

IN THE HIGH COURT OF JUDICATURE AT MADRAS

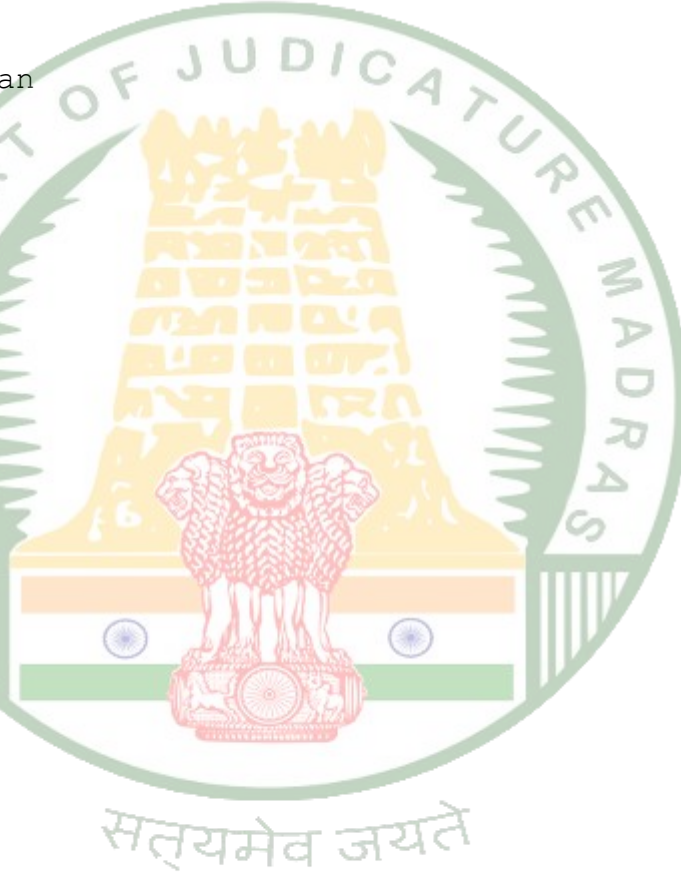
DATED 27.07.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP.No.19188 of 2017 and WMP.No.20724 of 2017

- 1.D.Dhanasekaran
- 2.M.Manikandan
- 3.R.Krishnan
- 4.S.Azhagarsamy
- 5.C.Balasubramaniam
- 6.M.Magaraja
- 7.V.Aanandhan
- 8.P.Loganathan
- 9.T.Paramasivan
- 10.M.Loganathan
- 11.V.Jayakumar
- 12.G.Thirumurugan
- 13.M.Aarumugasamy
- 14.L.Kathiravan
- 15.K.Balakrishnan
- 16.K.Saravanan
- 17.R.Ananthakumar
- 18.D.Yesurathinam
- 19.T.Thulasimani
- 20.S.Jeevithan
- 21.K.Lingeswaran
- 22.S.Annadurai
- 23.K.Thurimalai
- 24.B.Gurusamy
- 25.K.Velliyangiri
- 26.S.Satheeshkumar
- 27.P.Saravanan
- 28.K.Ayyavu
- 29.S.Pranab
- 30.S.Arumugam



...Petitioners

WEB COPY

Versus

1. The Government Of Tamil Nadu
rep.by its Secretary to Government
Municipal Administration & Water Supply Department,
Fort. St. George,
Chennai-600 009.

2. The Commissioner,
Tiruppur City Municipal Corporation,
Tiruppur.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the 2nd respondent to regularize the services of the petitioners and extend to all benefits.

For Petitioners : Mr.L.Chandrakumar
For Respondents : Mr.S.Gunasekaran, Addl
Govt Pleader for R1
M/s.P.Shanthi for R2

ORDER

The relief sought for in this writ petition is for a direction to direct the 2nd respondent to regularize the services of the petitioners and to extend all the service benefits.

