

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2016

Coram:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE MR.JUSTICE V.PARTHIBAN

Writ Appeal No.746 of 2016

and

C.M.P.No.9637 of 2016

1. The Secretary to Government
School Education Department,
Fort St. George, Chennai- 600 009.
2. The Director of Teacher's Education
Research and Training,
College Road, Chennai- 600 006 ..Appellants/Respondents 1 & 2

Versus

1. K.Mahimaidoss ..Respondent/Petitioner
2. The Principal & Correspondent,
Sacred Heart Teacher's Training
Institute, Cuddalore District. ... 2nd Respondent/3rd Respondent

Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 31.10.2014 in W.P.No.24851 of 2013 passed by the learned single Judge. Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandaus to call for the records relating to the impugned Government Lr.No.7683/U2/2000-31 dated 07.03.2007, quash the same and direct the 1st Respondent to regularize the service of the petitioner and release all the benefits attached to it including arrears of pay from the date of his original appointment viz. 1.11.1980 as a basic servant

(Prayer amended as per order dated 04.08.2014 in MP No.1 of 2014 in WP No.24851 of 2013)

For Appellants

.. Mr.P.S.Sivashanmugasundaram
Spl. Govt. Pleader.

For Respondent-No.1 .. Mr.Gilbert C.Pereira
For Respondent No.2 .. Mr.P.Godson Swaminath

JUDGMENT

(DELIVERED BY HULUVADI G.RAMESH,J)

This Appeal is preferred by the State, questioning the correctness of the order passed by the learned single Judge, in W.P.No.24851 of 2013, dated 31.10.2014, quashing Government Lr.No.7683/U2/2000-31, dated 07.03.2007 and directed the first Appellant to regularize the service of the first Respondent herein from the date of his appointment, i.e., from 01.11.1980 as Watchman, and to grant him time scale of pay applicable to the post of Watchman with all monetary benefits.

2. The first Respondent herein was appointed as a Watchman by the second respondent Teacher Training Institute at Cuddalore, by an order dated 30.10.1980 with effect from 01.11.1980 subject to the approval of the Inspectress of Girls Schools, Cuddalore. The said appointment was approved by the Inspectress of Girls Schools, Cuddalore, on 04.12.1981. The Inspectress fixed the pay for the purpose of staff grant to the first Respondent herein at the rate of Rs.18 + allowances. While his basic pay is Rs.20/-, a sum of Rs.8,989/- is being paid as total pay per month including the other allowances, namely, Dearness Allowance, City Compensatory Allowance and House Rent Allowance. The first Respondent herein sought for regularization of his services and thereby grant him time scale of pay applicable to the post of Watchman, from the date of his appointment.

3. In fact, the Director of Teachers Education Research and Training-second Appellant herein, made a recommendation vide his proceedings in Rc.No.7151/C3/1999, dated 20.06.2002 to the first Appellant for regularising the service of the first Respondent herein and his name is found at Sl.No.7 in the Annexure to the recommendation dated 20.06.2002. The aforesaid recommendation discloses that various correspondences between the first Appellant and the second Appellant took place relating to the regularization of service of the persons like the first Respondent herein, in the Private Aided Teacher Training Institutes for so many years.

4. In the meantime, one Gnana Pragasam, working in a Private Aided Teacher Training Institutes in Tirunelveli District as a Gardener, whose name is shown at Sl.No.11 in the Annexure to the aforesaid recommendation letter dated 20.06.2002 of the second Appellant, filed W.P.No.10364 of 2000 seeking for

regularization of the service. This Court by the order dated 26.06.2000 in W.P.No.10364 of 2000 directed the second Appellant to consider the representation of Thiru.Gnana Pragasam dated 27.01.2000 on the basis of G.O.Ms.No.577, Education Department, dated 01.04.1981 for regularization of service, and pass orders thereon.

5. In these circumstances, the second Appellant sent a proposal vide letter Na.Ka.No.7151/C3/99, dated 27.01.2006, to the first Appellant, requesting to regularise the service of 14 persons, including the said Gnana Pragasam and the first Respondent herein, whose names are given in the Annexure enclosed in the earlier letter dated 20.06.2002. The second Appellant also stated that two persons, who were mentioned in the Annexure to the list dated 20.06.2002, were regularized in G.O.(1D).No.46, School Education Department, dated 08.02.2000. Hence, the second Appellant recommended for passing similar order of regularization of 14 other persons, including the first Respondent herein. The second Appellant also brought to the notice of the first Appellant about the order dated 26.06.2000 made in W.P.No.10364 of 2000 filed by one Thiru.Gnana Pragasam, who is one among the said 14 persons.

