

IN THE HIGH COURT OF JUDICATURE AT MADRAS

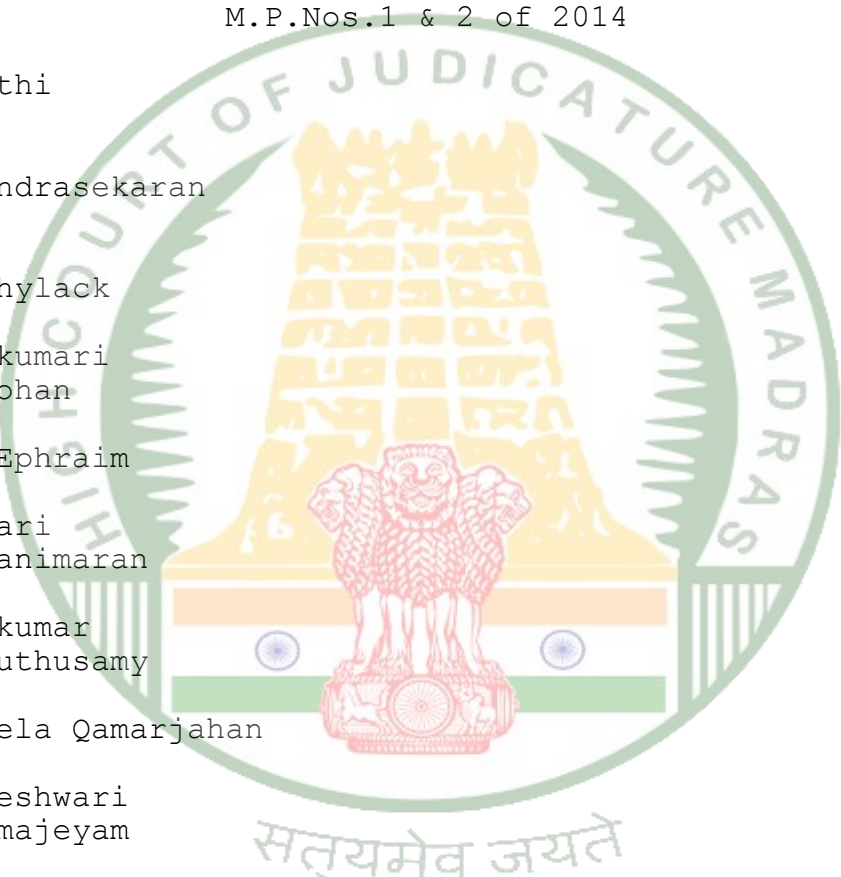
DATED : 28.09.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

W.P.No.13210 of 2014
and
M.P.Nos.1 & 2 of 2014

- 1.M.Banumathi
- 2.S.Santhi
W/o.Chandrasekaran
- 3.V.Chitra
W/o.A.Shylack
- 4.R.Vijayakumari
W/o.G.Mohan
- 5.A.Lazar Ephraim
- 6.V.Mageswari
W/o.K.Manimaran
- 7.M.Vijayakumar
S/o.K.Muthusamy
- 8.M.S.Jameela Qamarjahan
- 9.R.Mangaleshwari
D/o.Ramajeyam
- 10.H.Bhadrinath
S/o.J.Hanumantharao
- 11.C.Vasanthi
W/o.N.Chandra Sekar
- 12.E.Amutha
W/o.P.Sankar
- 13.M.Rathika
W/o.Nagarajan
- 14.B.Mangayarkarasi



WEB COPY

W/o.N.Muthukrishnan

15.K.Gandhimathi
W/o.Selvaraj

16.A.Bharath Kumar
S/o.S.Andivel

17.N.Jerina Begam
W/o.B.Kalim

.. Petitioners

vs.

1.State of Tamil Nadu,
represented by its Secretary,
Home (Courts) Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2.The Registrar General,
Madras High Court,
Chennai - 600 104.

