



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.09.2016

Delivered on : 27.09.2016

CORAM

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THE HON'BLE Mr. JUSTICE M.SATHYANARAYANAN

AND

THE HON'BLE Ms. JUSTICE V.M.VELUMANI

W.A.(MD)Nos.4 and 5 of 2016

&

C.M.P.(MD)No.9 of 2016 in W.A.(MD)No.4 of 2016

&

C.M.P.(MD)Nos.10 & 11 of 2016 in W.A.(MD)No.5 of 2016

1.The State of Tamil Nadu,
Represented by the Secretary,
Department of Health and Family Welfare,
Fort St. George,
Chennai.

2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai - 10.

3.The Dean,
Govt. Theni Medical College,
Theni.

.. Appellants
in both the W.As.

Vs.

1.T.Gopal
2.T.Ramar
3.S.Saravanakumar
4.V.Balagurusamy
5.A.Venkateswaran
6.Muthupandi, S/o.Lakshmanan

.. Respondents
in W.A.(MD)No.4/2016

1.R.Rajapandian
2.M.Nagalakshmi
3.N.Murugan
4.P.Jotheeswari
5.S.Selvasubramani
6.S.Bhagavathi
7.N.Velankanni

.. Respondents
in W.A.(MD)No.5/2016

Appeals filed under under Clause 15 of the Letters Patent,
<https://hcservices.ecourts.gov.in/hcservices/>
against the common order dated 17.04.2014, made in W.P.(MD)
Nos.8872 and 8873 of 2012.



Prayer in WP(MD)No.8872/2012:-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, in the nature of direction to call for the records pertaining to the impugned order in Na.Ka.NO. 2951/Ni.Pi.3/2011 dated 27.09.2011 on the file of the Respondent No.3 and quash the same as illegal to the extent it provides for regularization since 24.07.2009 and consequently direct the Respondents to regularize the petitioners service from the date of their joining in service as Sweepers on 13.09.2006 and fix the time scale of pay from that period with consequential benefits from 13.09.2006 to 24.07.2009 within the time stipulated by this Honourable Court .

Prayer in WP(MD)No.8873/2012:-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned order in Na.Ka.No.6364/Ni.Pi.3/11 dated 31.10.2011 on the file of the Respondent No.3 and quash the same as illegal to the extent it provides for regularization since 24.07.2009 and consequently direct the respondents to regularize the Petitioners service from the date their joining in service as Sweepers on 13.09.2006 and fix the time scale of pay from that period with consequential benefits from 13.09.2006 to 24.07.2009 within the time stipulated by this Honourable Court.

For Appellants

in both the W.As.

: Mr.A.K.Baskarapandian

Special Government Pleader

For Respondents

in both the W.As.

: Mr.T.Lajapathiroy

COMMON JUDGMENT

V.M.VELUMANI, J.

These Writ Appeals have been filed challenging the common order of the learned Single Judge, dated 17.04.2014, made in W.P. (MD)Nos.8872 and 8873 of 2012.

2. Since common issues are involved in these writ appeals, they are heard together and disposed of by this common Judgment.

Issues of the case:-

(i) According to the respondents, the first appellant sanctioned various posts to five newly established Medical



Colleges all over Tamil Nadu, i.e., Tirunelveli, Tuticorin, Vellore, Kanyakumari and the third appellant College. The respondents were appointed as Sweepers on consolidated pay in the third appellant College, by the proceedings of the Dean of the College, in Na.Ka.No.5972-Ni.Pi 2/05, dated 28.02.2006 and the respondents joined service in the third appellant College on 13.09.2006.

(ii) The appellants have brought number of employees, appointed on consolidated pay and on outsourcing basis, into time scale of pay as per G.O.(Ms)No.144, Health and Family Welfare (E2) Department, dated 30.04.2007. The respondents were not brought on time scale of pay, even though similarly placed persons, were brought on time scale of pay with effect from 01.04.2007. While so, the third appellant, by his proceedings, dated 24.07.2009 and 31.10.2011 regularized the services of the respondents with effect from 24.07.2009 instead of 13.09.2006, i.e., the date of their initial appointment. Under the circumstances, the respondents filed the abovesaid writ petitions seeking to quash the impugned order of the third appellant dated 27.09.2011 and 31.10.2011, in respect of their date of regularisation since 24.07.2009 and for a direction to the appellants to regularize their services from the date of their joining in service as Sweepers i.e., on 13.09.2006 and fix the time scale of pay from that period with consequential benefits from 13.09.2006 to 24.07.2009.

(iii) The appellants did not file any counter affidavit.