6. The first Appellant passed an order dated 07.03.2007, in Lr.No.7683/U2/2000-31 rejecting the proposal of the second Appellant for regularization of the service of contingent employees in the Private Aided Teacher Training Institutes, including the first Respondent herein.

7. Aggrieved by the Government Letter dated 07.03.2007 rejecting the proposal made by the second Appellant for regularization of the service of contingent employees in the Private Aided Teacher Training Institutes, including the first Respondent herein, the first Respondent herein filed W.P.No.24851 of 2013 seeking direction to the second Appellant to regularize his service as per G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, with effect from the initial date of appointment, i.e., from 01.11.1980 with all monetary benefits. Thereafter, he made an application to amend the prayer and the amended prayer is to quash the impugned Government Letter dated 07.03.2007 rejecting the proposal of the second Appellant to regularize his services and for a consequential direction to the first Appellant to regularize his services with all consequential benefits from the date of his appointment, i.e., with effect from 01.11.1980. It is pertinent to note that the same Government letter dated 07.03.2007 was also the impugned order in W.P.(MD)No.10915 of 2007, as stated above.

8. Heard Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, appearing for the State and Mr. Gilbert

C.Pereira, learned counsel appearing for the first Respondent and Mr.P.Godson Swaminath, learned counsel appearing for the second Respondent.

9. According to the first Respondent, he was appointed as a Watchman by the second respondent Teacher Training Institute at Cuddalore, by an order dated 30.10.1980 with effect from 01.11.1980 in the vacancy caused due to the resignation of one P.Arumugam, subject to the approval of the Inspectress of Girls Schools, Cuddalore. As per the records produced by the second Appellant, P.Arumugam was relieved from his duty on 30.10.1980 and in his place, the first Respondent herein was appointed and his appointment was also approved by the Inspectress of Girls Schools, Cuddalore, on 04.12.1981, with effect from 01.11.1980. He has been working as contingent Watchman and his initial basic pay was fixed at Rs.18/- and now he is receiving the basic pay of Rs.20/-. Though he is paid a meager basic pay of Rs.20/-, he is receiving Rs.8947/- towards Dearness Allowance, Rs.120/- towards City Compensatory Allowance and Rs.30/- towards House Rent Allowance respectively. Thus, the grievance of the first Respondent herein is that he should be accorded time scale of pay applicable to the post of Watchman.

10. It is pertinent to note that one Gnana Pragasam filed W.P.(MD)No.10915 of 2007 questioning the aforesaid order of the first Appellant dated 07.03.2007 and also sought for a direction to the Government and the Director of Teacher Education, Research and Training, to regularize his services from the date of his appointment on par with that of other similarly placed persons as per G.O.Ms.No.156, School Education (U1) Department, 23.12.1997, G.O.(1D).No.46, Education Department, dated 08.02.2000 read with G.O.Ms.No.52, Finance (FR-II) Department, dated 14.01.1997, with all attendant benefits. The said W.P.(MD) No.10915 of 2007 was allowed on 03.12.2012 by this Court holding that the act of the first Appellant in rejecting the claim of the writ petitioner therein amounts to discrimination, since the regularization of other similarly placed persons was done in G.O.(1D).No.46, dated 08.02.2000.

11. We have examined G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006, which makes it also clear that the services of employees working in various Government Departments on daily wage basis who have completed more than ten years of service as on 01.01.2006 will be regularised.

12. We are of the considered view that the learned single Judge has considered in detail the nature of work rendered by the first Respondent herein and in the penultimate paragraph of the final order, has observed that the petitioner has been in employment for the past 34 years as full time

contingent employee and that the Director of Teacher's Education, Research and Training, who is the highest authority in the Educational Department, recommended for regularization of the service of the first Respondent herein to the Government and that the judgment of the Apex Court in C.A.Nos. 2726 to 2729 of 2014 dated 21.02.2014 relied upon by the first Appellant is of no use. The learned single Judge after referring various decisions rendered by the Apex Court, has rightly passed a detailed order quashing Government Lr.No.7683/U2/2000-31, dated 07.03.2007 and directed the first Appellant to regularize the service of the first Respondent herein from the date of his appointment, i.e., from 01.11.1980 as Watchman, and to grant him time scale of pay applicable to the post of Watchman with all monetary benefits, taking into consideration the service rendered by the first Respondent herein as per G.O.Ms.No.22, dated 28.12.2006.

13. The learned Special Government Pleader would contend that the first Respondent herein is not a full time employee of uninterrupted service, whereas he was appointed as Nominal Muster Roll and on that ground the first Respondent herein is not entitled for regularization as considered by the learned single Judge and hence, he seeks to set aside the order passed by the learned single Judge.

