

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 28.08.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.15995 to 15997 of 2014 &
M.P.Nos.2, 2, 2 & 3, 3, 3 of 2014

M.Gopinathan .. Petitioner in
W.P.No.15995 of 2014

S.Kaveri .. Petitioner in
W.P.No.15996 of 2014

O.J.Selvi .. Petitioner in
W.P.No.15997 of 2014

versus

1. The Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai-600 009. .. 1st respondent in
all the Writ Petitions

2. The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai-600 009. ... 2nd respondent in
W.P.No.15995 of 2014

3. The Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai-600 009. .. 2nd respondent in
W.P.No.15996 of 2014

4. The Secretary to Government,
Handloom Textiles and Khadi Department,
Secretariat, Chennai-600 009. .. 2nd respondent in
W.P.No.15997 of 2014

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the first respondent in Letter No.14880/U2/2013-1 P & AR Department dated 02.05.2013, quash the same and consequently

direct the 1st respondent to regularize the services of the petitioners from the date of their respective first appointment on 2.4.2007 properly through Employment Exchange, with all consequential monetary benefits, seniority and promotion.

For Petitioners : Mr.T.Ranganathan

For Respondents : Mr.K.Venkataramani, AAG
assisted by Mr.T.M.Pappiah
Spl.G.P.

COMMON ORDER

The petitioners have approached this Court, seeking the following relief:

"To issue Certiorarified Mandamus, to call for the records relating to the impugned order issued by the first respondent in Letter No.14880/U2/2013-1 P & AR Department dated 02.05.2013, quash the same and consequently direct the 1st respondent to regularize the services of the petitioners from the date of their respective first appointment on 2.4.2007 properly through Employment Exchange, with all consequential monetary benefits, seniority and promotion."

2. All these Writ Petitions are connected in view of the common issues and grounds raised and are taken up together for final disposal by this common order.

3. The petitioners were sponsored by the Employment Exchange on 2.4.2007 and they came to be appointed in Tamil Nadu Secretariat as Typists vide G.O.Ms.No.4 Personal & Administrative Reforms (U) Department dated 3.1.2007. Prior to their recruitment, G.O.Ms.No.3 Personal & Administrative Reforms (U) Department dated 3.10.2007 was issued stating that the posts of Typist in the Tamil Nadu Secretariat would fall within the purview of the Tamil Nadu Public Service Commission (in short, 'TNPSC') and since the vacancies of Typists have not been filled up for a long time and till the candidates are recruited through the TNPSC, the administration work will get affected, a decision was taken up to fill up the vacancies on a temporary basis by formulating a scheme exclusively for this purpose pending regular recruitment through the TNPSC. In the said circumstances, all the petitioners came to be appointed based on G.O.Ms.No.4 dated 3.1.2007 as Typists on a temporary basis in the Tamil Nadu Ministerial Service.

4. After being appointed vide G.O.Ms.No.4, dated 3.1.2007, the petitioners continued in service, but except for one day break between two spells of appointment as tabulated below:

Sl. No.	Date of Break in service	Orders of the Government	Reappointed	Orders of the Government
1.	25.03.2008	GO (Ms) No.58 P&AR Department dated 24.3.2008	25.03.2008	GO (Ms) No.58 P&AR Department dated 24.3.2008
2.	25.06.2009	Letter (Ms) No.29257/U2 P & AR dated 24..6.2009	26.06.2009	Letter (Ms) No.29257/U2 P & AR dated 24..6.2009
3.	01.07.2010	Letter (Ms) No.27305/U2/10, P & AR dated 30.06.2010	02.07.2010	Letter (Ms) No.27305/U2/10, P & AR dated 30.06.2010

5. Subsequent to the appointment of the petitioners in 2007, the Government has issued G.O.Ms.No.61 P & AR Department, dated 22.5.2009, for conducting a Special test through the TNPSC to regularize the services of the petitioners. The petitioners had participated in the special test and were successful and thereafter, their services came to be regularized with effect from 25.11.2010, but not from their initial appointment, i.e. 02.04.2007. In the said circumstances, the petitioners submitted a representation for regularization of their services with effect from their original appointment, but the same was rejected by the first respondent vide proceedings dated 02.05.2013. The said rejection order is put to challenge in the present Writ Petitions.

