

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.Nos.155 to 159 of 2017
and 292 to 301 of 2017
and

CMP.Nos.2708 to 2721 of 2017
and 4735 to 4763 of 2017

- 1.The Assistant Executive Engineer,
Sub Division 1,2,3,4
K.W.S.P., P.W.D
Poondi, Thiruvallur District.
- 2.The Executive Engineer,
K.W.S.P. Division -1,
P.W.D., Chepauk,
Chennai - 600 005.
- 3.The Chief Engineer,
W.R.O., P.W.D.,
Chepauk, Chennai - 600 005.
- 4.The Government of Tamil Nadu
rep. by its Secretary,
Public Works Department, Chennai -9.
- 5.The Engineer-in-Chief,
Water Resources Organisation and
Chief Engineer (General)
Public Works Department,
Chepauk, Chennai - 600 005.
- 6.The Superintending Engineer,
Water Resources Organisation,
Chennai Region,
Chepauk, Chennai - 600 005.
- 7.The Superintending Engineer,
Water Resources Organization,
Palar Basin Circle, Chepauk,
Chennai- 600 005.

8.The Executive Engineer,
Water Resources Organisation,
Krishna Water Supply Project Division VIII
Public Works Department,
Chepauk, Chennai -5.

... Appellants/Petitioner in all
W.A.Nos.155 to 159 of 2017

vs.

1.J.Kumaravel ... 1st Respondent in W.A. 155 Of 2017
2.K.Murugesan ... 1st Respondent in W.A.156 Of 2017
3.M.Jayaraman ... 1st Respondent in W.A.157 Of 2017
4.R.Mohanraj ... 1st Respondent in W.A.158 Of 2017
5.M.Subramani ... 1st Respondent in W.A.159 Of 2017

2.The Presiding Officer,
1st Additional Labour Court,
Chennai - 600 104. ... 2nd Respondent in all W.A.Nos.155
to 159 of 2017 and 292 to 301 of 2017

Prayer :Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 11.04.2016 passed by a learned Single
Judge of this Court in W.P.No.17896 of 2015 to 17900 of 2015.

Common Prayer in W.P.Nos.17896 to 17900 of 2015. Petition filed
under Article 226 of the Constitution of India, praying to issue
writ of certiorari to call for the records in connection with
the Order dated 7.2.2015 made in I.D. No.693, 694, 695,696,
697/10 (Respectively in W.P.Nos.17896 to 17900/15) of 2010 on
the file of the 1st Additional Labour Court Chennai the 2nd
respondent herein and quash the same.

WA.Nos.292 to 301 of 2017:

1.The Assistant Executive Engineer,
Sub Division 1,2,3,4 सत्यमेव जयते
K.W.S.P., P.W.D
Poondi, Thiruvallur District.

2.The Executive Engineer,
K.W.S.P. Division -1,
P.W.D., Chepauk,
Chennai - 600 005.

3.The Chief Engineer,
W.R.O., P.W.D.,
Chepauk, Chennai - 600 005.

4.The Government of Tamil Nadu
rep. by its Secretary,
Public Works Department,
Chennai -9.

5.The Engineer-in-Chief,
Water Resources Organisation and
Chief Engineer (General)
Public Works Department,
Chepauk, Chennai - 600 005.

6.The Superintending Engineer,
Water Resources Organisation,
Chennai Region,
Chepauk, Chennai - 600 005.

7.The Superintending Engineer,
Water Resources Organization,
Palar Basin Circle, Chepauk,
Chennai- 600 005.

8.The Executive Engineer,
Water Resources Organisation,
Krishna Water Supply Project Division VIII
Public Works Department,
Chepauk, Chennai -5. Appellants/Petitioners in
WA.Nos.292 to 301 of 2017

vs.

