

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.13828 of 2015
and
M.P.No.1 of 2015
and
W.P.No.2686 of 2016

W.P.No.13828 of 2015:

1. Sajitha.T.- (WP Stands dismissed
as withdrawn in respt
of P-1 as per order dated
7.8.2015 in MP 1/15
in WP 13828/15)
 2. Minimal
 3. Anagha A.V.
 4. Shamna.M.
 5. Veena M.P.
 6. Deepthi Haridas
 7. Abhina K.K.
 8. Jeeshma M.K.
 9. Nidhina K.V. ... Petitioners
- vs
1. Union of India rep.by the
Chief Secretary to Government
Government of Puducherry
Chief Secretariat, Puducherry.
 2. The Under Secretary to Government
(Education), Government of Puducherry
Chief Secretariat, Puducherry.
 3. Director of School Education
Directorate of School Education
Government of Puducherry
Puducherry.
 4. Central Administrative Tribunal
Chennai Bench
rep.by its Registrar
Chennai 600 104. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records relating to O.A.No.1377 of 2013 dated 10.03.2015 passed by the fourth respondent and to allow the same.

W.P.No.2686 of 2016:

1. Minimal
2. Anagha A.V.
3. Shamna.M.
4. Veena M.P.
5. Abhina K.K.
6. Jeeshma M.K.
7. Nidhina K.V.

.. Petitioners

vs

1. Union of India rep.by the
Chief Secretary to Government
Government of Puducherry
Chief Secretariat, Puducherry.
2. The Under Secretary to Government
(Education), Government of Puducherry
Chief Secretariat, Puducherry.
3. Director of School Education
Directorate of School Education
Government of Puducherry
Puducherry.
4. Central Administrative Tribunal
Chennai Bench
rep.by its Registrar
Chennai 600 104.

5. Babitha.B.
6. Deesy Fernandez
7. Anima Pavithran
8. Dinsha.K.
9. P.T.Muhaseena
- 10.Amritha Purushothaman

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to OA No.1231 of 2013 dated 10.03.2015 passed by the fourth respondent Tribunal to allow the same.

For Petitioners : Mr.Sai Srijan Tayi for
in W.P.Nos.13828 M/s.Giridhar and Sai
of 2015 and 2686
of 2016

For Respondents : Mr.Syed Mustafa
1 to 3 in both Special Government Pleader
W.Ps. (Pondicherry)

In both W.Ps. R4- Tribunal
For RR5, 6,7, 9 and 10 No appearance
in W.P.No.2686 of 2016
R-8 Not ready

COMMON ORDER

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

Heard the learned counsel representing the petitioners and the learned Special Government Pleader representing the Union Territory of Puducherry.

2. The petitioners, aggrieved by the common order dated 10.03.2015 passed by the Central Administrative Tribunal, Madras Bench in O.A.Nos.1377 of 2013 and 1231 of 2013 have preferred these writ petitions seeking to quash the same.

3. The brief facts of the case is as follows:

(i) By Notification dated 23.07.2008, the Director of School Education, Union Territory of Puducherry invited applications from the residents of Puducherry for filling up the post of Primary School Teachers in Education Department. Accordingly, the petitioners herein applied for the same, but the same was not processed. According to them though certificate verification was conducted, selection list was not drawn. Subsequent thereto, yet another Notification dated 13.09.2010 was issued for appointment of candidates on contract basis and the petitioners herein were offered appointment on contract basis for the period upto 31.03.2011 vide Office Memorandum dated 10.01.2011 and their services were extended from time to time. When that being the position, to their shock and surprise, vide order dated 04.09.2013, the third respondent published the list of provisionally selected candidates in Mahe region pursuant to the Notification dated 23.07.2008 after a period of five years and the petitioners herein were issued with the termination order. Being

aggrieved by the same, the petitioners herein filed O.A.No.1231 of 2013 challenging their order of termination and seeking to regularize their services and the Tribunal also passed an interim order of status quo on 06.09.2013. In the meantime, one other Notification dated 05.09.2013 was issued inviting applications from candidates for filling up ten vacant posts of Primary School Teachers in Mahe Region. Challenging the same, the petitioners filed O.A.No.1377 of 2013.

(ii) The grievance of the petitioners is that when they are already serving as Primary School Teachers on contract basis the respondents ought to have regularized their services as has been done in the case of hourly paid lecturers, who were similarly placed as that of the petitioners. But the respondents without considering their case have invited fresh applications from the qualified candidates and selected them.