6. According to the learned counsel Mr.T.Ranganathan, appearing for the petitioners, once the petitioners were sponsored by the Employment Exchange and their employment cards were surrendered at the time of their initial appointment and as the appointment had culminated in petitioners' passing the special test conducted by the TNPSC in pursuance of G.O.Ms.No.61, dated 22.5.2009, the respondents ought to have regularized the services of the petitioners with effect from their initial appointment and not from the date of their qualifying in the special test. According to the learned counsel, in similar circumstances, such regularization had been

granted to other employees from the date of their original appointment.

7. According to the learned counsel for the petitioners, they were appointed against the sanctioned post and in order to deny them the benefits of regularization, artificial break-ups were applied in between two spells of appointment and such action on the part of the respondents per se arbitrary and unconstitutional, offending Articles 14 and 16 of the Constitution of India. Although the petitioners' appointment was termed as appointment under Rule 10(a)(i) of the Tamil Nadu State Subordinate Rules, their appointment for all purposes was valid and the same was done as per the Rules. Moreover, the appointments were also effected by following the roster prescribed by the Government. Since the petitioners' appointment continued with artificial break-ups with one day till their regularization in 2010, the authorities ought to have regularized the services of the petitioners from the date of their initial appointment and not from the subsequent date. The learned counsel for the petitioners would submit that the petitioners were fully qualified for appointment and while recruiting the petitioners, all the Rules and Regulations including employment seniority, rule of reservation, etc. were followed and therefore, there is no justification for the authorities to deny the benefit of regularization to the petitioners from the date of their initial appointment in 2007.

8. Upon notice, Mr.T.M.Pappiah, learned Special Government Pleader entered appearance and filed a common counter affidavit in all the writ petitions.

9. In the counter affidavit, it is stated that admittedly the post of Typist falls within the purview of TNPSC and any appointment outside the purview of TNPSC, cannot be a regular appointment. At the time of appointment of the petitioners, it was made clear in their appointment letters that their services were utilized on temporary basis till a regular incumbent is appointed through TNPSC and therefore, the petitioners, after accepting the appointment letters, cannot claim regularization from the date of their initial appointment.

10. It is also stated in the counter affidavit that the Employment Exchange registration cards were returned to the petitioners after their appointment, which fact has not been disputed by the petitioners. However, it is also stated that the Government, in order to help the temporary employees like the present petitioners, have issued G.O.Ms.No.61 P.&AR. Department, dated 22.5.2009 to conduct a special competitive examination at Group IV standard by the TNPSC and a person would be qualified to hold the post of Typist only after passing the said examination conducted by the TNPSC. The said competitive examination was conducted only on humanitarian grounds after

taking into consideration the services rendered by the temporary employees like the petitioners herein.

11. As regards the submission of the learned counsel for the petitioners regarding regularization of certain employees who failed special qualification test conducted in 1995, it is stated by the respondents in the counter affidavit that those employees were covered by the orders passed by the Tamil Nadu Administrative Tribunal and the High Court of Madras, wherein, certain orders were issued ordering regularization of the employees and the same cannot be made applicable to the present petitioners.

12. On behalf of the respondents, the learned Addl. Advocate General advanced his arguments. He would submit that the Government of Tamil Nadu issued a ban on direct recruitment in 2001 in respect of the posts of Typists, Steno-typists and Junior Assistants, ect., which posts would fall exclusively within the purview of TNPSC. In 2006, the ban was lifted and certain instructions were issued to fill up vacancies existed various in cadres like, Typists, Steno-typist, etc., which vacancies could not be filled up due to ban between 2001-2006. A special recruitment was made to fill up the vacancies originally in order to tide over the administrative crisis without waiting for regular recruitment by the TNPSC. Therefore, a temporary scheme was formulated for making such appointments. As per Rule 10(a)(v) of the General Rules for Tamil Nadu State and Subordinate Services, no employee shall be continued for more one year from the date of temporary appointment and he shall not be regarded as a probationer.

