

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

Coram

The Honourable Mr.Justice HULUVADI G.RAMESH
and
The Honourable Mr.Justice V.PARTHIBAN

W.A. No.1184 to 1192 of 2016 and
CMP Nos.15265 to 15281 of 2016

1. The Secretary to Government,
Handlooms, Textitles and Khadri Department,
Fort St.George,
Chennai-600 009.
2. The Director,
Sericulture Department,
Nethaji Nagar, Asthampatti,
Salem-636 007. .. Appellants 1&2 in
all the Writ Appeals
3. The Assistant Director,
(Grainage) Sericulture Department,
Hosur .. 3rd Appellant in
WA 1184 & 1191 of 2016
4. The Assistant Director,
Sericulture Department,
Thiruvannamalai .. 3rd Appellant in
WA 1185 & 1190 of 2016
5. The Assistant Director,
Sericulture Department,
Erode .. 3rd Appellant in
WA 1186 of 2016
6. The Assistant Director,
Sericulture Department,
Hosur .. 3rd Appellant in
WA 1187 of 2016
7. The Assistant Director,
Sericulture Department,
Tankasi,
Thirunelveli District .. 3rd Appellant in
WA 1188 of 2016
8. The Assistant Director,
Sericulture Department,
Thalavadi .. 3rd Appellant in
WA 1189 of 2016

9. The Assistant Director,
Sericulture Department,
Avallapalli at Hosur,
Hosur

.. 3rd Appellant in
WA 1192 of 2016

Versus

1. S.Usha	.. Respondent in WA 1184 of 2016
2. C.Murugan	.. Respondent in WA 1185 of 2016
3. E.Gomathi	.. Respondent in WA 1186 of 2016
4. A.Sankiari	.. Respondent in WA 1187 of 2016
5. S.Murugaiah	.. Respondent in WA 1188 of 2016
6. Fathimamarry	.. Respondent in WA 1189 of 2016
7. R.Radha	.. Respondent in WA 1190 of 2016
8. N.Rosi	.. Respondent in WA 1191 of 2016
9. K.Gopinath	.. Respondent in WA 1192 of 2016

Writ Appeals are filed under Clause 15 of the Letters Patent, against the common order dated 03.03.2016 in W.P.Nos.7562 to 7570 of 2016 passed by the learned single Judge of this Court Petitions under Article 226 of the Constitution of India, praying for the issue of a certiorarified Mandamus, to call for the records of the 2nd respondent in connection with the impugned order passed by her in Rc. No. 20954/E4/2015-1 dated 04.01.2016 and quash the same and further direct the respondents to regularize the petitioner service and consequently appoint the petitioner as Junior Inspector of Sericulture within a reasonable time.

For Appellants : Mr. V.Ayyathurai,
Addl.Advocate General, assisted by
Mrs.A.Sri Jayanthi, Spl.G.P.
For Respondents : Mr.S.Sivakumar in all WAs

COMMON JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

These Writ Appeals are directed against the common order dated 03.03.2016 in W.P.Nos.7562 to 7570 of 2016 passed by the learned single Judge, in and by which, the appellants have been directed to pass appropriate orders for regularization of the services of the respondents herein in the regular time scales of pay, in the light of the G.O.Ms.No.25, Handlooms, Textiles and Khadri (G2) Department dated 23.2.2010.

2. The respondents 9 in number, were appointed as casual/daily wage workers and continuing service for the past several years, i.e. more or less, 19 years in the respective third appellant Office. Though they had put in number of years of service, their services were not regularized. In such circumstances, the respondents made a collective representation to the appellants. According to the respondents, on earlier occasion, the appellants regularized as many as 520 casual labourers and brought them into regular establishment by the 1st appellant, by issuing G.O.Ms.No.25, dated 23.2.2010 by extending relaxation in their favour. While so, the 2nd appellant, by proceedings, dated 4.1.2016, rejected the claim of the respondents herein. Aggrieved by the same, the respondents have come forward with the writ petitions, viz. W.P.Nos.7562 to 7570 of 2016 before this Court.