1.A.Jeyapaul	...1 st	Respondent in W.A.292	Of 2017
2.R.Selvaraj	...1 st	Respondent in W.A.293	Of 2017
3.V.Samikannu	...1 st	Respondent in W.A.294	Of 2017
4.N.Sankar	...1 st	Respondent in W.A.295	Of 2017
5.J.Robinson	...1 st	Respondent in W.A.296	Of 2017
6.R.Rajamani	...1 st	Respondent in W.A.297	Of 2017
7.B.Palani	...1 st	Respondent in W.A.298	Of 2017
8.G.rajendran	...1 st	Respondent in W.A.299	Of 2017
9.N.Selvam	...1 st	Respondent in W.A.300	Of 2017
10.G.Appadurai	...1 st	Respondent in W.A.301	Of 2017

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 30.03.2016 passed by a learned Single Judge of this Court in W.P.No.17767 of 2015 to 17771 of 2015 and 17891 to 17895 of 2015.

Common Prayer in W.P.Nos.17767 to 17771 and 17891 to 17895 of 2015: Petition filed under Article 226 of the constitution of India, praying to issue writ of certiorari to Call for the

records in connection with the order dated 07.02.2015 made in I.D. No.688 of 2010, 689 of 2010, 690 of 2010, 691 of 2010, 692 of 2010, 698 of 2010, 700 of 2010, 701 of 2010, 702 of 2010, 704 of 2010, on the file of the 1st Additional Labour Court Chennai the 2nd respondent herein and quash the same.

For Appellants : Mr.Venkataramani, AAG assisted by
in all WAS. Mr.P.S.Sivashanmuga Sundaram, SGP

For R1 in All W.A's : Mr.Kolandaivelu

COMMON JUDGMENT

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

The unsuccessful writ petitioners, who are the State, are the appellants herein. In all these writ appeals, the first respondents are the workmen and the second respondent is the 1st Additional Labour Court, Chennai.

2.Since the issue involved in all these writ appeals is one and the same, they are considered and decided by this common judgment.

3.The first respondents - workmen initially approached the second respondent and raised disputes under Section 2-A(2) of the Industrial Disputes Act, 1947 seeking reinstatement in service with backwages, continuity of service and all other attendant benefits. It is the case of the first respondents - workmen before the second respondent that they had worked under the appellants as NMR workers with effect from different dates for different monthly wages and they were discharging their duties without any blemish or adverse remarks. Since the appellants failed to absorb them in permanent cadre, the workmen, through their Union, had filed WP.No.7374 of 2006, which was disposed of, by directing the appellants to consider the representation of the Union in the light of G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, whereby, all the NMR workers, who were working in other departments, had been absorbed in permanent cadre and their services had been regularised. However, the appellants failed to comply with the aforesaid order of this Court. Hence, the first respondents -workmen raised disputes before the Conciliation Officer, Chennai and the same ended in failure, which made them raise these disputes before the second respondent.

4.The second respondent, by a common award dated 07.02.2015, allowed all the Industrial Disputes in the following terms:

(i)The respondents (appellants herein) are directed to

reinstate the petitioners (workmen) into service within a period of 60 days from the date of this order.

(ii)The respondents (appellants herein) are directed to give the continuity of service from the date of completion of 10 years as per G.O.Ms.No.22 dated 28.02.2006.

(iii)The petitioners (workmen) are not entitled to any backwages.

(iv)The respondents (appellants herein) are directed to pay a sum of Rs.3,000/- to each of the petitioners (workmen) as costs of each petitions.

5.Challenging the aforesaid award passed by the second respondent, the appellants filed two sets of writ petitions before a learned Single Judge, who, by two separate common orders, dated 30.03.2016 and 11.04.2016, partly allowed those writ petitions.

6.The operative portion of the order dated 30.03.2016 reads thus:

"In the light of the above discussions, the writ petitions are partly allowed and the impugned common award passed in I.D.Nos.688 to 692, 698 & 700 to 702 of 2010 and 704 of 2010 dated 07.02.2015, is quashed only in respect of the relief granted to the respondents/workmen and the petitioner department is directed to frame a Scheme for regularisation of the respondents/workmen taking note of all the facts and also the various Government Orders in G.O.No.39, G.O.No.334 and G.O.No.134 and also the proceedings of the Chief Engineer dated 18.12.2007, and pass necessary orders so as to enable the respondents/workmen to be regularly absorbed in the service of the petitioner Department. The above direction shall be complied with by the competent authority of the petitioner Department within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed."