(iii) The official respondents have filed a reply statement stating that the petitioners were not selected through due process of selection and their engagement was purely a stop gap arrangement, which was not made in accordance with the rules and settled procedures of selection, but was made temporarily to meet an emergent situation. Therefore, they cannot claim any right. It was further contended that the Department of School Education issued fresh recruitment rules and issued the fresh Notification dated 05.09.2013 and the petitioners herein, if they are qualified, could also have competed in the proposed selection as per the fresh Notification for the ten vacant posts of Primary School Teachers in Mahe Region. They have also contended that the petitioners herein were not given any assurance that their services would be regularized and therefore, they cannot seek regularization as a matter of right.

(iv) The Tribunal after hearing the arguments advanced by respective parties, dismissed the applications filed by the petitioners by holding that the contractual employees have to give way for the regularly selected candidates since they have been appointed only as a stop gap arrangement and therefore, their services were terminated to accommodate the six candidates who have been selected through regular process of selection.

(v) Aggrieved by the said common order, these two writ petitions have been filed.

4. When the matter is taken up for hearing today, the learned counsel representing the first petitioner, viz.T.Sajitha in W.P.No.13828 of 2015 submitted that pursuant to the fresh Notification issued on 05.09.2013, she has participated in the interview and got selected for the post of Primary School Teacher. She was also issued with the appointment order dated 27.05.2015. In view of the same, this writ petition is dismissed as withdrawn insofar as the first petitioner is concerned, as has been recorded by this Court vide order dated 07.08.2015 in M.P.No.1 of 2015 in W.P.No.13828 of 2015.

5. We have perused the order passed by the Tribunal.

6. The Tribunal by referring to the judgment reported in AIR 2005 SC 2775 [Food Corporation of India vs. Bhanu Lodh] wherein the Apex Court has held that merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules, i.e., whether to fill up or not to fill up a post, is a policy decision and unless it is infected with the vice of arbitrariness, there is no scope for interference by means of judicial review. Further, it has also referred to the judgment reported in AIR 1991 SC 1612 [Shankarsan Dash vs. Union of India] wherein the Apex Court has held that even where vacancies exist, the State is under no legal duty to fill all or any of the vacancies earlier announced. The actual filling up or not of a vacancy is the prerogative of the Government. Yet another judgment reported in 1992 AIR SCW 2315 [State of Haryana vs. Piara Singh] was also referred to by the Tribunal to insist the legal position that whenever regular appointment is made, contract employee must give way to the regularly selected candidates.

7. By following the above said principles laid down by the Hon'ble Apex Court, the Tribunal has rejected the prayer of the petitioners.

8. At this juncture, it will be useful to refer to the decision rendered in this regard by the Hon'ble Apex Court in the case of Secretary, State of Karnataka & Ors. vs. Umadevi and Ors reported in AIR 2006 SUPREME COURT 1806, wherein, the Hon'ble Apex Court in paragraph No.43 has held as follows:-

"43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its

instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College [(1962) Supp 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent".

9. The Hon'ble Supreme Court in Umadevi's case, (supra), while discouraging the back door entry into service, has laid a cut off date and held that if the employees have continued to work for ten years or more but without the interruption of any order of Courts or Tribunals, those cases alone could be considered and not others. The Hon'ble Apex Court had put a cap on the appointment on the basis of back door entry, by way of absorption, by fixing the cut off date to those persons who have worked for more than 10 years or more from their date of entry into service either by way of back door entry or not.

10. In the case on hand, although the petitioners were appointed on contractual basis, in view of the ratio laid down by the Hon'ble Apex Court in Uma Devi's case [supra] they cannot seek regularisation as has been done in the case of hourly paid lecturers. Further, they have been selected only on contract basis to fill up the stop gap arrangement and that their services were extended from time to time. However, they have not been absorbed while regular vacancies arose. According to them they have put in three to four years of continuous service at the time they were terminated.

11. In view of the ratio laid down by the Hon'ble Apex Court in the cases cited supra, we are of the view that the stand taken by the respondents that there is a policy decision

and therefore, the petitioners services could not be regularised cannot be found fault with in the facts and circumstances of the case. However, taking into account the fact that the petitioners herein have worked on contractual basis for three to four years continuously at the time they were terminated from the service, if any future vacancies arise and pursuant to the said vacancies, if any notification is issued, and that if the petitioners apply for the same and found successful, due weightage may be given for the services rendered by them as contractual employees in the selection process.

12. In the result, while confirming the order passed by the Central Administrative Tribunal, these writ petitions are disposed of with the above said observations.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary to Government,
Union of India ,
Government of Puducherry,
Chief Secretariat, Puducherry.
2. The Under Secretary to Government,
(Education), Government of Puducherry,
Chief Secretariat, Puducherry.
3. Director of School Education,
Directorate of School Education,
Government of Puducherry,
Puducherry.
4. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai 600 104.

+1cc to the Government Pleader SR.27123
+1cc to M/S Giridhar & Sai, Advocate sr.27335

W.P.Nos.2686 of 2016 and 13828 of 2015

rsy[co]
srg 02/06/2016