13. According to the learned Addl. Advocate General, the petitioners were made known about the temporary nature of their appointment since there were no competitive test or other established procedure conducted for selection by TNPSC when these petitioners came to be appointed. Simultaneously, the TNPSC issued a notification in November 2007 inviting applications from general public for recruitment to the post of Typists and Steno-typists etc., in Tamil Nadu Ministerial Service, and a written examination was conducted in 2008 and the results were published. In view of the appointment of regular candidates, the employment of the petitioners was to be terminated in order to accommodate the selected candidates by the TNPSC. However, number of representations have been made to the Government for absorption of the temporary employees permanently in the government service. In the meanwhile, the persons who were selected through TNPSC came to be appointed in various Departments of Tamil Nadu as Typists and Steno-typists etc., in 2009.

14. In the above circumstances, the learned Addl. Advocate General would submit that instead of terminating the services of the petitioners and other temporary employees and in consideration of the representations made on behalf of the temporary employees, the Government, in consultation with the TNPSC, have decided to conduct a special competitive examination by applying relaxed standards in order to accommodate maximum number of temporary employees without they are being displaced and for this purpose, age relaxation was also applied and on the basis of their qualifying in special test, the petitioners came to be appointed on regular basis.

15. The learned Addl. Advocate General would also contend that as regards G.O.Ms.No.124, dated 12.9.2009, which G.O. has also been relied upon by the petitioners, stating that the persons who have not passed the special test conducted by the Government, had been regularized from the date of their initial appointment, he would submit that the said G.O. was issued in respect of certain employees who were recruited in 1983 and continued temporarily in the said posts for more than 15 years since they did not qualify the examination, they approached this Court and this Court, after taking into consideration the long years of services rendered by those employees, a direction was issued to absorb them. Only in the above backdrop, G.O.Ms.No.124, dated 12.9.2009 came to be issued and the benefits contemplated in the said G.O., cannot be made applicable to the petitioners since in the instant case, the petitioners were recruited only in the year 2007 and the special qualifying test was conducted in 2009 within two years and regularized their services in 2010. Therefore, the learned Addl. Advocate General would submit that the petitioners cannot draw parallel and compare their case with that of those employees whose services came to be absorbed through G.O.Ms.No.124, dated 12.9.2009.

16. Based on the above facts and submissions, the learned Addl. Advocate General would emphasis that the petitioners have not made out any case for grant of relief by this Court and their claim is completely misconceived and cannot be sustained in law.

17. This Court has considered the submissions put forth by the learned counsel appearing for the petitioners and the learned Addl. Advocate General appearing for the respondents and perused the relevant materials and pleadings placed on record.

18. At the outset, it is to be seen that it is admitted case that initially, the petitioners were not recruited by the TNPSC as the posts in which they were appointed namely Typists would come under the purview of the TNPSC. Therefore, the initial appointment of the petitioners cannot be said to be valid

