it is observed as follows:

"What is reflected in a judgment is normally presumed to be a true and correct record of what transpired within the Court room. Therefore, a statement made in a judgment by a learned Judge that the parties consented to an order, cannot be allowed to be disputed except by way of a Review before the very same learned Judge. Therefore, even at the outset, Court rejects the contention of the learned senior counsel for the appellant that the appellant did not give consent to some of the directions contained in the order under Appeal. It is not possible for the Court, sitting on Appeal, to make an enquiry as to what are the directions to which the appellant gave consent and what are the directions to which he did not give consent. If the appellant had not given consent, as stated in the order of the learned Judge, for some of the directions contained in paragraph-9, the only course of action open to the appellant, is to go back before the same learned Judge and seek a Review."

Appellants' Reply:

30.The Learned Special Government Pleader for the Appellants contends that although the Respondent was appointed through Employment Exchange he was not appointed as per Special Rules of Tamil Nadu Basic Service. Further, the Government had imposed ban



order for appointment of Office Assistant for re-fixing the norms for the applicability of Office Assistant to ministerial staff and the Officer, more number of Office Assistant had become surplus. Hence, the appointment of regular watchman was also stopped. Therefore, the daily wages watchman could not be brought into regular watchman post as per the G.O.(Ms).No.528, Personnel and Administrative Reforms (F) Department, dated 10.10.1988. As such, the Respondent/ Petitioner was not considered for the regular post of watchman as per G.O.(Ms).No.528 as stated supra.

31.The Learned Special Government Pleader for the Appellants takes a plea that the G.O.(Ms)No.528, P & AR (F) Department dated 10.10.1988 was applicable to an individual appointed on or before 10.10.1988 but in the instant case, the Respondent/Petitioner was appointed on 24.08.1992. But the 2nd Appellant/2nd Respondent took action enabling the Government to take appropriate action and that the Government issued orders in G.O.(Ms).No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 to regularise the service of the daily wages employees, those who had completed 10 years of service as on 01.01.2006 so as to bring them under the regular time scale of pay. Based on that the services of the Respondent/Petitioner was regularised on 17.09.2010 as per G.O.(Ms).No.187, Labour and Employment Department, dated 17.09.2010.

32.The Learned Special Government Pleader for the Appellants comes out with a plea that although the Respondent/Petitioner was appointed initially from the Employment Exchange, he was not qualified for the post with regard to age, rule and rule of reservation (communal rotation) and therefore, necessary relaxation in Rules of Tamil Nadu Basic Service was obtained in his favour and there is no provision in G.O.(Ms).No.22, Personnel and Administrative Reforms (F) Department dated 28.02.2006 to grant retrospective regularisation in favour of the Respondent/Petitioner and also, the creation of post for the daily wages employees.

33.The Learned Special Government Pleader for the Appellants submits that retrospective regularisation order could not be issued as per existing G.O.(Ms).No.74, Personnel and Administrative Reforms Department, dated 27.06.2013 and furthermore, the Respondent/Petitioner had not challenged the said G.O.

Discussions:

34.There is no dispute as regards the fact that the Respondent/Petitioner was appointed initially through Employment Exchange as Daily Wage Watchman and he was posted to the Office of the Commissioner of Labour, Thenkasi 1st Circle on 26.08.1992 by virtue of



an order dated 26.08.1992 passed by the Deputy Commissioner of Labour, Tirunelveli. He joined duty in the existing vacancy based on the appointment order and was given the regular appointment on 22.07.2008, in terms of G.O.(Ms)No.187, Labour and Employment (E2) Department, dated 17.09.2010 from the date of issuance of the Government Order.

35.The real grievance of the Respondent/Petitioner is that he was not regularised by the Government from the date of completion of 10 years of service and as such, regularising him from the date of issuance of G.O.(Ms).No.187, Labour and Employment (E2) Department, dated 17.09.2010 is an invalid and illegal one. Repudiating the claim of the Respondent/Petitioner, the Appellants, in the present Appeal, takes a plea that the Government imposed a ban order for appointment of Office Assistant for refixing the norms for the applicability of the Office Assistant to Ministerial Staff and Officer and in fact, more number of Office Assistants had become surplus and also the appointment of regular Watchman was stopped and therefore, the Daily Wage Watchman could not be brought into regular Watchman post in terms of G.O.(Ms).No.528 P & AR (F) Department dated 10.10.1988.

