

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.04.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.A. NO. 821 OF 2013

AND

M.P. NO. 1 OF 2013

1. The State of Tamil Nadu
rep. by its Secretary
School Education Department
Fort St. George, Chennai 600 006.
2. The Director of School Education
Thousand Lights, Chennai 600 006.
3. The Chief Educational Officer
Nagercoil, Kanyakumari Dt.
4. The District Educational Officer
Kuzhithurai, Marthandam
Kanyakumari District. ... Appellants/Respondents 1 to 4

- Vs -

1. D.Vijaya Raj
2. The Headmaster
Devaswom High School
Kuzhithurai, Kanyakumari Dt. .. Respondents/Petitioner 5th
Respondent

Appeal filed under Clause 15 of the Letters Patent, against the order of the learned Single Judge of this Court in W.P. (MD) No25935 of 2011 dated 21.08.2012, Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 4 to provide employment to the petitioner as a full time scavenger with the 5th respondent school on regular basis with effect from 11.12.1998 and pay all the backwages and other attendant and consequential benefits.

For Appellants : Mr. R.Ravichandran, AGP

For Respondents : Mr. E.Martin Jayakumar for R-1

JUDGMENT

(DELIVERED BY HULUVADI G.RAMESH, J.)

Heard the learned Addl. Government Pleader appearing for the appellants and the learned counsel appearing for the 1st respondent.

2. Learned single Judge, by impugned order dated 21.8.2012, while allowing the writ petition, directed the respondents/appellants herein to regularise the services of the petitioner as sanitary worker/water supplier on completion of ten years service as part-time worker from 1.10.83 and to pay time scale of pay and other benefits from 1.10.1983. Aggrieved by the said order, the present appeal has been filed by the appellants.

3. When the matter was taken up, learned Addl. Government Pleader, brought to the notice of this Court the judgment of the Apex Court in Civil Appeal No.2730-2732/2014 dated 21.02.2014 (Secretary to Government, School Education Department, Chennai - Vs - R.Govindasamy & Ors.). In para-7 of the abovesaid judgment, the Supreme Court, relying upon the judgment in State of Rajasthan & Ors. - Vs - Daya Lal & Ors. (AIR 2011 SC 1193), while considering the scope of regularisation of irregular or part-time appointments, held as under:-

"7. This Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The

equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim

parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute." (Emphasis added)

4. It is submitted by the learned Addl. Government Pleader that since the 1st respondent was working as a part-time worker, he cannot be considered for regularisation or permanent absorption unless he has been appointed through a regular recruitment and, therefore, the order passed by the learned single Judge deserves to be set aside.

5. It is trite law that no person working as a part-time worker in a non-sanctioned post, not having been recruited through regular recruitment, can be absorbed against a sanctioned post. The Supreme Court in Govindasamy's case (supra) has reiterated the said law, which has been laid down in Daya Lal's case (supra). In the case on hand, it is evident from the record that the 1st respondent herein was appointed against a sanctioned part-time post on temporary basis. However, no right will accrue on the 1st respondent to seek regularisation or permanent continuance or absorption against a sanctioned full time post. In such view of the matter, the order passed by the learned single Judge cannot be sustained.

6. However, it is brought to the notice of the Court that the 1st respondent has been regularised as part-time worker against the said sanctioned part-time post. In such view of the matter, this Court is of the considered opinion that while setting aside the order of the learned single Judge regularising the service of the 1st respondent herein, the appellant/authorities may be directed not to terminate the services of the 1st respondent herein, except according to law if it so warrants, who has been appointed as part-time scavenger against a sanctioned part-time post.

7. Accordingly, the order passed by the learned single Judge directing regularisation of the services of the 1st respondent is set aside and this writ appeal is disposed of directing the appellant/authorities not to terminate the services of the 1st respondent herein, who has been appointed as part-time scavenger against a sanctioned part-time post. Further, it is made clear that if the Department takes a decision to absorb the 1st respondent herein on the basis of any policy decision, having regard to the past services rendered by the 1st respondent herein, there may not be any impediment for the Department to

consider absorption of the 1st respondent on regular basis against any sanctioned post. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary
School Education Department
Government of Tamil Nadu
Fort St. George, Chennai 600 006.
2. The Director of School Education
Thousand Lights, Chennai 600 006.
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4. The District Educational Officer
Kuzhithurai, Marthandam
Kanyakumari District.
5. The Headmaster
Devaswom High School
Kuzhithurai, Kanyakumari Dt.

+1cc to Mr.E.Martin Jayakumar, Advocate, S.R.No.23705
+1cc to the Government Pleader, S.R.No.23475

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