3. After advertng to the contentions raised by both parties and taking note of G.O.Ms.22, dated 28.2.2006 and G.O.Ms.No.25, dated 23.2.2010, the learned Judge was of the view that rejecting the claim of the respondents, completely overlooking the factum of long length of serviced rendered by them and when the appellants regularized the similarly placed persons by relaxing the rule, the appellants cannot discriminate the respondents for the benefit of regularization. However, the learned Special Government Pleader, who appeared for the appellants, made a categoric statement that the claim of the respondents would be positively considered by the appellants. Recording the statement made by the learned Special Government Pleader and considering the fact that the respondents had put in considerable length of service, the learned Judge directed the appellants to regularize the services of the respondents in the light of G.O.Ms.No.25, dated 23.2.2010. Questioning the order of the learned Judge, the appellants have come forward with the present writ appeals.

4. Mr.Ayyathurai, learned Additional Advocate General

appearing for the appellants would contend that all the respondents are not full time daily wage employees, but appointed as casual labourers and they had not put in 10 years of service as on 1.1.2006 and thereby, they are not entitled for regularisation of service in terms of G.O.Ms.No.74, dated 27.06.2014. He would further contend that G.O.Ms.No.22, dated 28.02.2006 is applicable only to full time daily wage employees appointed against the sanctioned vacancies, paid not out of contingent fund and those who had completed 10 years of continuous service as on 01.01.2006. He pointed out that these criteria, had not been fulfilled by the respondents in order to consider their claim for regularization. He also pointed out that the Government has issued G.O.Ms.No.74, specifically clarifying the position that G.O.Ms.No.22 is not applicable to part time, consolidated pay employees and employees appointed on temporary basis. He submitted that there was no occasion for the appellants to apprise G.O.Ms.No.74, dated 27.6.2013 to the learned Judge and countenance their act of rejection in respect of the claim of respondents since the writ petitions were disposed of at the admission stage itself. In support of his contentions, the learned Addl.Advocate General also relied upon a decision of this Court reported in (2014) 5 CTC 474 (The State of Tamil Nadu versus M.Seeniammal & others)" and the decision of the Hon'ble Supreme Court reported in AIR 2006 SC 1806 (State of Karnataka & others versus Umadevi & others).

5. Per contra, learned counsel appearing for the respondents would vehemently contend that already on earlier occasions, this Court extended the benefit to the similarly placed persons and taking note of the fact that the respondents had put in long length of service and also recording the statement of the learned Special Government Pleader that claim of the respondents would be considered positively, the learned Judge has rightly granted the relief, by directing the appellants to regularize the services of the respondents. Having regard to the same, instead of complying the order of the learned Judge, the appellants are not justified in coming forward with the present writ appeals, which are liable to be dismissed as devoid of merits. Therefore, the learned counsel sought for dismissal of the writ appeals.

6. Heard the learned Addl.Advocate General for the appellants and the learned counsel for the respondents.

7. In the decision reported in in AIR 2006 SC 1806 (State of Karnataka & others versus Umadevi & others), the Hon'ble Supreme Court, has held as under:

"46.In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set

aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. No. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

8. In the decision reported in (2014) 5 CTC 474 (The State of Tamil Nadu versus M.Seeniammal & others)" this Court has, in fact, considered the issue in detail, and having followed the various decision of the Hon'ble Supreme Court including the above cited one, has categorically held as under:

"17. G.O. is applicable only to full time daily wage employees appointed against the sanctioned vacancies paid not out of contingent fund or on consolidated pay. They must also have completed 10 years of continuous service as on 01.01.2006. A reading of the said G.O. clearly shows that it applies only to daily wage employees. Further by G.O.Ms.No.74, the Government clarified that G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.2.2006, is not applicable to part time, the consolidated pay employees and employees appointed on temporary basis. In view of the authoritative pronouncement of the Apex Court referred to above in "Secretary to Government, School Education Department vs. Thiru R.Govindasamy and others" reported in CDJ Law Journal 2014 SC 146, a direction to the department to regularize the services of daily wagers, temporary, part time, contract workers and persons employed on consolidated salary cannot be issued by this Court based on the Government orders issued contrary to

statutory provisions of appointment being made without following the regular procedure. We also hold that in any event G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.2.2006, is applicable only to full time daily wage earners, who had completed 10 years of continuous service as on 01.01.2006. The said G.O., cannot be applied for part time employees, employees receiving consolidated salary and also to persons, who completed 10 years after 01.01.2006."

