

IN THE HIGH COURT OF JUDICATURE AT MADRAS

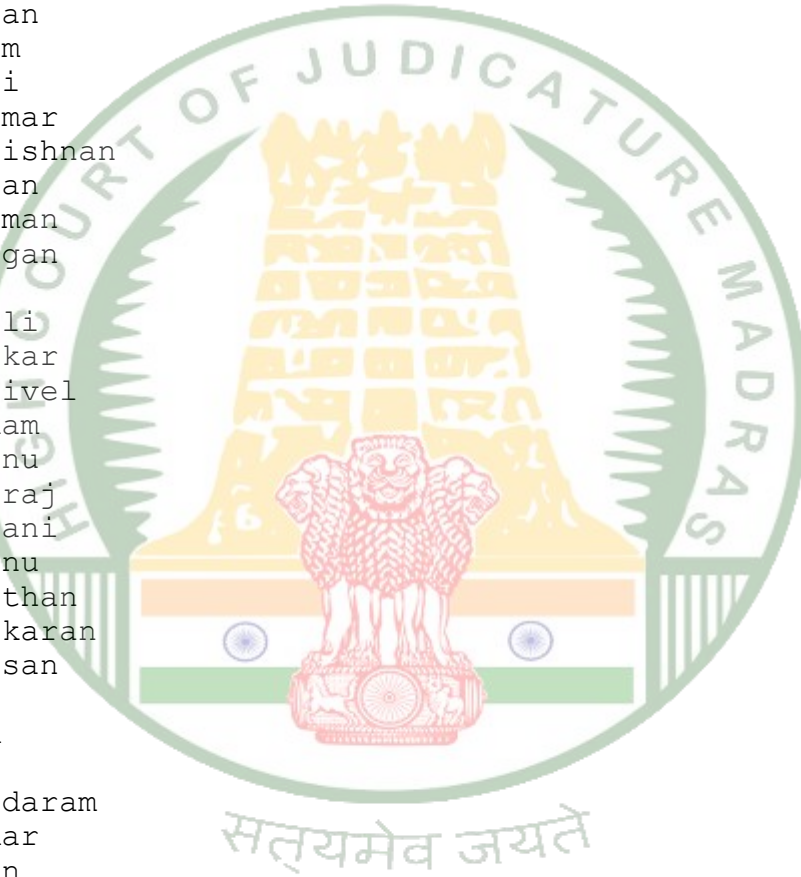
DATED : 06.10.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3341 of 2014
and
MP.Nos.1 and 2 of 2014

- 1.R.Venkatesan
- 2.V.Shanmugam
- 3.K.Ezhumalai
- 4.S.M.Sivakumar
- 5.M.Gopalakrishnan
- 6.T.Srinivasan
- 7.S.Janakiraman
- 8.R.Balamurugan
- 9.C.Kumar
- 10.R.Inbavalli
- 11.R.Raja Sekar
- 12.P.Thanigaivel
- 13.M.Kothandam
- 14.G.Samikannu
- 15.K.Govindaraj
- 16.C.Chakrabani
- 17.R.Samikannu
- 18.M.Ranganathan
- 19.T.Dhanasekaran
- 20.P.Sundaresan
- 21.G.Ravi
- 22.L.Palayam
- 23.N.Kasi
- 24.A.Somasundaram
- 25.R.Sasikumar
- 26.K.Baskaran
- 27.K.Raja
- 28.E.Munusamy
- 29.K.Ganesan
- 30.S.Elumalai
- 31.S.Mageshkumar
- 32.M.Babu
- 33.T.Mathavanithi
- 34.D.Kannan
- 35.V.Elumalai
- 36.V.Veerabathiran
- 37.A.Venkatesan
- 38.D.Vijayakumar



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39.A.Devaraj
40.K.Suresh
41.V.C.Arjunan
42.R.Ayyasamy
43.D.Sudakar
44.M.Gangadaran
45.U.Karunanithi
46.P.Jagadeesan
47.D.Sathiavel
48.K.Rajendiran
49.M.A.Subramanian
50.G.Vidya Sekar

..Petitioners

Vs

- 1.The Government of Tamil Nadu,
Rep.by the Chief Secretary to Government,
Highways Department,
Fort St.George, Chennai - 9.
- 2.The Chief Engineer,
Highways and Rural Works,
Chepauk, Chennai -5.
- 3.The Divisional Engineer,
Highways and Rural Works,
Chengalpattu Division, Chengalpattu.
- 4.The Divisional Engineer,
Highways and Rural Works,
Vellore Division, Vellore District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in letter No.10734/hm2/2011-9, dated 25.7.2013 and quash the same and direct the respondent to absorb the petitioners as N.M.R's and regularize the service.

