

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :02.09.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.29549 of 2011 and M.P.No.1 of 2011

R.Sivagami

..Petitioner

-Vs-

The Commissioner,
Arni Municipality,
Arni

..Respondent

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records connected with the Letter No.Na.Ka.No.1696/201/C1 dated 18.07.2011 of the respondent and to quash the same and direct the respondent to give employment to the petitioner based on her representation dated 02.03.2011.

For Petitioner : Mr.Karthikeyan, Senior Counsel
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

This Writ Petition has been filed seeking for issuance of Writ of Certiorarified Mandamus to call for the records connected with the Letter No.Na.Ka.No.1696/201/C1 dated 18.07.2011 of the respondent and to quash the same and direct the respondent to give employment to the petitioner based on her representation dated 02.03.2011.

2. According to the petitioner, she has been appointed on temporary basis in the post of Data entry Operator in the year 2005. The petitioner has been in continuous employment for four (4) years and has been paid daily wages by the respondent by way of vouchers. When the petitioner sought for permanency against a vacant post through several representations, the respondent failed to consider the same and hence the petitioner earlier approached this Court by way of Writ Petition No.9284 of 2011, wherein the respondents therein were directed to consider the

representation of the petitioner dated 02.03.2011. Thereafter, the respondent herein passed a impugned order dated 18.07.2011, rejecting the request of the petitioner, against which, the present Writ Petition has been filed.

3. The learned Senior Counsel for the petitioner attacked the impugned order mainly on the ground that the person, who is asked to continue in the post though as temporary employee, by the order of resolution passed by the municipality, definitely that would amount to employment. The petitioner's continuous posting as Data entry Operator in the Municipality was time and again extended by the Municipality by a proper resolution. Now, the contention of the respondent that the resolution was passed only to incur expenditure, cannot be accepted. He would further submit that here is the case where the right of the staff, who has been employed for the purpose of data entry from the year 2005 to 2010, five long years continuously has been affected and when the petitioner sought to be regularised, her request was rejected only on the ground that it is not regularised post or sanctioned post.

4. The learned Senior counsel would further contend that this Court in a similar circumstances, had decided that in case of temporary appointment, at the time of regularising their posts, such employees should be considered for permanent employment. He also by relying upon my latest Judgment dated 08.08.2016 in W.P.No.24823 of 2015 sought for similar relief in this writ petition on the ground that this Court following the earlier order passed in W.P.Nos.3571, 3572 and 5975 of 2009 dated 25.11.2010 and also in the light of G.O.Ms.Nos.139 and 105 dated 28.09.2013 and 26.02.2013 respectively had allowed the said writ petition. In fact, he would also rely upon the Judgment of the Hon'ble Supreme Court in the case of State of Karnataka and Others Vs. M.L.Kesari and others reported in (2010) 9 Supreme Court Cases 247. The learned Senior counsel further contends that when the Municipality has passed a resolution continuing the employment of the petitioner and also paid her daily wages from and out of the funds, passing the impugned order stating that the appointment of the petitioner is temporary, is legally incorrect. Accordingly, he would pray for setting aside the impugned order.

4. Per contra, the learned Additional Government Pleader by relying upon the counter affidavit filed, would submit that the appointment of the petitioner is absolutely on a temporary basis and what was incurred towards expenditure is only for paying daily wages to the petitioner. The petitioner is only a Data entry operator and that she is not an employee through

employment exchange and she is purely appointed on a temporary basis and that by itself would not enure to the benefit of getting regularisation in her post. Accordingly, he prays that the impugned order passed by the respondent is correct and it does not require any interference at the hands of this Court.

5. Heard both sides and perused the materials available on record.

6. The petitioner, who is a lady and physically handicapped has been appointed continuously for 5 years, as Data Entry Operator in the Municipality, has not been given regularisation only on the ground that it is not a regular post. Whereas the petitioner would contend that the resolution has been duly passed by the Municipality, which is also admitted in the counter and the impugned order. However, the resolution pertains to the payment. Initially the petitioner was paid payment of Rs.2,500/- per month and thereafter, it has been increased upto Rs.7,500/-, which is below the minimum statutory level passed by the respondent. The contention raised in the counter that resolution is pertaining to the payment, cannot be accepted for the reason, every year continuously the petitioner was employed.

7. In this connection, it is worthwhile to refer Paragraph Nos.12 to 15 from my Order dated 08.08.2016 in W.P.No.24823 of 2015 (M.Sekar and others Vs. The State of Tamilnadu, rep. By its Secretary to Government, Rural Development and Panchayat Raj (CGS.3) Department, Fort St. George, Chennai - 600 009 and others), where I have followed the Judgment of the Hon'ble Supreme Court reported in 2000 (4) SCC 186, Council of Scientific and Industrial Research Vs. Dr.Ajay Kumar Jain. Therefore, such a plea have to be necessarily considered.

