

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.4803, 12775, 24508, 26370 and 26371 of 2012
and

M.P.Nos.1 and 2 of 2012 and 1 of 2015
and

Rev.A.Nos.188 190 of 2012

1.I.Marie Catherine
2.L.Helice Vimala
3.N.Vijayalakshmi
4.N.Patchaivazhi
5.A.Prakash
6.B.Kalaniti

.. Petitioners in
W.P.No.4803 of
2012

1.A.Munusamy
2.E.Vengadesan
3.S.Velmurugan
4.D.Soupramanien
5.C.Ramamurthy
6.P.Vengadabady
7.P.Sattivelane
8.K.Rajeswary
9.H.Arulmozhi

.. Petitioners in
W.P.No.12775 of
2012

1.S.Anbu
2.R.Gunasekaran
3.M.Parayavarthan
4.S.Sundaram
5.E.Darmalingam
6.R.Gowmathi

.. Petitioners in
W.P.No.24508 of
2012

(W.P. dismissed as against P6
vide order dated 03.12.2014 in
W.P.No.24508 of 2012)

1.V.Karthik
2.B.Sulochana
3.S.Gunasegaran
4.R.Kanthaperumal
5.B.Prem
6.S.Sinrajal
7.A.Murugaiyan
8.L.Veeraragavaperuman @ Arun
9.A.Kamalathasan
10.B.Gobinathan
11.R.Purushothaman
12.T.Selvaganapathy
13.M.Murugasamy

.. Petitioners in
W.P.No.26370 of 2012

(W.P. dismissed as withdrawn
as against petitioners 2, 3, 7 and
13 vide order dated 01.04.2013
in W.P.No.26370 of 2012)

1.K.Subrayalu
2.M.Mariapan
3.A.Velmurugan

.. Petitioners in
W.P.No.26371 of 2012

Secretary to Government for
Women and Child Welfare
Department, Puducherry.

.. Petitioner in
all the Rev. Appls.

Vs.

1.Secretary to Government for
Women and Child Welfare
Department, Puducherry.
2.Chair Person,
Puducherry Women's Commission,
Puducherry.

.. Respondents
in all the W.Ps

1.S.Anbu
2.R.Gunasekaran
3.M.Parayavarthan
4.S.Sundaram

5.E.Darmalingam
6.R.Gowmathi
7.Chair Person,
Puducherry Women's Commission,
Puducherry.

.. Respondents in
Rev.A.No.188 of
2012

(W.P. dismissed as withdrawn as
against R6 vide order dated
03.12.2014 in W.P.No.24508 of 2012)

1.V.Karthik
2.B.Sulochana
3.S.Gunasekaran
4.R.Kanthaperumal
5.B.Prem
6.S.Sinrajal
7.A.Murugaiyan
8.L.Veeraragavaperuman @ Arun
9.A.Kamalathasan
10.B.Gobinathan
11.R.Purushothaman
12.T.Selvaganapathy
13.M.Murugasamy
14.Chair Person,
Puducherry Women's Commission,
Puducherry.

.. Respondents in
Rev.A.No.189 of 2012

1.K.Subbarayalu
2M.Mariappan
3.A.Velmurugan
4.The Chair person
Puducherry Women's Commission
Puducherry

.. Respondents in

Rev.A.No.190 of 2012

Petitions filed under Article 226 of The Constitution of India praying for the issuance of a writ of mandamus directing the respondents to regularise the services of the petitioners in the post of Counsellor/Field Staff/Sanitary Assistant/Peon with effect from the date on which they are appointed with other consequential benefits including the arrears of wages, seniority etc.,

Review Applications filed under Order XLVII Rule 1 and Section 114 of C.P.C. against the order of this Court made in M.P.Nos.2 and 2 of 2012 in W.P. Nos.24508 , 26370 and 26371 of 2012 dated 19.10.2012.

