



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.10.2016**

CORAM:

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

W.A. (MD) .No.870 of 2016

1.The District Educational Officer,
Aranthangi Educational District,
Aranthangi.

2.The Chief Educational Officer,
Pudukkottai District,
Pudukkottai.

3.The Director of School Education,
D.P.I. Compound,
College Road, Chennai.

... Appellants/ Respondents 1 to 3

Vs.

P.Thangappa

.. Respondent / Writ Petitioner

PRAYER: Writ Appeal has been filed under Clause 15 of the Letters Patent against the order dated 03.02.2014 made in W.P.(MD).No.5298 of 2011 on the file of this Court.

Prayer in WP(MD). 5298/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to issue a Writ of Mandamus, directing the respondents to appoint the petitioner in regular time scale either as Office Assistant or Scavenger or any other equivalent cadre in basic service as per the orders issued by the Government.

For Appellants	: Mr.A.K.Baskara Pandian, Special Government Pleader
For Respondent	: Mr.Devaraj for Mr.J.Parekhkumar

JUDGMENT

[Judgment of the Court was made by
The Hon'ble The Chief Justice]

The respondent has been working as a part-time waterman with the appellants since 1996, obtained through the employment exchange. It is the case of the respondent that many daily-wage employees, who are temporary in time were appointed on regular basis, but the respondent was not so appointed and there was an



intervening ban. The respondent sought a regular time scale either as Office Attendant or Scavenger or any other equivalent cadre in basic services as per the order issued in other cases by the appellant / State Government. This prayer made in the Writ Petition (MD).No.5298 of 2011 was allowed, by the judgment dated 03.02.2014, against which the appeal has been preferred.

2.The appellant had opposed the prayer of the respondent primarily on the ground that the order issued by the State Government was applicable to daily-wage employees alone and it would not apply to part-time workers. The learned Single Judge granted the benefit on parity with daily-wage workers only on the ground that a part-time employee cannot be deprived of the benefits.

3. The issue in question is no more *res integra*, in view of the judgment of the Supreme Court in Civil Appeal Nos.2726-2729 of 2014 decided on 21.02.2014. The issue has been discussed in the context of various judicial pronouncements, while considering the issue of regularization of part-time Sweepers. The discussion is contained in paragraph Nos.5 to 7 which read as under:

"5.The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularized. The issue is no more *res integra*.

In **State of Karataka & Ors. v. Umadevi & Ors.**, AIR 2006 SC 1806, this Court 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."

6.In **Union of India & Ors. v. A.s.Pillai & Ors.**, (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 regularization would not arise.

7. This Court in **State of Rajasthan & Ors. v. Daya Lal & Ors.**, AIR 2011 SC 1193, has considered the scope of regularization of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularization and parity in pay relevant in the context of the issues involved therein. The same are as under:

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization 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 adhoc 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, adhoc 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



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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.

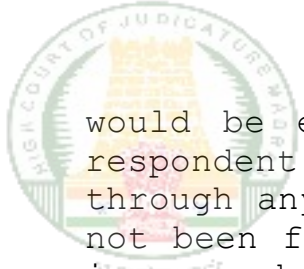
(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a Statute."

(Emphasis supplied)

4.The conclusion, thus, was that the part-time employees are not entitled to seek regularisation as they are not working against any sanctioned post and cannot claim parity in service with regular employees on the principle of "equal pay for equal work". However, on a concession made by the Department, it was opined that such of the person who had already obtained the benefits of the impugned judgment would not be disturbed.

5.We heard the learned counsel for the parties yesterday. Learned counsel for the appellants sought to emphasis that the ratio of the judgment is that part-time employees are not entitled to seek regularization in the absence of sanctioned post. The submission of the learned counsel for the respondent was that since there was sanctioned post in the present case, which was unfilled, the part-time worker could be regularized against that post.

<https://hcservices.courtservice.gov.in/> Given at the request of the learned counsel for the respondent to substantiate his plea by any judicial pronouncement that merely because a sanctioned post exists a part-time employee



would be entitled to regularisation. Learned counsel for the respondent is not able to substantiate the said legal position through any case laws. We may notice that the sanctioned post has not been filled up and remains vacant. The same has to be filled in accordance with norms. This may not imply that a part-time worker, working in the same department, is entitled to regularization merely because the sanctioned post remains unfilled. We are, thus, not able to agree with the conclusion of the learned Single Judge that it makes no difference whether it is daily-wager or part-time worker, as that would be contrary to a catena of judgments of the Hon'ble Supreme Court.

7. The net result is that the impugned order is set aside and the Writ Petition filed by the respondent in W.P.(MD).No.5298 of 2011 is dismissed. The appeal is accordingly allowed, leaving the parties to bear their own costs.

8. We may, however, observe that since the respondent has been working over a period of 20 years, as a part-time worker, even if regularization is not permissible his case should be considered sympathetically for absorption, specially keeping in mind that there exists a sanctioned post which is also not filled in for a long number of years. Such consideration for absorption should be made within a maximum period of two months from the date of receipt of the order and the expected favourable result be communicated to the respondent.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub Assistant Registrar

gcg/gb

TO

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2. The Chief Educational Officer,
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3. The Director of School Education,
D.P.I. Compound, College Road, Chennai.

+1cc to Spl. Government Pleader Sr.No.59383

+1cc to Mr.J.Parekhkumar Advocate Sr.No. 59351

JAM/21.10.16/EM/MPA/5P-6C