

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.504 of 2015 and M.P. No.1 of 2015

- 1 The State of Tamil Nadu
represented by the Secretary to Government
Education Department
Fort St. George
Chennai 600 009
 - 2 The Director of School Education
(Higher Secondary)
Chennai 600 006
 - 3 The Chief Educational Officer
Krishnagiri, Krishnagiri District
 - 4 The District Educational Officer
Krishnagiri Appellants/Respondents
- Vs.
- 1 N. Munusamy
 - 2 G. Gurusamy
 - 3 R. Suresh
 - 4 M. Subramani
 - 5 T. Muniappan
 - 6 K. Mani
 - 7 B.M. Natarajan
 - 8 M. Paramasivam
 - 9 G. Malliga
 - 10 M. Munirathinam

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Writ Appeal preferred under Clause 15 of the Letters Patent as against the order dated 29.08.2012 passed in W.P. No.28884 of 2011.

Writ petition filed under Article 226 of the constitution of India for the issue of a writ of mandamus directing the respondents to regularize the service of the petitioners in the light of the orders passed by the 1st respondent in G.O.Ms.No.505 Finance (KaKa-2) Department dated 14.10.2009 and G.O.(2D).No.32 Finance (Ka.Ka.2) Department dated 26.03.2010 G.O.Ms.No.88 School Education (R1) Department dated 1.4.2010 and the order passed in W.A.No.1520/2010 dated 25.10.2010 with effect from the date of their initial appointment with all monetary and service benefits.

For appellants Mr. K. Karthikeyan
Government Advocate

For respondents Mr. C. Umashankar
for Mr. M. Selvam

JUDGMENT

(Judgment of the Court was delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-Court appeal is preferred calling in question, the legality, validity and propriety of the order dated 29.08.2012 passed in W.P. No.28884 of 2011.

2 For the sake of brevity, clarity and convenience, the parties are referred to as per their rank in the instant appeal.

3 The respondents, who were appointed as Sweepers/Sanitary Workers/Night Watchmen in the Education Department on daily wage basis, came up with the instant writ petition, being W.P. No.28884 of 2011, seeking a writ of mandamus to direct the appellants to regularise their services in the light of the orders passed by the first appellant in G.O. Ms.No.505, Finance (KaKa-2) Department dated 14.10.2009, G.O.(2D) No.32, Finance (Ka.Ka.2) Department dated 26.03.2010, G.O.Ms.No.88, School Education (R1) Department dated 01.04.2010 and the order dated 25.10.2010 passed in W.A.No.1520 of 2010, with effect from the date of their initial appointment, with all monetary and service benefits.

4 The learned Single Judge, relying on some earlier decisions rendered by this Court, disposed of the instant writ petition, directing the second appellant to regularise the services of the respondents on their completion of ten years of service, with time scale of pay and pass suitable orders for their regularisation. It was further directed by the learned Single Judge that the arrears of salary, payable to the respondents, pursuant to such

regularisation, shall also be paid within four weeks. Thereagainst, the State has preferred the instant writ appeal.

5 We have heard the learned counsel for the parties and perused the pleadings and documents appended thereto.

6 An identical issue came up for consideration in a batch of writ appeals and writ petitions, being W.A. Nos.2911 of 2012, etc. batch, wherein, the question of regularisation on completion of ten years of service in the light of several Government Orders, as referred to in the said cases, was involved.

7 This Court, relying on the decision of the Supreme Court in Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and others¹ which arose from this State, in respect of the same issue, by a common judgment dated 10.07.2014, allowed the appeals preferred by the State and dismissed the writ petitions preferred by the employees, holding that the employees are not entitled to regularisation, on completion of ten years.

8 At this juncture, it is worth mentioning that regularisation of service depends on several factors, i.e., availability of vacancies, suitability and also nature of employment as to whether it is legal or irregular. In the case on hand, the respondents were appointed only on daily wage basis and not against regular vacancies and as such, it was an error to hold that since they have been working in the respective post for more than ten years, they are entitled to regularisation after completion of ten years of service.

9 A Constitution Bench of the Supreme Court, in Secretary, State of Karnataka vs. Umadevi and Others², while dealing with the issue of regularisation of casual/temporary/daily wage employees, observed as under:

"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned 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 open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets.

1 (2014) 4 SCC 769

2 (2006) 4 SCC 1

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 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 succour 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."

10 In view of the foregoing, the impugned order dated 29.08.2012 passed in W.P. No.28884 of 2011 is liable to be set aside and it is accordingly set aside. However, on the request of the learned counsel for the respondents, liberty is reserved to the respondents to make a fresh representation to the authorities to consider their cases for regularisation, on merits and in accordance with law.

11 Resultantly, the writ appeal stands allowed with the above observation. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1 The Secretary to Government
Education Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009
 - 2 The Director of School Education
(Higher Secondary)
Chennai 600 006
 - 3 The Chief Educational Officer
Krishnagiri, Krishnagiri District
 - 4 The District Educational Officer
Krishnagiri
- +1 cc to Government Pleader, SR.21035
- +1 cc to Mr.M.Selvam Advocate, SR.21031.

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krd 28/4

W.A. No.504 of 2015

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