7.The operative portion of the order dated 11.04.2016 is extracted hereunder:

"In the light of the above discussions, the writ petitions are partly allowed and the impugned common award passed in I.D.Nos.693 to 697 of 2010 dated 07.02.2015, is quashed only in respect of the relief granted to the respondents/workmen and the petitioner department is directed to frame a Scheme for regularisation of the respondents/workmen, taking note of all the facts and also the various

Government Orders in G.O.No.39, G.O.No.334 and G.O.No.134 and also the proceedings of the Chief Engineer dated 18.12.2007, and pass necessary orders so as to enable the respondents/workmen to be regularly absorbed in the service of the petitioner Department. The above direction shall be complied with by the competent authority of the petitioner Department within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed."

Being not satisfied with the orders so passed by the learned Single Judge, the present set of writ appeals came to be filed by the writ petitioners.

8.The learned Additional Advocate General appearing for the appellants would contend that the first respondents- workmen were daily wagers and they were not employed through Employment Exchange by issuing any call letter or offer letter for such employment. Whenever the department required the services of the workmen, they engaged them to do the particular work and after the completion of the same, the workmen were stopped from doing the work on daily wage basis. The learned Additional Advocate General would further contend that the work, for which the workmen were employed, was casual and seasonal in nature, based on availability of work. Hence, they are not entitled to regularisation of their services as a matter of right. The learned Additional Advocate General would also contend that the employment to any regular vacancy in a Government department involves various statutory obligations with reference to the service rules for each category and the qualification, age, reservation and method of recruitment have to be followed. If the services of the first respondents -workmen are regularised, it would result in opening floodgates of similar requests from other workers engaged in works throughout the State. To fortify his contentions, the learned Additional Advocate General placed reliance on a catena of decisions.

9.On the contrary, the learned counsel for the first respondents- workmen would contend that all the NMR workers working in other departments have been absorbed in permanent cadre and their services have been regularised vide G.O.Ms.No.22 dated 28.02.2006, however, such benefit was not extended to the first respondents- workmen, which is violative of Articles 14 and 16 of the Constitution of India. According to the learned counsel, the appellants have treated the first respondents-workmen unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited, who are getting more wages or salaries for doing similar work. The learned counsel

would further contend that having regard to the facts and circumstances of the case, the second respondent directed the appellants to give the first respondents-workmen regularisation, continuity of service and other attendant benefits, which was modified by the learned Single Judge to the extent of framing a Scheme and pass orders for regularization of the service of the first respondents- workmen, in the light of the various Government orders and the proceedings of the Chief Engineer dated 18.12.2007 and pass necessary orders. Even thereafter, the appellants failed and neglected to comply with either of the orders of the second respondent or the learned Single Judge, which is arbitrary, unfair and against the law.

10. Heard the rival contentions and perused the materials placed before this Court.

11. Concededly, the first respondents- workmen were engaged on daily wage basis for the work of execution of Krishna Water Supply Project by the appellants and no recruitment rules was followed in such engagement. They sought regularisation and other reliefs, which were denied by the appellants. However, the second respondent passed award in favour of the first respondents- workmen, granting them regularisation, continuity of service and all other benefits.

12. On the issue of claiming regularisation and other reliefs by the temporary employees, the law, which emerges from various decisions, is as follows:

(i) In *State of Karnataka & Others v. Umadevi & Others*, [AIR 2006 SC 1806], the Hon'ble Supreme 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."

(ii) In *Union of India & Others v. A.S. Pillai & Others*, [(2010) 13 SCC 448], the Hon'ble Supreme Court dealt with the issue of regularisation of part-time employees and 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 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.

(iii) The Hon'ble Supreme Court, in *State of Rajasthan & Ors. v. Daya Lal & Others*, [AIR 2011 SC 1193], 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:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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."

(iv) In *Management, The Assistant Salt Commissioner v. Secretary, Central Salt Mazdoor Union*, reported in [(2008) 11 SCC 278], the Apex Court opined as under:

"The State is not bound by the act of its officers contrary to the statutory rules and any infraction by such officers would not confer a benefit on temporary employees."

13. We are of the opinion that public employment is given only in a fair and equitable manner by giving all those, who are qualified, an opportunity to seek employment. In the guise of upholding rights under the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of such a plea would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment.

