

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.6.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.738 of 2016 against
WP No.27711/2011

1. The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai 600 003.
2. The Joint Commissioner (Education)
Corporation of Chennai
Ripon Buildings
Chennai 600 003. Appellants/Respondents

Vs.

1. T.Porkodi
2. G.Valarmathi
3. B.Jayalakshmi
4. R.Bhuvaneswari
5. B.Saraswathi
6. T.Joys
7. J.Prema
8. V.Uma Devi
9. A.Suganthi
- 10.P.Selvi
- 11.B.Samundeswari
- 12.M.Sathyavani
- 13.S.Moulisundari
- 14.R.Shyamala
- 15.E.Krishnaveni
- 16.Prema Usha
- 17.S.Sumathi
- 18.S.Tamilchelvi
- 19.C.Gowri
- 20.S.Sasikala
- 21.Rajalakshmi
- 22.M.Eswari
- 23.J.Valli
- 24.J.Ramani
- 25.E.Parimala

26.M.Banumathi
27.K.Mangairkarasi
28.R.Selvi
29.A.Vimala
30.S.Thenmozhi
31.M.Neela
32.J.Premalatha
33.J.Flory
34.R.Mala
35.Sujatha
36.M.Santhi
37.T.Latha
38.G.Jayanthi
39.B.Dhanalakshmi
40.Arunodaya Jayasree
41.E.Jayanthi
42.Chithramuhil
43.Inbam Daisy
44.Thilagaveni
45.The Secretary to Government
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai 9. . . Respondents/Petitioners/
Respondentss/3rd Respondent

Appeal under Clause 15 of the Letters Patent Act filed against the order dated 03.01.2013 made in W.P.No.27711 of 2011 on the file of this Court.

WP 27711/11: The Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of certiorarified Mandamus to call for the records and quash the order ref. Ka. Tu. Na. Ka. N.E-2/790/2011 dt 23.9.2011 read with order ref Ka. Tu. Na. Ka. N. E2/790/2010 dt 24.9.2011 issued by the 1 respondent and consequently direct the respondents to regularize the services of the petitioners herein from the date of their initial appointment with all consequential benefits.

For Appellants : Mr.P.H.Arvind Pandian
Additional Advocate General
Assisted by Mr.V.C.Selvasekaran

For Respondents: Ms.Nagasaila
For Mr.NGR Prasad for R1 to R44

Mr.P.S.Sivashanmugasundaram,
Spl.Government Pleader for R45.

J U D G M E N T

(Delivered by Hulumadi G.Ramesh,J)

This writ appeal has been filed challenging the order of the learned single Judge dated 03.01.2013 made in W.P.No.27711 of 2011.

2. The respondents herein applied to the post of Kindergarten Teachers in the Corporation Schools, pursuant to an advertisement issued by the second respondent in the year 1997 and 1998 and they were appointed between 01.7.1997 and 13.3.2006 on consolidated pay. Though the writ petitioners were initially appointed only for a period of ten months, they were continued in service for nearly ten years. By resolution No.391/2006 dated 31.8.2006, Chennai Corporation has resolved to bring the services of the employees, including the writ petitioners, into regular scale of pay and the same was also forwarded to the Secretary to Government, Municipal Administration and Water Supply Department, Chennai.

3. The writ petitioners filed W.P.No.28054 of 2008 for regularisation of their services and the same was disposed of by order dated 25.11.2008, directing the appellants herein to consider the case of the writ petitioners for bringing them into regular scale of pay. The appellant, vide G.O.Ms.No.246, Finance Pay Cell Department, dated 10.6.2009, brought the writ petitioners on regular scale of pay. But, the services rendered by them were not regularised. Therefore, the respondents made a representation dated 26.11.2010 seeking permanency. As no order was passed on the said representation, the respondents filed W.P.No.4694 of 2011 and the same was disposed of on 02.3.2011, directing the appellants to consider the representation of the respondents dated 26.11.2010 and pass orders within a period of 12 weeks. Accordingly, the first appellant, by order dated 23.9.2011, regularised the services of 28 teachers and rejected the claim of 61 teachers, including the respondents herein on the ground that they do not possess requisite educational qualification. Aggrieved by the said order, the respondents filed the writ petition.

4. The learned single Judge, by order dated 03.01.2013, holding that the respondents were appointed only after a proper selection, that though only five respondents did not possess the basic qualification of SSLC at the time of their appointment, they acquired the same later and that the respondents had rendered more than ten years of service and therefore, regularisation could not be denied on untenable grounds, allowed the writ petition, setting aside the order of the first appellant dated 23.9.2011 and directing the respondents to

regularise the services of the respondents from the date of their appointment, with all consequential benefits, within a period of three months. The appellants filed a petition seeking to review the said order in Review Petition No.241 of 2014 and the same was dismissed on 29.10.2014.

5. Assailing the order of the learned single Judge, the appellants have come up with this appeal.

6. The learned Additional Advocate General contended that the respondents herein were appointed only on part time with consolidated pay and not against the sanctioned posts and that only by G.O.Ms.No.246 dated 10.6.2009, the respondents were brought into regular scale of pay and therefore, they cannot seek regularisation from the date of their initial appointment; that the respondents did not undergo two years training course in nursery Montessori Kindergarten run by Government Institute and that they underwent only one year in private Institutes and moreover, they did not have the qualification of SSLC, at the time of their initial appointment and they obtained required qualification only at a later point of time and therefore, the order of the learned single Judge has to be set aside.

