

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

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

W.P. No.596 of 2010 and
W.M.P.No.1 of 2010

T.Sivaraman

.. Petitioner

Vs

1. Central Board of Secondary Education,
Represented by its Secretary,
Ps-1-2, Institution Area, I.P.Extn,
Patparganj, Delhi - 110 092.
Having its regional office at

Plot No.1630 A, "J" Block,
16th Main Road, Anna Nagar West,
Chennai - 600 040.
2. The Director General,
Ordnance Factory Board,
Esplanade East,
Calcutta - 700 069.
3. The General Manager,
Heavy Vehicles Factory,
Avadi, Chennai - 600 054.
4. HVF English Medium Educational Society,
Represented by its Secretary,
Vijayanta Senior Secondary School,
Near EME Lines, HVF Estate,
Avadi, Chennai - 600 054.
5. Vijayanta Senior Secondary School,
Represented by The Secretary,
Near EME Lines, HVF Estate,
Avadi, Chennai - 600 054.

..Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a writ in the nature of Writ of Mandamus or any other appropriate writ of direction, directing the respondent to regularize the petitioner services as per their byelaws.

For Petitioner : Mr.V.Raghavachari
for Mr.C.Prasannavenkatesh

For Respondents : Mr.G.Naga Rajan for R1
Sr.Central Govt. Standing Counsel

: Mr.K.Gunasekar for R2 to R5

O R D E R

The present Writ Petition has been filed, seeking for issuance of a writ of mandamus to direct the respondents to regularise the service of the petitioner.

2. The Writ Petitioner is presently employed as Librarian on Adhoc /temporary basis, more specifically, on consolidated salary. The Writ petitioner was appointed by the fifth respondent in his proceedings dated 26th August 2003. On a perusal of the Appointment Order, it is unambiguous that the appointment of the Writ Petitioner as Librarian was purely on temporary/adhoc basis more specifically on consolidated salary.

3. The learned Counsel appearing for the Writ Petitioner strenuously contended that the Writ Petitioner is continuing in service for more than 13 years. Further, the respondents regularised the services of similarly placed persons, who have completed five years of service. Therefore, the case of the Writ Petitioner also to be considered on the said basis.

4. The learned Counsel for the respondents opposed the contentions raised by the learned counsel appearing for the petitioner, by stating that after the Judgment of the Hon'ble Supreme Court of India in THE SECRETARY STATE OF KARNATAKA AND ORS v. UMA DEVI & ORS [2006 (4) SCC 1], the benefit of regularisation cannot be extended to the temporary employees, who entered into Public Office through back door entry. Every employment to Public Office is to be carried out through the Constitutional Schemes and not otherwise. Appointment made without following the Recruitment Rules and Procedures contemplated therein, cannot be confirmed and no such appointment can be regularised. For better appreciation, paragraph No.42, of the decision cited supra, is extracted below:

"42. The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to

life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under [Article 39\(a\)](#) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on [Article 21](#) of the Constitution."

In view of the Judgment of the Hon'ble Constitution Bench of the Apex Court of India, now employees who entered into the Service, without following the Recruitment process, cannot seek for Regularisation. Admittedly, the Writ petitioner was not recruited through the procedures established under the Rules and therefore his continuation as adhoc- temporary employee, cannot be regularised and it has to be considered as back door entry.

5. Such being legal principles laid down by the Hon'ble Apex Court of India, this Writ Petition deserves no further consideration and accordingly, stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa/gsk

To

1. The Secretary,
Central Board of Secondary Education,
Ps-1-2, Institution Area, I.P.Extn,
Patparganj, Delhi - 110 092.
Having its regional office at

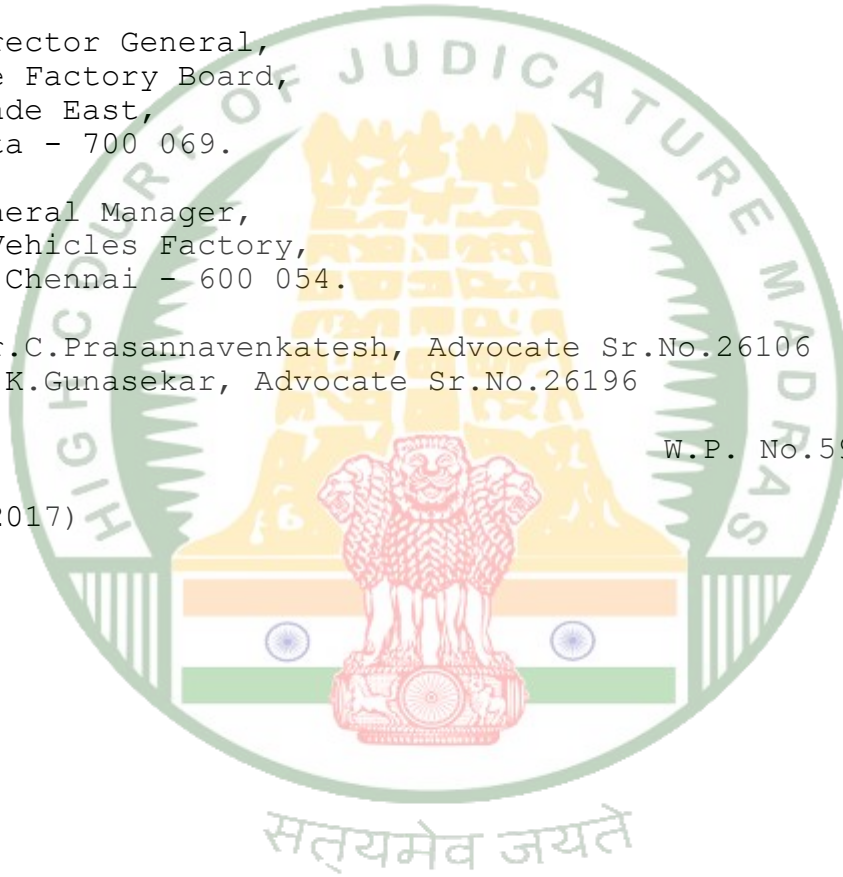
Plot No.1630 A, "J" Block,
16th Main Road, Anna Nagar West,
Chennai - 600 040.

2. The Director General,
Ordnance Factory Board,
Esplanade East,
Calcutta - 700 069.
3. The General Manager,
Heavy Vehicles Factory,
Avadi, Chennai - 600 054.

+1cc to Mr.C.Prasannavenkatesh, Advocate Sr.No.26106
+1cc to M.K.Gunasekar, Advocate Sr.No.26196

W.P. No.596 of 2010

NM(CO)
NR(19/05/2017)



WEB COPY