36.Moreover, the Respondent/Petitioner was not considered the post of regular Watchman in terms of G.O.(Ms)No.528, P & AR Department as stated supra and in fact, the said G.O. applies to the person appointed on or before 10.10.1988, but in the instant case, the Respondent/Petitioner was appointed on 26.08.1992. Also that, the Government issued orders in G.O.(Ms) No.22, P & AR (F) Department dated 28.02.2006 to regularise the service of the daily wage employees, who had completed 10 years of service as on 01.01.2006 so as to bring them under the regular time scale of pay and based on that, the contention advanced on behalf of the Petitioner is that the services of the Petitioner was regularised on 17.09.2010 in terms of G.O.(Ms).No.187, Labour and Employment (E2) Department, dated 17.09.2010 with effect from the date of issuance of the Government Order.

37.At this stage, this Court pertinently points out that a perusal of the G.O.(Ms)No.187, Labour and Employment (E2) Department, dated 17.09.2010, inter alia, indicates that the Government had ordered to regularise the services of 5 Watchman (including the Respondent/Petitioner) who were working in the Factories Wing from the date of issuance of the order and further mentioned that the Tamil Nadu Basic Service Rules of Rule 48, Volume-I of the Service Rules Manual 1987, Part-II, Tamil Nadu Basic Service Rules, Rule 4 (a), 5(1) and 3A were relaxed and their services were regularised from the date of issue of this order by the Governor of Tamil Nadu.



38. Apart from that, a closer scrutiny of the aforesaid G.O.(Ms) No.187, Labour and Employment (E2) Department, dated 17.09.2010 points out to the fact that the post of Watchman comes under Special Rules for Tamil Nadu Basic Service and further, they should have been between 30 to 35 years of age and they should know to read and write in Tamil and they should fulfil the Rule of Reservation (Communal Rotation). Therefore, the Chief Inspector of Factories had requested the Government to issue necessary orders, in order to appoint the 5 Watchmen, (including the Respondent/Petitioner), relaxation of Rules to Rule 4(a), 5(1) and 3A of the Special Rules of Tamil Nadu Basic Service and to regularise their services from the date of joining in the Department of Inspectorate of Factories.

39. In this connection, one cannot ignore a vital fact that although the Respondent/Petitioner was appointed through Employment Exchange, he was not appointed as per the Rules as prescribed in the Special Rules for Tamil Nadu Basic Service. In fact, the Respondent/Petitioner's case was considered as per G.O.(Ms) No.22, P & AR Department, dated 28.02.2006 and he was given the appointment on time scale of payment from 22.07.2008. In reality, even though the Respondent/Petitioner was not qualified for the post of Daily Watchman, as regards the Age, Education, Rule and Rule of Reservation (communal rotation), relaxation in the Rules of Tamil Nadu Basic Service was obtained in his favour. Only with a view to regularise his service in terms of G.O.(Ms).No.22, P & AR Department dated 28.02.2006, the Government passed orders in G.O.(Ms).No.187, Labour and Employment (E2) Department, dated 17.09.2010.

40. At this stage, this Court cites the decision of the Hon'ble Supreme Court in Secretary to Government, School Education Department, Chennai V. R.Govindaswamy and others, (2014) 4 Supreme Court Cases 769 at special page 771, whereby and whereunder, in paragraph 8, it is observed as follows:

"8. This Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

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



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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.

(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 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



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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." (Emphasis added)"

41. In the decision of the Hon'ble Supreme Court in Secretary, State of Karnataka V. Umadevi and others, 2006 (4) SCC 1, at special page 37 & 38, in paragraphs 44 to 46, the Hon'ble Supreme Court had observed as follows:

"44. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated



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directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the



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exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad (supra), Piara Singh (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority



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affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn {See Lord Diplock in Council of Civil Service Unions V. Minister for the Civil Service (1985 Appeal Cases 374), National Buildings Construction Corp'n. Vs. S. Raghunathan, (1998 (7) SCC 66) and Dr. Chanchal Goyal Vs. State of Rajasthan (2003 (3) SCC 485)}. There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after the Dharwad decision. Though, there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim



based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected."