"12. In the above context, I have to say that, I myself had an occasion to deal with a similar circumstances in respect of two persons, viz., M.Selvaraj and Umayal, who are employed for the Livelihood Project on consolidated pay, in Dharmapuri District, controlled by Rural Development through DRDA, funds allotted by Government of India, their services were not regularized and hence, they have filed W.P.Nos. 3571, 3572 and 5975 of 2009, seeking to direct the Government to bring them into regular establishment with time scale of pay. In the said Writ Petitions in W.P.Nos. 3571, 3572 and 5975 of 2009, by order dated 25.11.2010, in paragraph Nos.18, 19, 20, 25 and 26, I have held as follows:-

"18. From these proceedings, it is clear that the petitioners have been employed as Field Officers from 1985 or 1986, as the case may be, only with the concurrence and knowledge of the successive District Collectors and other officers. But it is rather unfortunate that the petitioners service has been exploited and for all these years, they were made to work for a paltry and meager amount of Rs.1,000/- per month. The petitioners have not even been paid the minimum wages all these years. Curiously, now, in the counter affidavit, the third respondent would contend that the petitioners original appointment itself are illegal and that after 1993, they were allowed to work without any orders. It was further contend that the performance of the petitioner in WP No. 3571 of 2009 is far from satisfactory. In fact, in the order dated 30.04.2008 relieving the petitioners to take charge as Field Officers in the Ponvizha Grama Suya Valai Vaippu Thittam, nothing has been stated regarding their irregular appointment or that they were working without any orders or sanction from the Government. Contra, the District Collectors and other officers have recommended that the petitioners should be brought into regular time scale of pay and also issued certificates of appreciation in their favour for their work. While so, by a memo dated 09.02.2009 of the District Collector, Dharmapuri, the petitioner in WP No. 3571 of 2009 was sought to be terminated from his long length of service, which is unwarranted besides legally not sustainable. Only in that memo dated 09.02.2009, for the first time, certain deficiencies were allegedly pointed out in the service rendered by the petitioner K. Selvarasu. Whereas, in the earlier occasion, the District Collector of Dharmapuri District has given certificate in favour of the petitioners.

19. It is seen from the proceedings dated 20.10.2008 of the District Collector, Dharmapuri that wages are being paid to the petitioners from the contingency fund for labourers under various categories. From that proceedings, it is seen that skilled labourers such as Carpenter, mason, Tailor etc., are paid Rs.155/- per day; unskilled labourers such as Head Mazdoor are paid Rs.105/- per day and other skilled menials such as Sweeper, Watchman etc., are paid R.100/- per day. Whereas,

the petitioners who are highly qualified are being paid Rs.1,000/- per month as consolidated pay for the past more than 23 years. In spite of various proposals and recommendations made to bring them under time scale of pay, nothing could be done due to the inaction on the part of the Government. In fact, one of the petitioners Selvaraj is a Master Graduate having completed M.A., B.L., and the other petitioner Umayal had completed her graduation.

20. In this connection, the learned counsel for the petitioners relied on the decision of the Division Bench of this Court in WP Nos. 25490 to 25493 of 2002 etc., batch dated 25.08.2006 wherein in para Nos. 14, 15, 16 and 17, it was held as follows:-

"14. A reading of the above, it is clear that the issue in regard to regularising the service of the staff engaged in HRRCs as well as other research Projects of the ICMR has been under consideration with the Union Ministry of Health & F.W. even since 2000. It is very deplorable that even after years also, no effective steps were taken to regularise the services of the respondents/ employees. Even on this day also, when the matter is taken up, the learned standing counsel for the petitioners brought to the notice of this Court the letter, dated 18.08.2000 said to have been sent by the ICMR stating that the said issue of regularisation is still under consideration with the Ministry of Health and Family Welfare. Therefore, having regard to all these aspects, we agree with the view taken by the Tribunal that the services of the respondents/employees have to be regularised.

15. The learned senior counsel appearing for the respondents/employees, by relying upon the Judgment of the Division Bench of this Court reported in 2005-II LLJ (cited supra) wherein also the appellant is ICMR, submitted that if a person is continued in a post for more than certain limited period, he is entitled to regularisation from the date of his initial appointment and therefore, the services of the respondents/employees ought to have been regularised from the date of their respective initial appointments. In similar facts of the present case, the Division Bench of this Court has

held in para 28 and 29 as under:-

"28. In service jurisprudence, no post can be treated permanently as temporary. Temporary means only for a certain period. When a post being held by a person continues to be held for more than a certain limited period, it cannot be said that it is a temporary post. Such continuance, in a certain post, automatically takes away the character of temporary post and takes the character of permanent.