although the petitioners were sponsored by the Employment Exchange and some selection procedure was followed by the Government while recruiting them on temporary basis. Moreover, the fact that in 2008-09, the TNPSC had notified and recruited regular employees for the post of Typists and Steno-typists by subjecting them to regular selection and the employees who were selected by the Commission had been given employment on regular basis in 2009, their seniority will be drastically affected if the petitioners' claim is allowed. As rightly contended by the learned Addl. Advocate General that instead of displacing the petitioners, the Government on humanitarian consideration, conducted the special qualifying test by applying the relaxed standards and regularized the services of the employees like the petitioners herein who were originally appointed through Employment Exchange on temporary basis. It is also admitted case that the petitioners were aware of the temporary nature of appointment and accepted such appointment and they had also participated in the special qualifying test conducted by the TNPSC and after participation in the special qualifying test, it is not open to the petitioners to claim regularization of their services from the date of their initial appointment as admittedly, they became eligible for regular appointment only on the date of passing special qualifying test. If the claim of the petitioners is to be allowed in the place of regular recruitment of employees by the TNPSC in 2008-09, it would amount to treating unequals as equals and that would be violative of Articles 14 and 16 of the Constitution. The petitioners having got the benefit of regularization through relaxed selection procedure, cannot be heard to complain about non-regularization of their service from the date of their initial appointment.

19. In the light of the above narrative and discussion, this Court finds that the claim of the petitioners cannot be countenanced both in law and on facts and therefore, the Writ Petitions are liable to be dismissed as devoid of merits and substance. Accordingly, the Writ Petitions fail and they are dismissed. No costs. Consequently, connected MPs are closed.

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Sd/-
Asst.Registrar (CS V)

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Sub Asst. Registrar

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1. The Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai-600 009.

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Commercial Taxes and Registration Department,
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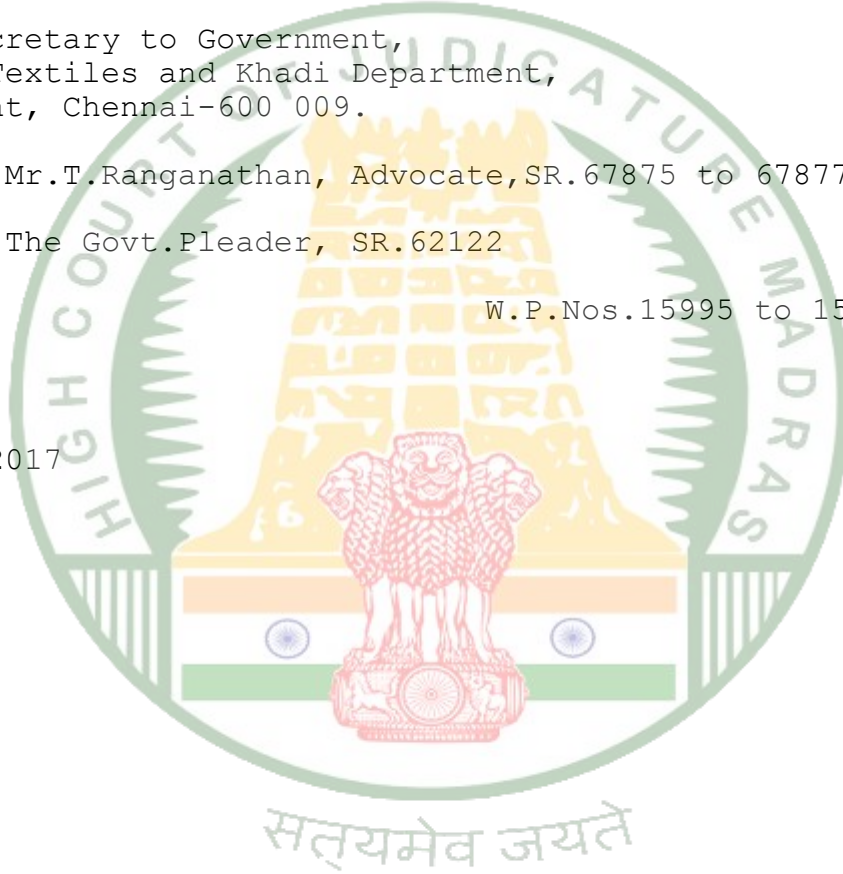
+ 3 cc to Mr.T.Ranganathan, Advocate, SR.67875 to 67877

+ 1 cc to The Govt.Pleader, SR.62122

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MN (CO)

NR 16/11/2017



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