IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.38069 of 2016
and WMP.No.32627 of 2016

1.A.M.Thirumalai
2.V.Vallinayaki
3.D.Jayamani
4.K.Jayanthi
5.R.Vadivelu
6.P.Shanthi
7.C.Susila
8.V.Salammal
9.J.Tamil Selvi
10.P.Rameshkumar .. Petitioners

Vs

1.The Registrar General
High Court
Chennai-600 104

2.The Principal District Judge
Dharmapuri ..Respondents

Prayer : Writ Petition filed praying to issue a Writ of Mandamus directing the respondents to extend the benefits granted by the orders in R.O.C.No.588/A/2006/C3 dated 29.03.2006 and appoint the petitioners in the posts of Readers, examiners, Copyists, Senior Bailiffs or Junior Bailiffs in Judicial Department of Dharmapuri District on regular basis on the same conditions as set out in the said order.

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For Petitioners :: Mr.S.Mohan

For Respondents :: Mr.R.Vijayakumar, Addl.Govt.Pleader for R 1 and R 2.

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ORDER

(Order of the Court was made by HULUVADI G.RAMESH, J.)

Heard Mr.S.Mohan, learned counsel for the petitioners and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for respondents 1 and 2.

2. The short facts of the case herein is that the names of petitioners 1 to 6 and 10 were sponsored by the District Employment Office and they were selected after Written and Oral test and appointed as Typists by the orders of the 2nd respondent; the petitioners 7 to 9 also applied for the post and after conduct of Written and Oral Tests, they were selected and appointed as Typists and they were being ousted from the post before completion of 12 months of service and re-appointed every year by the 2nd respondent. It is also stated that the petitioners 3 and 7, who are now ousted from service and the other petitioners, who are under the threat of being ousted from the post of Typist, are willing to serve in any one of the posts on temporary basis, pending consideration of their name for appointment in the said posts on regular basis.

3. Mr.R.Vijayakumar, learned Additional Government Pleader appearing for respondents 1 and 2 submits that the decision of this court in W.P.No.29656 of 2013 dated 21.11.2014 squarely covers the factual position of this case and in the said writ petition, this court held that no direction can be issued to regularise the services of the petitioners and continue them on the basis of their continuity of service in the past, after their appointment till date.

4. The Division Bench of this Court, in the above cited order dated 21.11.2014, referred to the decision of the Supreme Court in State of Rajasthan Vs.Daya Lal [(2011) 2 SCC 429], wherein, the Supreme Court has held that 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 candidtates cannot be regularised. 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

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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."

5. In view of the above, the direction sought for by the petitioners cannot be granted by this court. However, in the event of any notification issued calling for applications for different postings by the respondents, the petitioners can very well participate in the selection process and if they are found successful, they would be in a position to get appointment. With the above observation, the Writ Petition is disposed of. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri
To

1.The Registrar General,
High Court,
Chennai-600 104.

2.The Principal District Judge,
Dharmapuri.

+1cc to M/S.S.Mohan, Advocate SR.62025

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