29. Even the project or department or whatever the name be, can function on yearly renewal basis, but the services of the persons working in such project or any other departments cannot be kept as temporary for more than a certain limited period. Because the renewal of the project or departments on yearly basis would not affect its functions and objectives, whereas, the services of the person working in such project or departments are not regularised, if they are working for more than certain limited period, which would not only affect their career but also their entire life.

16. While holding so, the Division Bench has ultimately held that the services of the first respondent therein, have to be regularised from the date of her initial appointment.....

17. Therefore, applying the above ratio to the facts of the present case, we are of the view that the services of the respondents/employees have to be regularised from the date of their respective initial appointments. Accordingly, to that extent, we modify the order of the Tribunal."

...

25. The learned Government Advocate appearing for the respondents would now contend that in the decision of the Honourable Supreme Court reported in (State of Karnataka Vs. Uma Devi) (2006) 4 SCC 1, it was held that contract employees are not eligible to seek permanent absorption. This is not a case where the appointment of the petitioners are illegal or improper. From the beginning, the petitioners were appointed and working as Field Officers by the Project Officer under UNICER scheme on a day to day basis and thereafter, they were brought into regular establishment under the IRDP programme and they continued to work there. Every time when the District Collectors or other officers recommended

the case of the petitioners for bringing them into regular time scale of pay, it was simply kept on file without any orders being passed. Under those circumstances, the argument of the learned Government Advocate for the respondents, relying on Uma Devi's case, is not legally sustainable.

26. In view of the factual findings rendered above, the respondents are directed to consider the claim of the petitioners for bringing them into regular time scale of pay and pass orders on merits and in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order. Accordingly, WP Nos. 3571 and 3572 of 2010 are allowed."

13. In the order in W.P.Nos.3571, 3572 and 5975 of 2009, dated 25.11.2010 (cited supra), I have referred to a Division Bench judgment, wherein, it was observed that when a post being held by a person continues to be held for more than a certain limited period, it cannot be said that it is a temporary post. Such continuance, in a certain post, automatically takes away the character of temporary post and takes the character of permanent and ultimately, I directed the respondents therein to pass orders considering the claim of the petitioners for bringing them into regular time scale of pay within a time frame.

14. It is pertinent to note that pursuant to my order in the Writ Petitions in W.P.Nos.3571, 3572 and 5975 of 2009, dated 25.11.2010, in Dharmapuri District, the services of two persons viz., M.Selvaraj and Umayal, were regularized. It is worthwhile to note that in Kattidamaiyam/ Building Centre and Tsunami Centre, similar set of people, who are employed for the Livelihood Project on consolidated pay for quite a long number of years, controlled by Rural Development through DRDA, funds allotted by Government of India, services were regularized, without even the intervention of this Court by virtue of G.O.Ms.No.139, dated 28.09.2013 and G.O.Ms.No.105, dated 26.02.2016 respectively. Infact, Tsunami Centre office was started in the year 2005 and the service of the persons, who are employed there for the Livelihood Project on consolidated pay, have been regularized immediately on completion of ten years of service, whereas, the petitioners, who have been continuously working for nearly 20 years, without any break, till date were paid only on consolidated pay basis, and they

were not given the benefit of regularization. The petitioners were paid on consolidated basis at the rate as under:-

S. No.	Details of Salary Enhancement	Mr.M.Sekar Rc.No.144/B/95	Mr.N.Rajagopal Rc.No.306/B/95	Mrs.S.Sarojini Sheela Rc.No.144/B/95	Mr.S.Anthonysamy Rc.No.6/B/95
1.	As per Chairman/Collector Note order	Designated as store keeper	Daily wage per day Rs.35 (w.e.f. 4.4.95) designated as Accountant	Daily wages Rs.30/- per day (w.e.f. 2.1.95) Designated as Junior Assistant-cum-Typist	Rs.750/- p.m. w.e.f. 10.3.95 Designated as Night watchman redesignated as OA from 2.8.95.
2.	As per Chairman/Collector Note order	Rs.1500/- (w.e.f. 27.6.95)	Rs.1500/- (w.e.f. 1.1.96)	Rs.1500/- (w.e.f. 18.4.95)	Rs.750/- (w.e.f. 10.3.95)
3.	As per Chairman/Collector Note order	Rs.2000/- (w.e.f. 18.3.96) Redesignated as Marketing Officer	Rs.2000/- (w.e.f. 1.4.2000) Redesignated as Marketing Officer II	Rs.1750/- (w.e.f. 1.10.2000) Redesignated as Accountant	Rs.1600 (w.e.f. 1.4.98)
4.	GB Meeting on 30.5.2002 as per Resolution No.9	Rs.3000/-	Rs.3000/-	Rs.2250/-	Rs.1500/-
5.	EC Meeting on 30.3.2007 as per Resolution No.5	Rs.5000/-	Rs.5000/-	Rs.4500/-	Rs.3000/-