For Petitioners : Mrs.Thenmozhi Shiva Perumal
For Respondents : Ms.K.Bhuvaneswari
Government Advocate.

O R D E R

The order of rejection issued by the first respondent in proceedings dated 25.7.2013 as sought to be quashed in this writ petition and further, a direction is sought for to absorb the petitioners as N.M.Rs and regularise their services in the permanent post.

2.The learned counsel appearing for the writ petitioners has made a submission that the writ petitioners were appointed as Nominal Mazdoor Roll (N.M.R.) by the Highways Department on daily wage basis in the Chengalpattu Division. The writ petitioners were working as daily wage employees fairly for a long duration and inspite of that, their services were not regularised in the regular post available in the Department of Highways. This writ petition is filed on the ground that the petitioners have worked for long years and therefore, they are entitled for regularisation. The order of rejection was issued by the first respondent in the proceedings dated 25.7.2013 stating that the writ petitioners have not completed ten years of service so as to consider their claim of regularisation in accordance with the order passed by the Government order in G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.2.2006. The Government granted the benefit of regularisation for the daily wage employees who have completed ten years of service as on 01.01.2006. However, the writ petitioners have not completed ten years of service as on 01.01.2006 and therefore, the respondents have not considered the case of the writ petitioners for regularisation.

3.Apart from the above factual circumstances considered by the respondents, in the case on hand, this Court has to consider the legal principles settled by a Constitutional Bench of the Supreme Court of India in respect of the regularisation of the services of the employees in the STATE OF KARNATAKA AND OTHERS v. UMA DEVI (3) & ORS. [(2006) 4 SCC 1], and the relevant paragraphs of the same are extracted here under :

"33. In the earlier decision in Indra Sawhney Vs. Union of India [1992 Supp. (2) S.C.R. 454], B.P. Jeevan Reddy, J. speaking for the majority, while acknowledging that equality and equal opportunity is a basic feature of our Constitution, has explained the exultant position of Articles 14 and 16 of the Constitution of India in the scheme of things. His Lordship stated:-

"6. The significance attached by the founding fathers to the right to equality is evident not only from the fact that they employed both the expressions 'equality before the law' and 'equal protection of the laws' in Article 14 but proceeded further to state the same rule in positive and affirmative terms in Articles 15 to 18

7. Inasmuch as public employment always gave a certain status and power --- it has always been the repository of State power ---besides the means of livelihood, special care was taken to declare

equality of opportunity in the matter of public employment by Article 16. Clause (1), expressly declares that in the matter of public employment or appointment to any office under the state, citizens of this country shall have equal opportunity while clause (2) declares that no citizen shall be discriminated in the said matter on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. At the same time, care was taken to, declare in clause (4) that nothing in the said Article shall prevent the state from making any provision for reservation of appointments or posts in favour of any backward class of citizen which in the opinion of the state, is not adequately represented in the services under the state.."

(See paragraphs 6 and 7 at pages 544 and 545) These binding decisions are clear imperatives that adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.

43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

45. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to

what we have held herein, will stand denuded of their status as precedents.

49. In the result, Civil Appeal Nos. 3595-3612 of 1999, Civil Appeal No. 3849 of 2001, Civil Appeal Nos. 3520-3524 of 2002 and Civil appeal arising out of Special Leave Petition (Civil) Nos. 9103-9105 of 2001 are allowed subject to the direction issued under Article 142 of the Constitution in paragraph 46 and the general directions contained in paragraph 44 of the judgment and Civil Appeal Nos. 1861-2063 of 2001 are dismissed. There will be no order as to costs."

4. By following the above Constitutional Bench judgment, once again the Hon'ble Supreme Court reiterated in the case of SECRETARY TO GOVERNMENT, SCHOOL EDUCATION DEPARTMENT, CHENNAI v. R.GOVINDASWAMY AND ORS.[(2014) 4 SCC 769]. In paragraph No.8, the Hon'ble Supreme Court has observed as follows:

"8.this Court in State of Rajasthan & Ors. v. Daya Lal & Ors., 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:

"(i) 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.