For Petitioners.. Mr.L.Chandrakumar
in W.P.Nos.26370, 26371 and
24508 of 2012
Mr.V.Ajayakumar
in W.P.Nos.4803 and 12775
of 2012
Mr.J.Kumaran,
Govt. Advocate (Pondy)
in Rev.Apln. Nos.188 to 190 of 2012

For Respondents.. Mr.J.Kumaran,
Govt. Advocate (Pondy)
in W.P.Nos.26370, 24508, 4803,
12775 of 2012
for R1 in W.P.No.26371 of 2012
Mr.Karthik Mukundan for R2
in W.P.No.26371 of 2012
Mr.L.Chandrakumar
for R1 to R6 in Rev.Apln.No.188 of
2012, for R1 to R13 in Rev.Apln.
No.189 of 2012 and
for Respondents in Rev.Apln.No.190
of 2012

All these writ petitions raise common issue and grounds and therefore, they are taken together for hearing for common disposal.

2.The petitioners in all the writ petitions are the casual employees working in the second respondent Commission which is functioning under the first respondent Department. The second respondent Commission was constituted in 2004 as per the orders of the Government of India. It is a statutory body being controlled by the first respondent Department viz., Women and Child Welfare Department. The entire funds for the commission is made by the Government of Puducherry.

3.On being constituted in 2004, the petitioners came to be appointed on various dates on a casual basis and they have been allowed to continue in their work uninterruptedly without any break. They were originally paid daily wages ranging from Rs.277/- to Rs.376/- depending on their employment in various

categories. Since they have been continuously working from the date of their respective original appointment, they have been recommended by the first respondent for regularising the services on par with regular employees employed by the Government in similar categories.

4. According to the petitioners, originally the Government of Puducherry issued G.O.Ms.No.92 in 1998 providing for regularisation of daily rated employees who had rendered a minimum of 240 days service in a year. However, the said Government Order has been replaced by G.O.Ms.No.22 Department of Personnel and Administrative Reforms dated 27.02.2009, which Government Order provides for comprehensive guidelines for regularising the employees like the petitioners herein in a phased manner. The said Government Order was issued solely for the purpose of regularising the casual employees working in the Departments of Government of Puducherry and their subordinate offices. According to the petitioners, the employees working in the second respondent Commission under the first respondent Department are also covered under the Scheme and therefore they are also entitled to be conferred with the benefit of provisions of the Scheme.

5. According to the petitioners, after coming into force of the above said Government Order in 2009, several Departments have initiated action for regularising the services of the casual employees by implementing the Government Order and the employees whose claims were considered, were regularised, applying the beneficial provisions of the Government Order. However, inspite of the fact that the present petitioners are similarly placed, their claim was not considered by the first respondent and therefore, they are before this Court seeking to issue a mandamus.

6. Mr. L. Chandrakumar, learned counsel appearing for the petitioners would contend that G.O.Ms.No.22 Department of Personnel and Administrative Reforms dated 27.02.2009 is an ongoing scheme and the provisions of the scheme have been time and again applied even as recent as in 2016 for regularising the casual employees in the Forest Department of Government of Puducherry.

7. Mr. V. Ajayakumar, learned counsel appearing for the petitioner in W.P.No.12775 of 2012 would draw this Court's attention to the official memorandum dated 28.02.2011 issued by the Government of Puducherry in which it is clearly stated that all Government Departments and their subordinate offices, Quasi-Government Organisations and local bodies are directed to strictly conform to the provisions of the Scheme notified vide G.O.Ms.No.22 Department of Personnel and Administrative Reforms dated 27.02.2009. Therefore, he would submit that all

organisations functioning under the Government of Puducherry have come within the ambit of the said scheme and therefore the petitioners who are working in the second respondent Commission are also covered by the beneficial provisions of G.O.Ms.No.22 Department of Personnel and Administrative Reforms dated 27.02.2009.