7. In support of his contentions, the learned Additional Advocate General relied upon the decision of a Full Bench of this Court in S.Dhanasekaran v. Government of Tamil Nadu [2013 (6) CTC 593] and a decision of the Apex Court in School Education Department, Chennai v. R.Govindaswamy [(2014) 4 SCC 769].

8. Per contra, the learned counsel for the respondents contended that though the respondents were stated to be appointed on part time basis, they were functioning on full time basis and they were in continuous service since the date of their appointment; that the respondents possess Montessori Training even at the time of their appointment and therefore, the appellants cannot now contend that the respondents were given training after their appointment, as the said training was given only to enhance the skill of the respondents; and that in view of the decision of the Supreme Court in Nihal Singh v. State of Punjab [(2013) 14 SCC 65], the respondents have to be regularised from the date of their appointment.

9. Heard Mr.P.H.Arvind Pandian, learned Additional Advocate General appearing for the appellants and Ms.Nagasaila, learned counsel appearing for the respondents.

10. Admittedly, the respondents were appointed pursuant to the notification calling for Part Time Kindergarten Teachers on consolidated pay. Consequent to the resolution passed by the

first appellant, the Government, by G.O.Ms.No.246 dated 10.6.2009 directed that the respondents are entitled for revised pay scales with effect from the date of the issue of that order. Accordingly, by circular dated 24.9.2011, the respondents were brought into regular scale of pay with effect from 10.6.2009.

11. By G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.6.2013, the Government issued revised order stating that the services of full time daily wage employees appointed in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and completed ten years of service as on 01.01.2006 shall be regularised against regular vacancies in the sanctioned cadre strength, in view of the fact that part time employees were granted the benefit of regularisation which was available only for the full time daily wage employees.

12. In *S.Dhanasekaran v. Government of Tamil Nadu* [2013 (6) CTC 593], where the services of the sanitary workers who were appointed on consolidated pay during the years 1999 and 2000 were regularised only with effect from 31.10.2006 and not from the date on which they had completed three years of service from the date of their initial entry into service, a Full Bench of this Court held that regularisation of services of the sanitary workers should take effect only from the date of G.O. and note from the date on which they had completed three years of service from the date of their initial entry into service.

13. In *School Education Department, Chennai v. R.Govindaswamy* [(2014) 4 SCC 769], the issue for consideration before the Supreme Court was whether the services of part time sweepers could be directed to be regularised by the High Court, though the part time sweepers in that case were regularised as directed by the High Court. Relying upon the decision in *State of Rajasthan v. Daya Lal* [(2011) 2 SCC 429], wherein it is held that temporary, ad hoc or daily wage service for a long number of years would not entitle an employee to claim regularisation and that part time employees are not entitled to seek regularisation as they are not working against any sanctioned posts and seek parity in salary with government employees, the Supreme Court held that the part time sweepers are not entitled to regularisation.

14. In *State of Karnataka v. Umadevi* [(2006) 4 SCC 1], where the issue for consideration before a Constitution Bench of the Supreme Court was whether the employees who were appointed on a temporary basis or on daily wages or casually and continued in employment or engaged in the work for a significant length of time, are entitled for absorption in the posts, even if they were not working against a sanctioned post or even if they do

not possess the requisite qualification or even if they were not appointed in terms of the procedure prescribed for appointment, it held as under:

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. 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."

15. Though the learned counsel for respondents relied upon the decision in *Nihal Singh v. State of Punjab* [(2013) 14 SCC 65], in support of their contention that the respondents should be regularised from the date of their appointment, the facts of the said case is entirely different from the case on hand and therefore, the said decision is not applicable.

16. In the light of the facts and circumstances of the case and ratio laid down in the decisions cited supra, we are of the considered opinion that though the respondents had rendered continuous service, they cannot be regularised from the date of initial appointment.

17. However, in view of our order dated 24.6.2016 made in W.A.No.612 of 2016 [*The Government of Tamil Nadu v. M.Rajendran*], wherein we have held that 50% of the services rendered by the employees on part time basis with consolidated pay has to be taken into account for pensionary benefits, it is for the appellants to consider the case of the respondents for taking into account 50% of the services rendered by them from the date of their appointment till the date of regularisation, at least for the purpose of granting pensionary benefits and to pass orders within a period of twelve weeks from the date of receipt of a copy of this order.

The writ appeal is allowed, with the above observations.
There shall be no order as to costs. Consequently, CMP No.9524
of 2016 is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai 600 003.

2. The Joint Commissioner (Education)
Corporation of Chennai
Ripon Buildings
Chennai 600 003.

3. The Secretary to Government
Municipality Administration and
Water Supplies Department,
Fort St.George, Chennai 9.

2 ccs to Mr.N.G.R.Prasad and D.Nagasaila, Advocates, sr.35820

W.A.No.738 of 2016.

rj co
kra 06.07.2016

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