3.The Principal District Judge,
Karur.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents 1 and 2 to consider and absorb the petitioners' services against any permanent vacancies as and when it arises in the Judicial Department of Karur District as per the Tamil Nadu Judicial Ministerial Service by framing a scheme on the lines approved by this Court in its judgment dated 10.06.2009 in W.P.No.9710 of 2009 and grant all other attendant benefits thereto or in the alternative to direct the respondents to consider and absorb the petitioners in the posts of Typist in the promotional vacancies, Examiners, Readers and Amins in direct recruit vacancy, xerox operator, record clerks, process servers or any other suitable post and till then not to terminate the petitioners' services.

For Petitioner : No appearance

For Respondents : Mr.P.Chinnadurai,
Government Advocate [R1]
No appearance [R2 & R3]

O R D E R

[Order of the Court was made by S.TAMILVANAN, J.]

Petitioners were temporarily appointed in different posts viz., junior assistant, typist etc. in the Courts of Karur District. Petitioners 1 to 3 have been appointed through Employment Exchange and petitioners 4 to 17 have been appointed through newspaper advertisement in keeping with Rule 16(a)(i) of Tamil Nadu Judicial Ministerial Service Rules. While so, an advertisement has been issued by the Tamil Nadu Public Service Commission inviting applications for regular recruitment to the posts of Junior Assistant, Steno-typist Gr.III, Typist and various other posts. The grievance of the petitioners is that in case of the posts are filled up by candidates, who are going to be selected by the State Public Service Commission, the petitioners would be ousted from service and further, the recruitment to the posts such as Typist in the promotional vacancies, Examiners, Readers and Amins in direct vacancy, Xerox Operators, Record Clerks and Process Services, are not through the Service Commission and hence, petitioners could be absorbed permanently in those posts. The relief claimed by petitioners, in short, is that they should not be terminated from service and that their service should be regularised.

2. The present writ petition found part of a batch of writ petitions (W.P.No.3498 of 2013 and batch) wherein status-quo was ordered to be maintained by this Court on 07.08.2014. While the batch of writ petitions have been dismissed under orders dated 27.11.2014, the present case alone stands posted before this Court.

3. Learned counsel for petitioner contended that the claim of petitioners is only for absorption and not for regularisation as that of the batch of writ petitions.

4. The order in W.P.No.3498 of 2013 and the batch of Writ Petitions dated 27.11.2014 in brief is thus:

In view of commonality of the issue involved in this batch of writ petitions, these writ petitions are being considered and decided by this common order.

2. These petitioners were appointed temporarily in different posts, viz., Typist/Steno Typist/Junior Assistant, etc. in their respective districts. While they were working as such, a proper selection was conducted by the Tamil Nadu Public Service Commission and regular incumbents were selected for appointment. The gist of the relief sought by the petitioners is that they should not be terminated from service and instead, their service in the Tamil Nadu Judicial Subordinate Service, should be regularised.

3. The identical issue came up for consideration

in this Court in S. Girija and 11 others vs. The Registrar General, Madras High Court, Chennai 600 104 and another (W.P. No.29656 of 2013). This Court, after having examined all aspects of the matter, by order dated 21.11.2014, dismissed the writ petition holding that the petitioners therein, appointed temporarily with a condition to be replaced by regular incumbents, have no right to continue in the post and also to be regularised in their respective posts. The operative portion of the said order reads thus:

"11. In view of the well settled provisions of law as discussed hereinabove and the factual matrix involved in the case on hand, no direction can be issued to regularise the services of the petitioners and continue them on the basis of their continuity of service in the past, after their appointment till date.

In view of the foregoing, the writ petition is dismissed. No costs."

4. However, the learned counsel for the petitioners brought to the notice of this Court, a decision of this Court in Judicial Temporary Employees Welfare Association and another vs. State of Tamil Nadu, represented by Secretary to Government, Home (Courts) Department, Secretariat, Chennai - 9 and 19 others (W.P. Nos.9710 of 2009 etc. batch), wherein, a Division Bench of this Court, by order dated 10.06.2009, observed that the State of Tamil Nadu should consider holding of a special examination for such employees. Thus, it is requested that direction similar to that might be issued to the Government for conducting a special examination for the petitioners herein.

