

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH  
AND  
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A.Nos.890 & 891 of 2017

The Commissioner  
Madurai City Municipal Corporation  
Madurai 625 020 .. Appellant in both the  
appeals

-vs-

1. A.Micheal
2. The Secretary to Government  
Municipal Administration &  
Water Supplies Department  
St.Fort George  
Chennai 600 009
3. The Commissioner  
Municipal Administration  
Chepauk  
Chennai 600 005 .. Respondents in both the appeals

Appeals under Clause 15 of the Letters Patent, against the order dated 08.02.2017 made in W.P.No.16743 of 2014 & W.P.(MD) No.11534 of 2014.

(i) Issue a Writ of certiorarified mandamus or any other appropriate Writ, Order of direction in the nature of Writ of Certiorarified mandamus calling for the records calling for the records of the proceedings of the 1st respondent in Letter No.31783/ MC/ IV/2006-1 dated 30.10.2006 Letter No.(1D) No.276/MC4 dated 24.6.2009 & Letter (D) No.222/MC-4/2013 dated 5.6.2014 and quash the same consequently direct the respondents to regularize the petitioner herein as Pharmacist in the existing vacancy from the date of initial appointment and grant all attendant benefits (in WP.16743/2014) and

(ii) Issue a Writ of certiorarified mandamus or any other appropriate Writ, or Order in the nature of writ, calling for the records relating to the impugned Order passed by the 1<sup>st</sup> respondent in his proceedings Letter No.(D) No.222/MC-4/2013 dated 05.06.2014 consequential Orders passed by the 3<sup>rd</sup> Respondent in his proceedings in Ma.Ni10/19295/2014, dated

26.06.2014 and quash the same and direct the respondents to regularize the service of the petitioner as pharmacist (Allopathy) in the 3<sup>rd</sup> respondent corporation with effect from 01.02.2006 with all Consequential benefits within the time frame fixed by this Hon'ble Court (in WP.MD.11534/2014) respectively.

For Appellant :: Mr.K.Venkataramani  
Additional Advocate General  
for Mr.T.Shanmugam

For Respondents :: Mr.R.Bharanidharan for  
Mr.R.Karthikeyan for R1  
Mr.R.Prathapkumar  
Additional Government Pleader  
for R2 & R3

#### JUDGMENT

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

Heard the learned Additional Advocate General for the appellant and the learned counsel representing the first respondent.

2. Pending disposal of the writ petitions, the impugned interim order has been passed directing the Government to pay the time scale of pay to the first respondent. The stand of the Government is that the contract employees have no right to seek for regularisation, as their appointment was only on adhoc basis. In the case on hand, since the first respondent was engaged on contract basis, the question of grant of time scale of pay does not arise and accordingly, the learned Additional Advocate General for the appellant sought to contend that the interim order ought not to have been passed.

3. The learned counsel for the first respondent has submitted that the first respondent was appointed in 2006 and still waiting for regularisation and when an interim order has been passed, the same should have been complied with.

4. The issue as to the tenure and nature of appointment of contract employees to claim the benefit of regularisation and/or time scale of pay is no longer res integra, as the Apex Court in Secretary to Government, Commercial Taxes and Registration Department v. A.Singamuthu, (2017) 4 SCC 113, in furtherance to the ratio laid down by the Constitution Bench in State of Karnataka v. Uma Devi (3), (2006) 4 SCC 1, has clarified that the part time or casual employees have no right to seek for regularisation, as they are not working against any sanctioned posts. In this context, the relevant paragraphs of the said judgment of the Apex Court read as follows:-

"8. Part-time or casual employment is meant to serve the exigencies of

administration. It is a settled principle of law that continuance in service for long period on part-time or temporary basis confers no right to seek regularisation in service. The person who is engaged on temporary or casual basis is well aware of the nature of his employment and he consciously accepted the same at the time of seeking employment. Generally, while directing that temporary or part-time appointments be regularised or made permanent, the courts are swayed by the long period of service rendered by the employees. However, this may not be always a correct approach to adopt especially when the scheme of regularisation is missing from the rule book and regularisation casts huge financial implications on public exchequer.

16. In *State of Rajasthan v. Daya Lal*, (2011) 2 SCC 429, this Court has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and this Court clearly laid down that part-time employees are not entitled to seek regularisation as they do not work against any sanctioned posts. It was also held that part-time employees in government-run institutions can in no case claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Relevant excerpt from the said judgment is as under:

"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) 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 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 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) to (v) ....."

5. In that view of the matter, we modify the interim order passed by the learned single Judge and request the learned single Judge to dispose of the main writ petitions themselves as to the entitlement of the first respondent for the benefit of regularisation etc., after hearing the parties. With this observation, the writ appeals are disposed of. Consequently, C.M.P.Nos.12519 & 12520 of 2017 are closed. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government  
Municipal Administration &  
Water Supplies Department  
Fort St. George  
Chennai 600 009

2. The Commissioner  
Municipal Administration  
Chepauk  
Chennai 600 005

3. The Commissioner  
Madurai City Municipal Corporation  
Madurai 625 020

+1cc to Government Pleader Advocate, S.R.No.57939  
+2cc to Mr.Mr.R.Karthikeyan, Advocate, S.R.No.57689,57690  
+2cc to Mr.T.Shanmugam, Advocate, S.R.No.57873,57874

W.A.Nos.890 & 891 of 2017

SAI (CO)  
GN(28/08/2017)



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