(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 regularisation, if he is not working against a sanctioned post. Sympathy and sentiment 5 Page 6 cannot be grounds for passing any 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 added) "

5. All appointments to public post have to be made only under the Constitutional schemes and by following the Recruitment Rules in force. Back door entry in the public employment, cannot be entertained by the officials. All the back door appointments are to be scrapped and the eligible candidates are to be considered through open competitive process and by providing equal opportunity to all the eligible citizens of this great nation.

The very concept of equality enshrined under the Constitution of India has to be followed scrupulously by the State by providing equal opportunity of appointment to all the citizens by conducting open competitive process in accordance with the Recruitment Rules. Appointments made contrary to the Recruitment Rules, cannot be regularised on the basis of the length of services rendered by the candidates. The practice of appointing the candidates in a public post irregularly and thereafter, regularising the service only based on the length of service, causes great injustice to the citizens of the country and the eligible candidates who are aspiring for public employment by putting their hard labour, are deprived of their opportunity of public employment.

6. Thus, the practice of back door entry is totally barred through the authoritative pronouncement of the Constitutional Bench of the Supreme Court of India. This Court cannot issue any direction under Article 226 of Constitution of India, so as to regularise the services of the petitioners, who were not appointed in accordance with the Requirement Rules in force. Such being the legal principle settled in the matter of regularisation and appointment, this Court cannot grant any relief as such sought for in this writ petition.

7. Accordingly, the writ petition stands dismissed. Consequently connected miscellaneous petitions are closed. However there shall be no order as to costs.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Secretary to Government,
The Government of Tamil Nadu
Highways Department,
Fort St. George, Chennai - 9.

2. The Chief Engineer,
Highways and Rural Works,
Chepauk, Chennai - 5.

3. The Divisional Engineer,

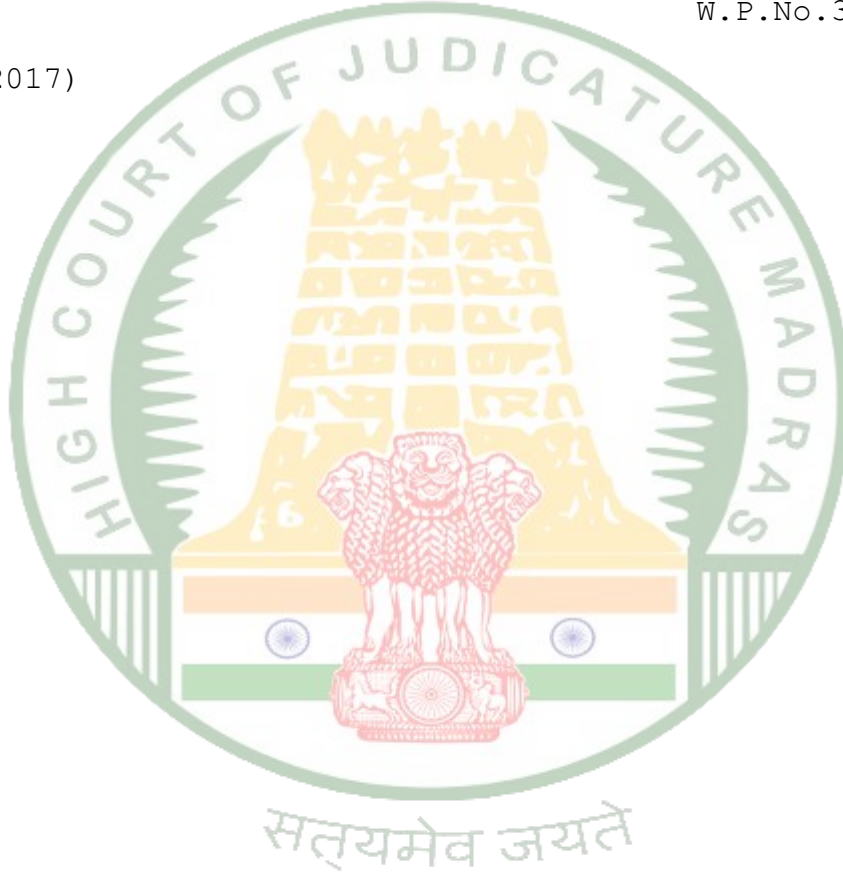
Highways and Rural Works,
Chengalpattu Division,
Chengalpattu.

4.The Divisional Engineer,
Highways and Rural Works,
Vellore Division, Vellore District.

+1cc to the Government Pleader, S.R.No.72656

W.P.No.3341 of 2014

AD(CO)
GN(13/11/2017)



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