(iv) The learned Judge, considering the fact that the appellants have not specifically denied the averments of the respondents that they were appointed on 13.09.2006 by filing counter affidavit, disposed the writ petitions directing the third appellant to correct the date of joining of the respondents, as applicable to them.

4. Against the said order, dated 17.04.2014, the present writ appeals are filed.

5. Mr.A.K.Baskarapandian, learned Special Government Pleader, appearing for the appellants submitted that the learned Judge has failed to see that as per G.O.(4D)No.60, Health and Family Welfare (E2) Department, dated 24.07.2009, the respondents were regularized with effect from 24.07.2009. The learned Judge has also failed to consider that the Government Order is only with prospective effect and therefore, the respondents cannot be regularized with retrospective effect. The learned Judge ought to have given an opportunity to the appellants to file counter putting forth their defence. He further submitted that the respondents are not entitled for regularisation from the date of their joining, which will lead to multiplicity of litigation and it will cause financial loss to the appellants. The learned Special Government Pleader further contended that in the facts and circumstances of the case and on the basis of the Government Order, the order of the learned Judge, issuing positive direction



to the appellants to regularise the services of the respondents as Sweepers from 13.09.2006, is liable to be set aside.

6. Mr.T.Lajapathiroy, learned counsel for the respondents submitted that similarly placed employees were regularised with effect from 01.04.2007. The respondents were discriminated and the appellants in an arbitrary manner, regularised the services of the respondents only with effect from 24.07.2009 instead of 13.09.2006. The appellants have not denied the various averments made in the affidavit filed in support of the writ petitions and therefore, the learned Judge, after considering all the materials on record, has issued positive direction and prayed for dismissal of the writ appeals.

7. We have carefully perused all the materials available on record and considered the arguments advanced by the learned counsel appearing for the parties.

8. The contentions of the learned counsel for the respondents that similarly placed employees were regularised with effect from 01.04.2007 and the respondents are also entitled to the same benefit, is untenable. The respondents are not entitled to take advantage of earlier order passed by the appellants in respect of certain categories of persons and claim the same benefit.

9. A similar issue was considered by the Hon'ble Apex Court in the judgment reported in 2014 (4) SCC 769 [Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others], wherein in paragraphs 7 and 8, it has been held as follows:-

"7. In *Union of India vs. A.S. Pillai* [2010 (13) SCC 448] this Court dealt with the issue of regularisation of part-time employees and the Court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

8. This Court in *State of Rajasthan v. Daya Lal* [2011 (2) SCC 429] 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: (SCC p. 435, para 12)

"(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.*

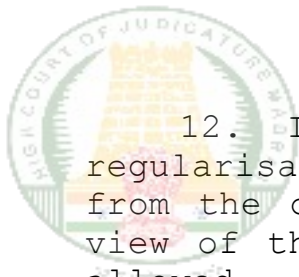


"8. It is settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an Order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or Court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.""

11. Further, a Full Bench of this Court in the judgment reported in 2013 (6) CTC 593 [S.Dhanasekaran and others Vs. Government of Tamil Nadu, Rep. by its Secretary and others], has held that the employees are entitled to regularisation only from the date of Government Order and not from the date of completion of three years from the date of their initial appointment. The Full Bench of this Court held that an employee does not get automatically a right of regularisation on completion of three years from the date of their initial appointment and further held that the employee is entitled to regularisation only after the Government consider the issue and pass Government Order. The relevant portion of Paragraph No.27 of the Full Bench judgment reads as under:

"27. In our considered view, in the case of Sanitary Workers, who were appointed against the newly created posts in pursuance of G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.6.1997, their regularisation is governed by G.O.Ms. No.21, Municipal Administration and Water Supply Department, dated 23.2.2006. Such a regularisation, as per the said G.O., should take effect only from the date of G.O. and not from the date on which they had completed three years of service from the date of their initial appointment."

(emphasis supplied)



12. In the light of the above judgments, the date of regularisation whether from the date of initial appointment or from the date of Government Order is no longer *res integra*. In view of the settled legal proposition, the appeals deserve to be allowed.

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13. In the result, the writ appeals are allowed and the impugned order of the learned Judge, dated 17.04.2014, made in W.P.(MD)No.8872 and 8873 of 2012 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary,
Department of Health and Family Welfare,
Fort St. George,
Chennai.

2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai - 10.

3.The Dean,
Govt. Theni Medical College,
Theni.

+2 ccs to The Special Government Pleader, SR.Nos.56648 and 56649

+2 ccs to Mr.T.Lajapathi Roy, Advocate, SR.Nos.56606 and 56605

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RL/8C/8P/CK/18.10.2016

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