8.Both Mr.L.Chandrakumar and Mr.V.Ajaykumar, learned counsels appearing for the petitioners in the respective writ petitions would draw the attention of this Court to several orders issued by the Government in 2014 and 2016, wherein various Departments of Government of Puducherry have applied the provisions of the aforesaid scheme and regularised several employees. Learned counsels would particularly draw this Court's attention to the communication dated 22.02.2016 issued by the first respondent Department, in which in para 2, it is stated as follows:

2.The engagement/continuance of the Casual Labourers shall be in strict adherence to the terms and conditions contained in the "The Government of Puducherry Casual Labourers (Engagement & Regulation) Scheme, 2009" issued vide G.O.Ms.No.22 dated 27.02.2009 of the Department of Personnel and Administrative Reforms (PW), Puducherry.

9.Therefore, the learned counsels would impress upon this Court that the engagement of the casual labourers by the second respondent Commission has to conform to the Scheme framed by the Government of Puducherry vide G.O.Ms.No.22 Department of Personnel and Administrative Reforms dated 27.02.2009. Mr.L.Chandrakumar, learned counsel would also submit that the second respondent Commission vide its communication dated 05.05.2010 had submitted a detailed report to the Government of Puducherry in regard to the employment of casual employees of various categories of posts and also requirement of various posts for effective functioning of the Commission. According to the learned counsel for the petitioners, the Government is therefore aware of the service details of the casual employees employed by the second respondent Commission but despite the same, no efforts have been initiated for regularising their services.

10.According to the learned counsel for the petitioners, when a demand was made by the petitioners in 2011-2012, the meagre daily wages which were paid to them, came to be discontinued and from 2011 onwards, these petitioners had been working without any wages being paid to them. However, despite the said fact that they have still been working with the fond hope that their services would one day be considered and regularised by applying G.O.Ms.No.22 Department of Personnel

and Administrative Reforms dated 27.02.2009. In the said circumstances, learned counsels appearing for the petitioners would pray for a direction to the first respondent to regularise the services of the petitioners in terms of the aforesaid Government Order.

11. Upon notice, Mr. J. Kumaran, learned Government Advocate entered appearance on behalf of the respondents/Government of Puducherry and filed a detailed counter affidavit. The principal point which is sought to be urged while resisting the claim of the petitioners is that the second respondent Commission has recruited the casual employees without getting approval from the Government and such back door entry cannot be allowed to be validated by applying the provisions of the scheme framed by the Government vide G.O. Ms. No. 22 Department of Personnel and Administrative Reforms dated 27.02.2009. He would submit that all the employees, who were recruited by the second respondent Commission, did not satisfy the criteria for regularising them and the Government in fact had not sanctioned any post for employing these petitioners and therefore their plea for regularisation cannot be accepted and the same is liable to be rejected.

12. This Court has given its anxious consideration to the submissions of the learned counsel for the petitioners as well as the respondents and perused the materials and the pleadings placed on record. There appears to be considerable force in the contention put forth by the learned counsels for the petitioners as all the petitioners who are covered under the present writ petitions have been given employment for last several years and this Court is convinced of the fact that the regularisation scheme, which was framed by the Puducherry Government, is an ongoing scheme and the provisions of the same has to be applied to all the casual employees no matter the method of selection and appointment which preceded their appointment. As rightly contended by the learned counsel for the petitioners, though the scheme was touted to be an one time measure according to the learned Government Advocate appearing for the respondents, but the documents which were referred to by the learned counsels for the petitioners would unequivocally demonstrate that the scheme is an ongoing scheme and several casual employees who are similarly placed like the petitioners herein have been periodically regularised even in 2016 in terms of the aforesaid scheme. In the said circumstances, this Court does not find any reason as to why these petitioners alone have to be treated differently and denied the benefit of the provisions of the regularisation scheme vide G.O. Ms. No. 22 Department of Personnel and Administrative Reforms dated 27.02.2009. Any differential treatment for these petitioners would per se be discriminatory,

arbitrary unreasonable and cannot satisfy the parameters laid down under Articles 14 and 16 of the Constitution of India.