5. We have examined the said submission. However, we are of the considered view that such a direction cannot be granted for more than one reason. Firstly, the petitioners, while working in the post on temporary basis, had an opportunity to participate in the examination conducted by the State Public Service Commission for appointment in the said post. Some of the candidates had appeared for the examination and also came out successfully. The petitioners, it appears, have not participated in the selection process. Secondly, the petitioners, while accepting the appointment on temporary basis, were conscious of the fact that their appointment was only till

regularly appointed incumbents are available. Thirdly, the petitioners' appointment was not in accordance with the Constitutional scheme of employment. Thus, it cannot be directed to conduct a separate examination for regularisation of the present employees.

6. However, to meet the ends of justice, we feel just and proper that in future, whenever selection takes place and the petitioners apply for the same post in which they are working, the Government may take into account, their work as temporary employees and grant reasonable age relaxation to them, to the extent of their service in the same post.

7. We also make it clear that if the petitioners make a representation to the employment exchange for maintaining seniority in the list, as on account of their appointment temporarily, their names have been struck off, the authorities will consider the same and restore their seniority in the list.

8. The writ petitions have been disposed of with the above observations and in terms of the order of this Court dated 21.11.2014 (supra). Connected Miscellaneous Petitions were closed.

5. We fully concur with the reasoning given therein and accordingly, we reject the claim of petitioners herein since the relief sought for is only for absorption and such a claim has not been upheld in decision of this Court in S.Saroja and others v. State of Tamil Nadu and others [2013 LAB. I.C. 90]. We find it proper to reproduce paragraph Nos.10 and 11 of such order:

"10. The learned counsel appearing for the petitioner would strenuously contend that a similar direction should be issued in these writ petitions to direct the State Government to pass appropriate orders for conducting a special competitive examination for the purpose of regularising the services of the petitioners.

11. We are unable to accept the contention raised by the learned counsel appearing for the petitioner for more than one reason. Firstly, all the petitioners were full aware that their appointment is purely temporary and their services were liable to be ousted after the regular candidates were selected and appointed by the TNPSC. Further in the decision of the Division Bench in W.P.No.9710 & 1018 of 2009, which we have referred to in the order dated 29.07.2010 in W.P.No.15191 of 2010 (quoted above), it

was observed that at the time when the temporary appointments were made, no merit list was prepared for selection and appointment and there was no record placed to suggest that the seniority was fixed by the concerned District Judge nor the selection was made following communal rotation. Further, it was observed that the concerned District Court has not followed the guideline of seniority either on the basis of registration of the candidates with the employment exchange or on the basis of age which is required to be followed in the normal course. In such circumstances, we are of the clear view that this Court cannot issue any direction to either absorb the petitioners in any vacant post or to regularise their services in view of the earlier orders passed by this Court and also taking note of the fact that all the petitioners were fully aware that their appointment was purely temporary and they were liable to be ousted as and when select list is published by the TNPSC after conducting regular recruitment. Therefore, the decision and the Government order relied on by the learned counsel appearing for the petitioner does not in any manner advance their case."

We are in agreement with such reasoning given in the aforesaid decision and in view of the same, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

- 1.The Secretary,
Home (Courts) Department,
Fort St.George, Secretariat,
Chennai - 600 009.
- 2.The Registrar General,
Madras High Court,
Chennai - 600 104.

WEB COPY

3.The Principal District Judge,
Karur.

4.The Section Officer,
Legal Cell,
High Court,
Madras-104.

+1cc to Mr.R.Sureshkumar, Advocate, S.R.No.52504
+1cc to M/S Row & Reddy, Advocate, S.R.No.52437
+1cc to the Government Pleader, S.R.No.52600

W.P.No.13210 of 2014

kk(CO)
srg(12/02/2016)



WEB COPY