14. At this juncture, it is pertinent to point out the principles summarised by the Hon'ble Supreme Court in the matter of public appointments, in *M.P. State Coop. Bank Ltd., Bhopal vs Nanuram Yadav and Others*, [(2007) 8 SCC 264], which read as follows:

"1) The appointments made without following the appropriate procedure under the Rules/Government Circulars and without advertisement or inviting applications from the open market would amount to breach of Arts. 14 & 16 of the Constitution of India.

2) Regularisation cannot be a mode of appointment.

3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization.

4) Those who come by back door should go through that door.

5) No regularization is permissible in exercise of the statutory power conferred under Art. 162 of the Constitution of India if the appointments have been made in contravention of the statutory Rules.

6) The Court should not exercise its jurisdiction on misplaced sympathy.

7) If the mischief played so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside."

15. In the light of the aforesaid well settled legal principles, we do not find any justification in regularization of the services of the first respondents- workmen. As such, the first respondents -workmen cannot be accommodated in permanent cadre.

16. When the appellants preferred writ petitions before the learned Single Judge, as against the award of the second respondent, directing them to regularise the services of the

first respondents -workmen and grant all other benefits, the learned Single Judge modified the award of the second respondent, by framing a Scheme and pass necessary orders, to regularise the service of the first respondents - workmen, based on the Government Orders. With regard to this aspect, it is relevant to refer to the observation of the Hon'ble Supreme Court in the judgment in State of Karnataka & Others v. KGSD Canteen Employees Welfare Association & Others, [(2006) 1 SCC 567], wherein, the Hon'ble Supreme Court deprecated the tendency on the part of Courts in directing framing of Schemes for regularisation of temporary employees and held thus:

"The question which now arises for consideration is as to whether the High Court was justified in directing regularisation of the services of the respondents. It was evidently not. In a large number of decisions, this Court has categorically held that it is not open to a High Court to exercise its discretion under Article 226 of the Constitution either to frame a scheme by itself or to direct the State to frame a scheme for regularising the services of ad hoc employees or daily wage employees who had not been appointed in terms of the extant service rules framed either under a statute or under the proviso to Article 309 of the Constitution. Such a scheme, even if framed by the State, would not meet the requirements of law as the executive order made under Article 162 of the Constitution cannot prevail over a statute or statutory rules framed under the proviso to Article 309 thereof."

17.Going by the aforesaid observation, we are of the view that framing a Scheme for regularising the services of ad hoc employees or daily wage employees who had not been appointed in terms of the service rules framed under a statute, would not meet the requirements of law, as the executive order made under Article 162 of the Constitution cannot prevail over a statute or statutory rules framed under the proviso to Article 309 thereof. As such, we are inclined to set aside the orders impugned in these writ appeals. Accordingly, the orders of the learned Single Judge are set aside.

18.In such view of the matter, we cannot direct the appellants to absorb them in permanent cadre, by violating the principles laid down by the Hon'ble Supreme Court. At the same time, we cannot simply brush aside the work done by the first respondents-workmen in the execution of the project in question, as they spent their valuable time for quite some time.

19. Therefore, considering the facts and circumstances of the case and taking note of the fact that the appellants have utilised the services of the first respondents -workmen for quite some time, for the purpose of execution of the project in question, we are of the view that ends of justice would be met by directing the appellants to award a lumpsum amount to the first respondents -workmen.

20. Accordingly, the appellants are directed to calculate the period of service rendered by the each workman and pay a lumpsum amount by fixing a sum of Rs.25,000/- per year. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

21. In fine, all these writ appeals are disposed of, as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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TO

1. The Assistant Executive Engineer,
Sub Division 1,2,3,4
K.W.S.P., P.W.D
Poondi, Thiruvallur District.

2. The Executive Engineer,
K.W.S.P. Division -1,
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Chepauk, Chennai -5.

9.The Presiding Officer,
1st Additional Labour Court,
Chennai -600 104.

+1cc to Mr.N.Kolandaivelu, Advocate SR.No.76427
+1cc to Special Government Pleader SR.No.76359

W.A.Nos.155 to 159 of 2017
and 292 to 301 of 2017

MR (CO)
GN (02/02/2018)

सत्यमेव जयते

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