13.In the above circumstances, this Court is of the considered view that the petitioners in all these writ petitions have made out a strong and valid case calling for intervention in the matter. In view of the clear scheme provided for by the Puducherry Government in G.O.Ms.No.22 Department of Personnel and Administrative Reforms dated 27.02.2009, there cannot be any legal impediment for the Government of Puducherry to initiate action for regularising the services of the petitioners by applying the provisions of the scheme on par with the other similarly placed casual employees whose services were regularised over a period of time.

14.In these circumstances, this Court directs the first respondent to apply the provisions of G.O.Ms.No.22 Department of Personnel and Administrative Reforms dated 27.02.2009 to the petitioners who are before this Court and regularise their services from the date of their initial appointment by sanctioning necessary posts in respect of various categories in which the petitioners are working and grant of other attendant and consequential benefits as admissible to them on such regularisation. The respondents are also directed to disburse the salaries that are payable to the petitioners for the work which was extracted from them for all these years forthwith before the steps are initiated for regularisation of their services.

15.The first respondent is directed to implement this order within a period of six months from the date of receipt of a copy of this order. It is also made clear that till the regularisation order is passed, the service conditions of the petitioners shall remain in tact. With these directions, the writ petitions stand allowed. In view of the final orders passed in these writ petitions, nothing survives in the review petitions and the review petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government for
Women and Child Welfare
Department, Puducherry.

2.The Chair Person,
Puducherry Women's Commission,
Puducherry.

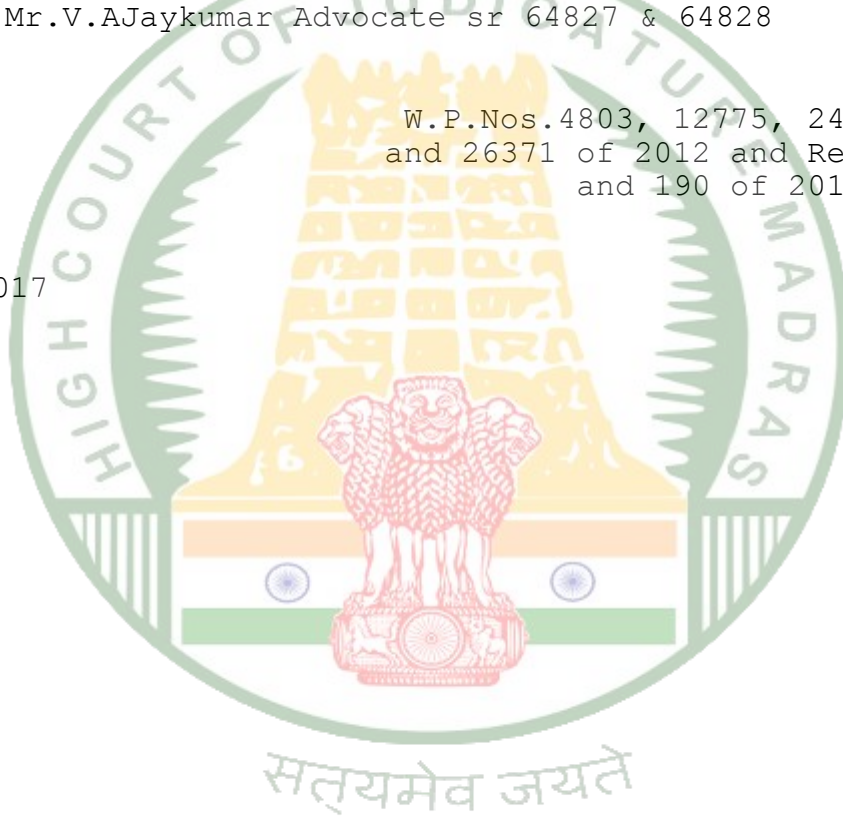
+2 ccs to Government pleader sr 65672,65673

+3 ccs to Mr.L.Chandrakumar Advocate sr 65079

+2 ccs to Mr.V.AJaykumar Advocate sr 64827 & 64828

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and 190 of 2012

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