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42. At this juncture, this Court aptly points out that it could not be said that even on the ad hoc appointments they had the same legitimate expectation of getting a permanent job as if they had been issued normal letters for probationary service, as per decision of the Hon'ble Supreme Court in Central Inland Water Transport Corporation Limited and another V. Brojo Nath Ganguly and another, AIR 1986 Supreme Court 1571.

43. It may not be out of place for this Court to make a significant mention of the Hon'ble Supreme Court decision in K. Madalaimuthu and another V. State of Tamil Nadu and others, 2006 (6) Supreme Court Cases 558 at special page 601, wherein in paragraph 24, it is observed as follows:

"24. On a consideration on the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view appears to be the one canvassed on behalf of the Appellants. The decisions cited by Mr. Rao have been rendered in the context of Rule 10(a) (i)(1) and the other relevant rules, which are also applicable to the facts of the instant case. Apart from the above, the law is well settled that initial appointment to a post without recourse to the Rules of Recruitment is not an appointment to a service as contemplated under Rule 2(1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact, Rule 39(c) of the General Rules indicates that a person temporarily promoted in terms of Rule 39(a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the Rules. It stands to reason that a person, who is appointed temporarily to discharge the functions in a particular post without recourse to the Recruitment Rules, cannot be said to be in service till such time as his appointment is regularised. It, therefore, follows that it is only from the date on which his services are



regularised that such appointee can count his seniority in the cadre."

44. Further, this Court relevantly points out that it is the wisdom of the Government to grant regularisation from any date as per the decision of the Hon'ble Supreme Court in K. Madalaimuthu and another V. State of Tamil Nadu and others, 2006 (6) Supreme Court Cases 558. Only when the date fixed by the Government giving effect to regularisation is found to be an arbitrary and violative of the Article 14 of the Constitution of India, it can be said that the same is an illegal or unconstitutional one. As such, there is no discrimination and also the same is not against the tenets of Article 14 and 16 of the Constitution of India.

45. In fact, in the Full Bench decision of this Court in S. Dhanasekaran & 24 others v. Government of Tamil Nadu, rep. by its Secretary, Department of Municipal Administration and Water Supply, Fort St. George, Chennai and others, 2013 (6) CTC 593 (in which one of us is a Member, M. VENUGOPAL, J.), it is held that the Wisdom of the Government to order regularisation from the date of passing of the G.O. regularising service is not arbitrary. Further, it is laid down that the regularisation of sanitary workers covered under G.O. (Ms). No. 101 and 71 are all G.O. (Ms) No. 21 and the regularisation of service shall take effect from 23.01.2006 and not from the date of which they are completed three years of service from the date of their initial appointment into service.

46. Applying the ratio laid down by the Full Bench decision of this Court reported in 2013 (6) CTC 593 (cited supra), this Court comes to an inescapable and inevitable conclusion that the impugned order in G.O. (Ms) No. 187, Labour and Employment (E2) Department, dated 17.09.2010 insofar as it relates to the Respondent/Petitioner appointing him as Regular Watchman in the time scale of pay from the date of issuance of the order is a just, valid and proper one, in the eye of Law and the contrary view taken by the Writ Court, in allowing the Writ Petition by setting aside the impugned order in G.O. (Ms). No. 187, Labour and Employment (E2) Department, dated 17.09.2010 of the 1st Appellant/1st Respondent insofar as it restricts the regularisation of the Respondent/Petitioner's services from the date of order, is not a tenable one, in the eye of Law. As such, this Court interferes with the said order dated 02.07.2012 in W.P. No. 11640 of 2012 and sets aside the same. Consequently, the Writ Appeal succeeds.



47. In the result, the Writ Appeal is allowed, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The State of Tamil Nadu,
The Principal Secretary to Government,
Labour and Employment (E2) Department,
Secretariat, Chennai - 9.
2. The Commissioner of Labour,
Teynampet, Chennai - 6.
3. The Inspector of Labour,
Tuticorin,
Tuticorin District.

+1cc to Mr.G.Elanchezhian, Advocate, S.R.No.21009
+1cc to the Government Pleader, S.R.No.21417

W.A.No.14 of 2015

CNR(CO)
CA(24/04/2015)