9. In the present case, it is not in dispute that the respondents were appointed as casual labourers and not as full time workers and as such, they had not put in service 10 years as on 1.1.2006, of course, they had put in number of years of service as casual labourers. It is settled law that mere continuation of service by a temporary or ad hoc or daily wage employee, would not ipso facto confer upon him any right to be absorbed him into regular service, as such service would be litigious employment and even temporary, adhoc or daily wage service for a long number of years, will not entitle such employees to claim regularization. Further, G.O.Ms.No.22 on which, heavy reliance was placed upon by the respondents, is only applicable only to full time daily wage employees, who had put in 10 years of continuous service as on 1.1.2006. G.O.Ms.No.74 clarified the position that G.O.Ms.No.22 is not applicable to part time, consolidated pay employees and temporary employees. Admittedly, the respondents had not complied with this criteria. The decision rendered by this Court reported in (2014) 5 CTC 474 (The State of Tamil Nadu versus M.Seeniammal & others) is squarely applicable to the facts of the present case. When such being the settled position and having regard to the categoric pronouncement of both the Hon'ble Supreme Court and this Court in the decisions (cited supra), we unable to take a different view in this matter. The contention of the learned counsel for the respondents that by virtue of the orders of this Court on earlier occasions, many similarly placed persons had the benefit by getting their services regularized and as such, the respondents are entitled to be allowed. In this regard, it is well settled that Article 14 cannot be extended to legalise the illegal orders though others had wrongly got the benefit of orders.

10. For the foregoing discussion, we are of the view that the order of the learned Judge is not legally sustainable and hence, it is required to be interfered with.

11. Before parting with, we feel it appropriate to mention here that having utilized the services of the respondents for

numbers of years, ranging from 10 to 19 years and still utilized even after the cut off date, i.e. 1.1.2006, it is for the Government to safeguard the interest of the respondents by taking an appropriate decision favouring the respondents, if need, by introducing a scheme in this regard, otherwise, the respondents would be put to great prejudice and irreparable loss. In reply, the learned Addl. Advocate General has fairly accepted the view of this Court and has undertaken that he would apprise the same to the Government in order to extend appropriate benefits to the respondents including accommodating them in the existing vacancies. We do also hope that the Government of will take a well considered decision in the matter by applying the principles of reasonableness and equality, without again driving the respondents to approach this Court.

Accordingly, with the above observation, the Writ Appeals are partly allowed. The order of the learned Judge, dated 3.3.2016 in W.P.Nos.7562 to 7570 of 2016 is modified and the respondents are directed to submit a representation to the appellants within a period of two weeks from the date of receipt of a copy of this order. On such representation being made, the appellants/Government are directed to consider and pass appropriate orders on the lines suggested in the penultimate paragraph. No costs. Consequently, connected CMPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

1. The Secretary to Government,
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Chennai-600 009.

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6. The Assistant Director,
Sericulture Department,
Hosur

7. The Assistant Director,
Sericulture Department,
Tankasi,
Thirunelveli District

8. The Assistant Director,
Sericulture Department,
Thalavadi

9. The Assistant Director,
Sericulture Department,
Avallapalli at Hosur,
Hosur

+1cc to Mr.S. Sivakumar, Advocate, S.R.No.65568
+1cc to the Government Pleader, S.R.No.65824

nm(CO)
md(21/12/2016)

सत्यमेव जयते W.A.Nos.1184 to 1192 of 2016

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