2. The Learned counsel appearing for the writ petitioners contended that the writ petitioners were appointed as Drivers for heavy duty vehicles in the 2nd respondent/Corporation. The learned counsel would further contended that all the writ petitioners are appointed through District Employment Exchange and they are appointed against the permanent vacancy. Thus, they are entitled for regularization of their services. The order of appointment dated 23.04.2012 clearly stipulates that the appointment of the writ petitioners as Drivers was issued on Contract basis and more specifically, the conditions are stipulated in the order of appointment itself. The conditions furnished in the order of appointment stipulated that

1. The appointment is temporary.
2. By getting the appointment order, the petitioners should not claim permanent appointment.
3. After joining in service, they should not claim any enhancement of salary.
4. They will be subjected to transfer on administrative grounds.
5. They will be paid the salary for the days they worked and they should abide by the decisions taken by the Corporation.
6. While performing the duties, they should wear uniforms.
7. They should show devotion to their duties and as per the rules of the Corporation, they have to follow the instructions of the Superior Officers.
8. In the event of expiry of the driving license, they

should renew the driving license and inform the same to the Corporation.

3. Pursuant to the issuance of the said order of appointment, they have executed a bond in Rs.20/- non judicial stamp paper. On execution of bond, the writ petitioners joined the services of the second respondent/Corporation. Thus it is a clear case that the writ petitioners have admitted the conditions and agreed to work under the conditions stipulated in the order of appointment.

4. Contract appointment will not confer any right of regularization to the employees. The nature of the conditions stipulated in the order of appointment shows that the writ petitioners are appointed temporarily and regular recruitment process had not undertaken by the respondent/corporation.

5. All appointments to public post to be undertaken only through the Constitutional Schemes by providing equal opportunity to all the citizens and any Contract Appointment which has made temporarily will not confer any right of permanent absorption to such employees.

6. The Constitutional Bench of the Supreme Court of India in the case of State of Karnataka and others Vs. Umadevi and others reported in 2006 [4] SCC (1) authoritatively held that all public post to be filled up by following the recruitment rules in force and all back door entries hereafter be prevented and such appointments not following the recruitment rules, are to be curtailed and such persons cannot seek for any regularization of their services. It is relevant to extract the following:

Para3: But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not

always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226, of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

Para 4: This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

Para 12: What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs. Jagdip Singh & Ors. (1964 (4) SCR 964). It was held therein, "In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."

Para 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.

7. The Honourable Supreme Court of India subsequently in the case of the Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others reported in 2014 [4] SCC 769 following the decision rendered in Umadevi's case [cited supra], had rendered the findings as hereunder:

"Para 8:(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 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)

Para 9: The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgment. Therefore, the appeals are allowed. However, in light of the facts and circumstances of the case as Shri P.P. Rao, learned senior counsel has submitted that the appellant has already implemented the impugned judgments and does not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected.

Para 10: With the aforesaid observations, the appeals stand disposed of accordingly. No order as to costs.

8. The Honourable Supreme Court of India repeatedly and consistently reiterating and emphasizing that all public appointments has to be undertaken only by following the recruitment rules in force and by virtue of contractual or daily wages appointment, no person can claim permanency or regularization. The person entered through back door should exit only through the same back door and no concession can be shown by the constitutional Courts in order to secure the permanent appointment in public services. Such being the legal dictum in the subject, this Court cannot show any exception to the writ petitioners and on a perusal of the order of appointment in this writ petition, it is unambiguous that all the appointments are made on contract basis on certain condition and by accepting the condition, the writ petitioners have executed an agreement in a stamped paper. This being the factual position in the case on hand, no further consideration in respect of regularization of the service of all these petitioners, need to be undertaken.

9. The Learned counsel appearing for the writ petitioners contended that in respect of similar persons, the writ petition is pending and an interim order was granted. But the same may not be the reason for entertaining the present writ petition and the prayer sought for in this writ petition is very

much contrary to the legal principles settled by the Honourable Supreme Court of India in the matter of regularization of service. Thus, the pending writ petition cannot be a reason for admitting the present writ petition. This Court is of the firm view that since settled legal principles regarding regularization of service, more specifically, in respect of regularization of the services of temporary/Contract/Daily wages employees have been enumerated by the Apex Court, this Court is not inclined to entertain the writ petition in this regard. Thus, no further consideration is required to be undertaken on merits in this writ petition.

10. In the result, the writ petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration & Water Supply Department,
Fort. St. George,
Chennai-600 009.

2.The Commissioner,
Tiruppur City Municipal Corporation,
Tiruppur.

+1cc to the Government Pleader Sr. 53972
+1cc to Mrs.P.Shanthi, Advocate Sr. 53704
+1cc to Mr.S.Arivazhagan, Advocate Sr. 53206

WP.No.19188 of 2017

AR(V)
VR(16/8/2017)