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6.	EC Meeting on 14.02.2011 as per Resolution No.3	Rs.12000/-	Rs.12000/-	Rs.9000/-	Rs.5000/-

15. Having regard to all the above, firstly, I have to state that the impugned order, dated 07.07.2015, is liable to be set aside, as in the impugned order no specific reason has been assigned by the 1st respondent, viz., Government, for rejecting the claim of the petitioners for regularization. Secondly, I have to state that the 1st respondent has not taken into consideration that the petitioners have been working continuously for nearly 20 years, without any break, till date, under various funds allotted by the Government of India or otherwise. But, the admitted fact remains that the petitioners have been continuously working for nearly 20 years, without any break, and till date, they are continuing in service. Thirdly, I have to state that even after the impugned order was passed by the 1st respondent, on 07.07.2015, rejecting the claim of the petitioners for regularization, the fact remains that the petitioners were not terminated from service or relieved from service and they were allowed to continue in service till date, on consolidated pay basis, and therefore also, the order passed by the 1st respondent is liable to be set aside."

8. In this case, the petitioner is physically handicapped and as per decision of Hon'ble Supreme Court reported in (2010) 9 Supreme Court Cases 247 in the case of State of Karnataka and Others Vs. M.L.Kesari and others, initially if the appointment is valid, they can be considered. Here the petitioner's appointment is absolutely accorded by the Municipality through the resolution. Hence the impugned order is set aside and the matter is remanded back to the authority concerned. Since the petitioner has been worked continuously for a period of 5 years, the authority is directed to sympathetically consider the case of the petitioner for regular appointment in the light of orders referred to above, as expeditiously as possible or provide any

other alternate employment suitable for her.

With the above observation, the Writ Petition is allowed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssd

To

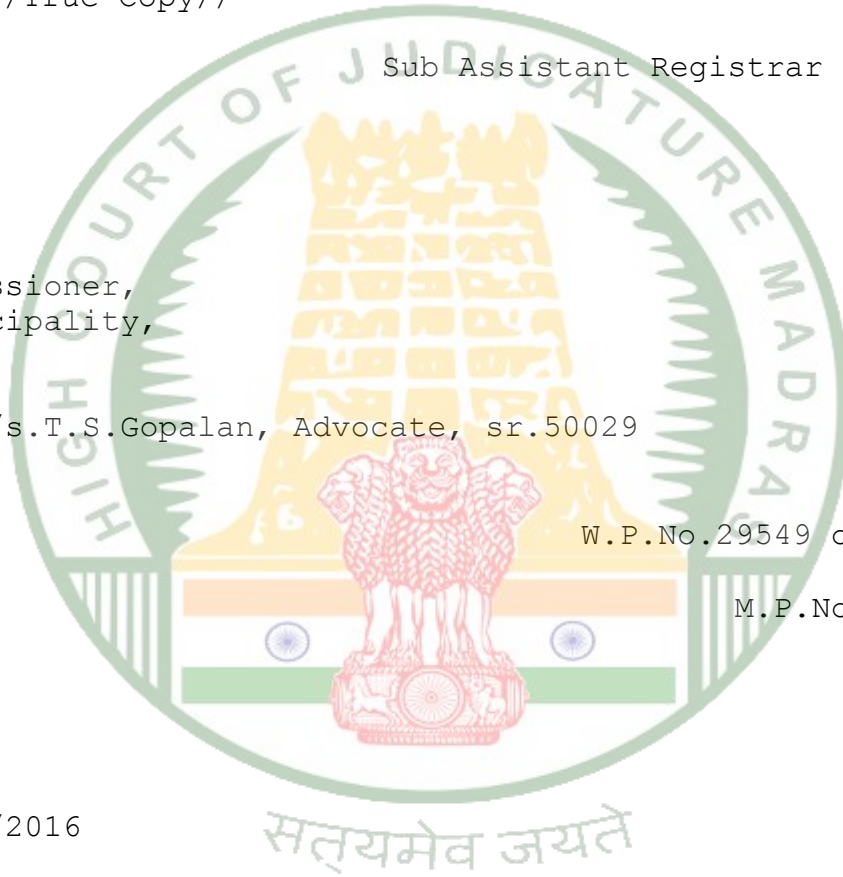
The Commissioner,
Arni Municipality,
Arni

1 cc to M/s.T.S.Gopalan, Advocate, sr.50029

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