

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.84 of 2016
and CMP.No.12508 of 2016

1. The Director of Public Health and Preventive Medicines
Chennai-6.
 - 2.The Director of Rural Development
Saidapet, Chennai-15
 - 3.The District Collector
Cuddalore
Cuddalore District
 - 4.The Panchayat Union Commissioner
Melbhuvanagiri Panchayat Union
Cuddalore District
- ...Appellant

Vs.

R.Ramamoorthy

...Respondent

Writ Appeal filed against the order passed in W.P.No.6849 of
2007 (T) (O.A.No.3597 of 2002) dated 05.03.2014.

For Appellant : Mr.P.S.Sivashanmugasundaram
Special Govt.Pleader

For Respondent : Mr.G.Elachcheizhian

JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Heard Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader for the appellants and Mr.G.Elanchezhian, learned counsel for the respondent.

2. This Writ Appeal is filed as against the order of the learned Single Judge passed in W.P.No.6849 of 2007 (T) (O.A.No.3597 of 2002) dated 05.03.2014.

3. In the Writ Petition filed by one R.Ramamoorthy seeking direction to the respondents to appoint him as Basic Service Personnel in any one of the regular vacancy on time scale of pay and regularise his service from the date of the first appointment and grant consequential benefits by considering his representation dated 04.07.2001, the learned Single Judge, issued a direction to the respondents/appellants herein to appoint the petitioner as Basic Service Personnel in any one of the regular vacancy on time scale of pay and thereafter to regularise his service. The learned Single Judge, further directed that the whole exercise shall be completed within a

period of 4 weeks from the said order.

4. Such a direction was issued by the learned Single Judge by pointing out that similar claim of the employees were considered by the Administrative Tribunal and High Court or the authority concerned, as the case may be, and disposed of in favour of the employees and they were appointed in the regular vacancy on time scale of pay and thereafter, regularised in the same post.

5. On a perusal of the said order passed by the learned Single Judge, we are of the considered view that the learned Single Judge had given the said direction by taking into consideration the fact that the employee's services were utilized by the respondent-department and as such some favour is shown to him.

6. The only contention of the learned counsel for the 1st respondent is that similarly placed employees, who approached this Court or Administrative Tribunal were regularised on the directions issued to the Departments concerned and they were absorbed into the service, however, the 1st respondent/Writ Petitioner, is only the left out person to get regularised.

7. The learned Special Government Pleader appearing for the appellants/State, drawn the attention of this court to Page No.21 of the typed set of papers filed along with this Writ Appeal and stated that the issue raised in this Writ Appeal is squarely covered by the judgment of the Honourable Supreme Court passed in ***Civil Appeal No.2726-2729 of 2014 (Arising out of SLP(C).Nos.5681-5684/2014) [Secretary to Government, School Education Department, Chennai, Vs. R.Govindaswamy & Ors]***.

8. The learned Special Government Pleader further assailed the order of the learned Single Judge by submitting that the Honourable Supreme Court in Civil Appeal No.2730-2731 of 2014 dated 21.02.2014 has allowed the appeals filed by the State by considering the scope of regularization of irregular or part time appointments in all possible eventualities and laid down well-settled principles.

9. We have perused the judgment of the Supreme Court in Civil Appeal No.2726-2729 of 2014 & Civil Appeal No.2730-2731 of 2014 dated 21.02.2014 and also considered the submissions made on

either side.

10. In ***State of Karnataka & Ors., V. Umadevi & Ors., AIR 2006 SC 1806***, the Supreme Court observed that the right to be treated equally with the other employees employed on daily wages cannot be extended to a claim for equal treatment with those who were regularly employed; that would be treating unequals as equals; it cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.

11. Notedly, the direction issued by the learned Single Judge is as against the settled principles laid down by the Supreme Court. However, we do not want to perpetuate the illegality. Even though if it is done by oversight, it could be only in the nature of extension of services of the petitioner or accommodating the petitioner in the service for the remaining years of service, in any other project done by the appellants herein. However, the appellants shall take into consideration the principles laid down by the Supreme Court in ***Umadevi's case*** as well as Civil Appeal No.2726-2729 of 2014 dated 21.02.2014. At the most, the case of the petitioner will be

accommodated at the daily wage basis and not beyond that, however, looking at any angle, regularising the 1st respondent in service may not be palatable.

12. In the backdrop of the above facts, it is pertinent to note that the Government by G.O. Ms. No. 22 Personnel & Administrative Reforms Department dated 28.02.2006, directed the regularisation of employees working in various Government Department on daily wages and who have put in more than 10 years of service as on 01.01.2006 provided they were qualified to hold the post. Paragraphs 1 and 2 of the G.O. reads as follows:-

"The Hon'ble Chief Minister had announced during the Tamil Nadu Government Officials Union and Government Servants and Teachers Associations General Conference held on 8.2.2006, that the services of employees working in various Government Departments on daily wage basis who have completed more than 10 years of service as on 1.1.2006 will be regularised.

2. Based on the announcement made by the Hon'ble Chief Minister on 8.2.2006, the Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 1.1.2006 be regularized by appointing them in the time scale of pay of the post in accordance with the service conditions

prescribed for the post concerned, subject to their being otherwise qualified for the post."

13. Hence, making it clear that there cannot be any indirect entry into the service except against the existing vacancy as on 01.01.2006. However, for such regularization also, the employees should have completed more than 10 years of service as on 1.1.2006. Further, the appellants should not forget the fact that the 1st respondent's service was utilized in the tough situations. Keeping in mind the useful service rendered by the 1st respondent/writ petitioner, the learned Single Judge, passed such a direction in the Writ Proceedings.

14. Considering the overall facts and circumstances of the case, we direct the appellants to consider and accommodate the 1st respondent/writ petitioner on the ongoing projects in order to help him to eke out his livelihood. In any case, aftermath the decisions of the Supreme Court, in cases viz., ***Secretary to Government, School Education Department, Chennai, Vs. R.Govindaswamy & Ors]*** and ***Umadevi's case (cited supra)***, we cannot canvass the appellants to regularise the service of the 1st respondent on the basis of the earlier service put up by him in the project schemes, which will

only have a devastating result as against the law laid down by the Apex Court.

15. In view of the above reasonings, we dispose of the Writ Appeal with the observation made in the preceding paragraphs. No costs. Consequently, connected CMP is closed.

(H.G.R., J.) (M.V.M., J.)

Index: Yes
nvsri

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