

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2017

Coram

The Hon'ble Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.6532 of 2017

A.Gowry

...Petitioner

Vs.

1. The State of Tamilnadu
Represented by its Principal Secretary
Department of Arts and Culture
Fort St.George, Chennai - 9.
2. The Commissioner of Arts and Culture
Directorate of Arts and Culture
Tamil Valarchi Valagam, 2nd Floor
Egmore, Chennai - 600 008.
3. The Administrative Officer
Tamil Nadu Jawahar Siruvar Mandram
Government Music College Campus
Greenways Road, Chennai - 600 028.
4. The District Collector
Chennai.
5. The Executive Officer
Jawahar Siruvar Mandram
Mylapore, Chennai - 600 004.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the entire records relating to the impugned Executive Order No.256/SaCiMa-2/2010, dated 31.03.2015 of the 2nd respondent and quash the same as illegal, arbitrary, in-operative in law and further directing to the 2nd to 4th respondents to give regularization of service from 15.05.2008 in Evalar post with monetary benefits.

For Petitioner : Mr.M.Ravi
For Respondents : Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

The order ousting the services of the writ petitioner dated 31.03.2015 is under challenge in this writ petition. The writ petitioner was appointed as a part time sweeper in the office of the third respondent on 06.07.2000, for a consolidated pay of Rs.240/- per month. Subsequently, the consolidated pay for part time sweeper was enhanced to Rs.900/- per month with effect from 18.10.2007.

2. The learned counsel appearing for the writ petitioner contended that the post of part time sweeper was subsequently converted as a full time post of Evalar and therefore the writ petitioner is entitled for regularisation in the regular post on time scale of pay.

3. However, the writ petitioner is continuing as part time sweeper, even in case of converting his post as full time post of Evalar, the service of the writ petitioner cannot be regularised, in view of the legal principles laid down in the case of SECRETARY TO GOVERNMENT, SCHOOL EDUCATION DEPARTMENT, CHENNAI v. R.GOVINDASWAMY AND ORS [(2014) 4 SCC 769], which is extracted hereunder:-

"8. This Court in State of Rajasthan v. Daya Lal 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: (SCC p.435, para 12)

"(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 of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and /or appointment of ineligible candidates cannot be regularized.

(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 regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization 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 regularization 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. All appointments to any public employment has to be undertaken only through the recruitment rules, which are in force. Appointments made without following recruitment rules cannot be allowed to continue and only on the basis of the length of service, no employee can be allowed to claim regularisation. The Honourable Supreme Court has made it very clear that equal opportunity of employment has to be given, as it is the constitutional right of every citizen of this great nation. The opportunity of employment in public post had to be provided equally to all citizens concerned. No back door entry has to be permitted and no order of regularisation can be issued against the appointments, which are not made in accordance with the recruitment rules in force. Such being the legal dictum, this Court is not inclined to consider the case of the writ petitioner.

5. Accordingly, the writ petition stands dismissed. However, there is no order as to costs.

Sd/-

Asst.Registrar (CS II)

/true copy/ सत्यमेव जयते

Sub Asst. Registrar

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To

1. The Principal Secretary
The State of Tamilnadu
Department of Arts and Culture
Fort St.George, Chennai - 9.

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+1cc to M/S.M.Ravi, Advocate Sr. 55761
+1cc to the Government Pleader Sr. 55043

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GMI (CO)
VR(30/8/2017)



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