

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.Nos.1177 and 1178 of 2017
and
C.M.P.Nos.16348 to 16351 of 2017

A.Selvaraju

... Appellant in W.A.No.1177/2017/
Writ Petitioner in W.P.No.21464/2017

B.Balaji

... Appellant in W.A.No.1178/2017/
Writ Petitioner in W.P.No.21465/2017

.. Vs ..

1. The Principal Secretary to Government,
Animal Husbandry, Dairying &
Fisheries (FS2) Department,
Secretariat, Chennai - 600 009.
2. The Director of Fisheries,
Tsunami Project Implementation Unit,
Nandanam,
Chennai - 600 035.
3. The Commissioner of Fisheries,
Fisheries Department,
DMS Campus,
Teynampet,
Chennai - 600 006.
4. The Chief Engineer,
O/o. the Commissioner of Fisheries,
Fisheries Department,
DMS Campus,
Teynampet,
Chennai - 600 006.

... Respondents in both
W.As./Respondents in both W.Ps.

Prayer in both Writ Appeals.: Writ Appeals filed under Clause 15
of Letters Patent, against the order dated 11.08.2017 passed by
this Court in W.P.Nos.21464 and 21465 of 2017 respectively.

Prayer in WP.NO.21464 & 21465/2017: Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus to call for the records pertaining to the proceedings of the 1st respondent in Letter No.12792 / FS -2 / 2016-8, and Letter No.12792 / FS -2 / 2016-9 dated 15.06.2017 and quash the same as illegal incompetent and ultravires and to absorb the petitioner in the post of Technical Assistant pursuant in accordance to the notification issued by the 4th respondent in notification No.01/2017 dated 16.06.2017

For Appellants
in both W.As. : Mr.R.Jayaprakash

For Respondents : Mr.P.S.Sivashanmugha Sundaram,
in both W.As. Special Government Pleader

COMMON JUDGMENT

(Common Judgment of the Court was delivered
by HULUVADI G.RAMESH,J.,)

Both the writ appeals are directed against the order dated 11.08.2017, passed by the learned single Judge, dismissing the writ petitions filed by the appellants in W.P.Nos.21464 and 21465 of 2017 respectively.

2. The appellants in both the writ appeals/writ petitioners have filed the above W.P.Nos.21464 and 21465 of 2017 for issuance of writ of certiorarified mandamus, calling for the records pertaining to the proceedings of the first respondent in Letter No.12792/FS-2/2016-8 and Letter No.12792/FS-2/2016-9 dated 15.06.2017 and quash the same as illegal, incompetent and ultra vires and to absorb the appellants/writ petitioners in the post of Technical Assistant pursuant to the notification issued by the fourth respondent in Notification No.01/2017 dated 16.06.2017.

3. Heard the learned counsel appearing for the appellants and the learned Special Government Pleader appearing for the respondents.

4. It appears that by the order of the learned single Judge, the writ petitions came to be dismissed referring to a Constitution Bench judgment of the Supreme Court in the case of State of Karnataka Vs. Umadevi, reported in (2006) 4 SCC 1 and also the judgment of the Supreme Court in the case of Secretary

to Government, School Education Department, Chennai Vs. R.Govindaswamy and Ors. reported in (2014) 4 SCC 769.

5. The argument of the learned counsel appearing for the appellants is that what has been prohibited by the decisions referred supra is back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates. However, in the case on hand, employment was offered to the appellants/writ petitioners under the Tsunami Project Implementation Unit at Chennai, by the Director of Fisheries.

6. The argument of the learned counsel appearing for the appellants is that though the appointments are purely temporary, they were made after issuance of an advertisement and after analysis of the merits and following the selection process, and therefore, the decisions referred supra, are not applicable to the present case.

7. Per contra, the learned Special Government Pleader appearing for the respondents has drawn the attention of this Court to the appointment orders/proceedings issued by the Director of Fisheries, which were annexed at Page Nos.9 & 10 of the typed set of papers, wherein, certain terms and conditions of the appointment have been specified, which read as follows:-

"(i) This assignment is purely temporary and on contract basis for a maximum period of one year

(ii) The individual cannot claim any rights for extension, preference or permanency in Government Service based on Government rules and regulations, since the assignment is purely on contract basis only

(iii) The individual is eligible to avail leave in terms of one day per month.

(iv) Consolidated pay will be paid on monthly basis only as noticed in the advertisement

(v) The service of the individual may be considered for extension based on his/her performance and requirement for the project as and when required."

8. Learned Special Government Pleader appearing for the respondents argued that as stated in the decision of the Supreme Court in the case of Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and Ors. (cited supra),

no directions for regularisation can be granted 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. Inasmuch as in the case on hand, the appointments made were under the Tsunami Project Implementation Unit, on temporary and on contract basis, the appellants/writ petitioners are not entitled to the relief as prayed for.

9. It is pertinent to note that when the posts were notified, the appellants applied and got selected. What is permitted under public advertisement is on consolidated contract basis only for the purpose of the scheme whereas what is contemplated in Govindaswamy's case is that mere continuation of service by a temporary on adhoc basis, in some interim orders, the Court cannot confer upon any right to service as he is not working in any sanctioned post and the same has not been demonstrated.

10. The posts are notified against the sanctioned vacancies only only for the purpose of achieving the goal and the persons, who are affected in place of Tsunami, have to be accommodated and for that purpose, the project was floated and these persons were appointed. If the project continues beyond certain period namely, the cut-off date, the question arises as to whether it is based on the decision of the Government policy and whether it is sanctioned post or only adhoc post. These persons were appointed pursuant to an advertisement and they have also been paid consolidated salary and the scheme is only for a certain period and therefore, they cannot insist for regularization. In any event, the appointments are not backdoor appointments and it is purely based on merits pursuant to the notification.

11. The question arises as to whether the writ petitioners could be regularized, though the initial appointment is for the project and whether the authorities have got any idea of making it a permanent post by way of sanctioning post. We make it clear that by virtue of the qualification of the appellants/writ petitioners, it is for the Government to consider their candidature on merits and take a decision in accordance with law for their continuance. The writ petitioners were appointed during 2013 and now it is almost 4 years, i.e., 2017, and by now the object and purpose of the scheme would have been accomplished and the scheme wound up. In such event, the appellants/writ petitioners having been in the service continuously, should, in our considered view, be suitably paid lumpsum compensation.

12. With the above modification in the order of the learned single judge, both the Writ Appeals are disposed of. No costs. The connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1. The Principal Secretary to Government,
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Fisheries (FS2) Department,
Secretariat, Chennai - 600 009.
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Fisheries Department,
DMS Campus,
Teynampet,
Chennai - 600 006.

+ 2 cc to Mr.R.Jayaprakash Advocate, SR.78729, 78728
+ 1 cc to The Govt.Pleader, SR.79336

W.A.Nos.1177 and 1178 of 2017

ssd(co)
nr 04/01/2018