14. At this juncture, the learned counsel appearing for the first Respondent herein relied upon a decision of the Supreme Court in **Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy (2004 (4) SCC 769)**, wherein the Supreme Court quoted the ratio laid down in **State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193**, while considering the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down the well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved t. 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."

15. The aforesaid proposition makes it clear that part-time employees cannot seek regularization and the time scale of pay applicable to full time posts. In this case, the first

Respondent herein is not a part time employee. In fact, the impugned order nowhere states that the claim of the first Respondent herein is rejected on the ground that he is a part-time employee. The recommendations of the second Appellant dated 20.06.2002 and 27.01.2006 make it clear that the first Respondent herein was employed as a contingent full time employee and not as a part time employee. The appointment order issued to the first Respondent herein as well as the approval of the said appointment order by the Inspectress of Girls Schools, Cuddalore also, make it clear that the post of Watchman held by the first Respondent herein is not a part time employee like Sweepers, but it is a full time post. Taking into account all these facts, this Court in the case of one Gnana Pragasam, who is also a contingent employee in a Private Aided Teacher Training Institute and whose name is also found in the recommendation made by the second Appellant in Na.Ka.No. 7151/C2/99, dated 20.06.2002, issued direction on 03.12.2012 in W.P.(MD)No.10915 of 2007 to the respondents therein to regularise his service.

16. In fine, we are of the considered view that it is for the Respondent Authority to work out the ratio laid down by the Supreme Court in the case of *R. Govindasamy* and do the needful in accordance with law and pass appropriate orders regarding regularization of the services of the first Respondent herein, if he is so entitled and satisfied the parameters laid down by the Supreme Court. The Writ Appeal is disposed of with the above observation. No costs. Consequently, C.M.P.No.9637 of 2016 is closed.

gr.

-sd-

Assistant Registrar

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सत्यमेव जयते

Sub Assistant Registrar

To

1 The Secretary to Government
School Education Department,
Fort St.George, Chennai-9.

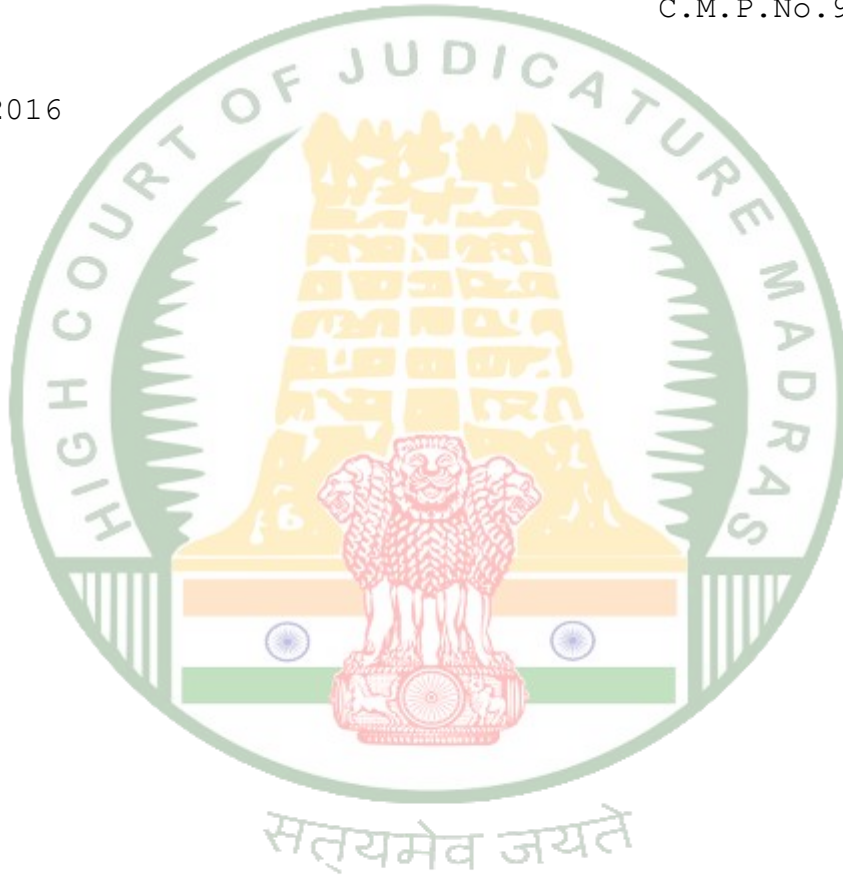
2 The Director of Teachers Education,
Research and Training, College Road,
Chennai-6.

+1 C.C. to MR.P.GODSON SWAMINATH Advocate SR.NO.70752

+1 C.C. to The Government Pleader, High Court, Madras 104
SR.No.70955

W.A.No.746 of 2016
and
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PK (CO)
VS 30.12.2016



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