

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE V. PARTHIBAN

Writ Petition Nos.22461, 22933 to 22935 of 2010,
3012, 18165, 18166 and 9755 of 2011,
11194 to 11197 of 2014 and 22510 of 2010
and
connected M.Ps.

W.P.No.22461 of 2010

1. I.SRILAKSHMI
2. K.STALIN
3. M.VADIVELU
4. S.ISABEL DERICKS SELVAM

W.P.No.22933/10

- 1.G.Velu
- 2.C.Dharmaraj

W.P.No.22934/10

P.Ramesh

W.P.No.22935/10

L.Jenitha Juliet

W.P.3012/11

- 1.T.S.Kumar
- 2.Dilip Kumar
- 3.S.Rajaguru
- 4.KrupaRatnam
- 5.S.Ragumaran

W.P.18165/11

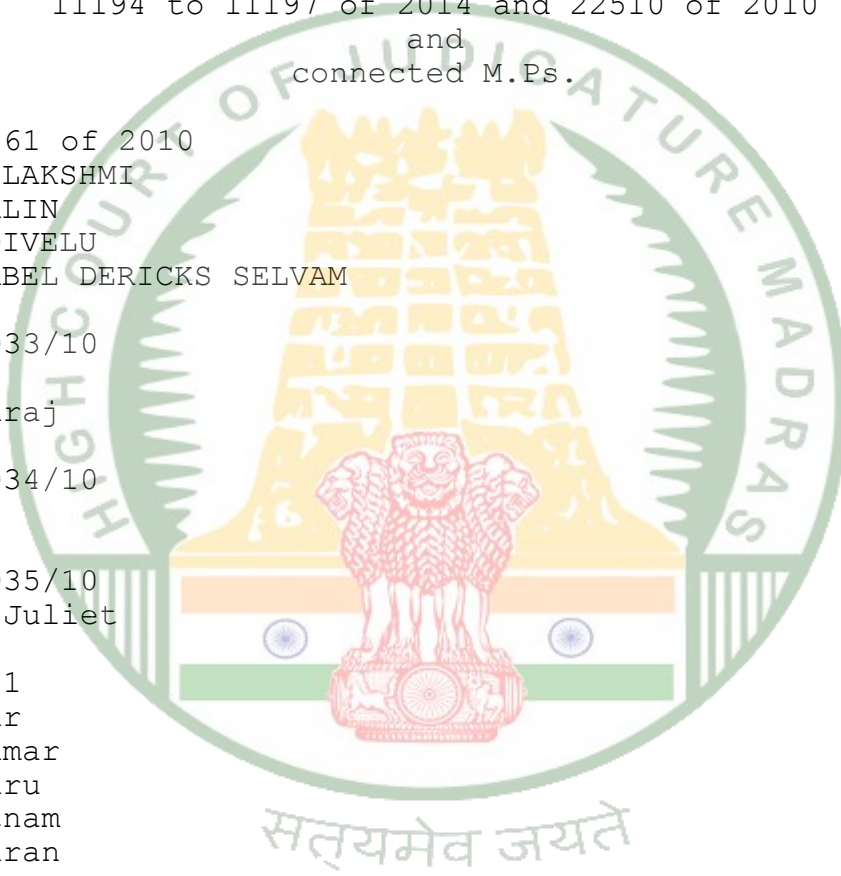
- 1.M.Chandrasekar
- 2.G.Dandis Ananda Kumar
- 3.S.Gopalakrishnan

W.P.18166/11

E.Elanchezhian

W.P.9755/11

S.Saravanan



WEB COPY

W.P.11194/14
A.S.Vijayalakshmi

W.P.11195/14
D.Rajan

W.P.11196/14
D.Muthurajan

W.P.11197/14
N.Anand

W.P.22510/10
1.J.A.Rajan
2.N.Sureshkumar
3.S.Sasikumar
4.T.Nambirasan ... Petitioners

Versus

- 1 THE UNION OF INDIA
REP. BY THE SECRETARY TO GOVERNMENT
MINISTRY OF EARTH SCIENCES
GOVERNMENT OF INDIA
MAHA SAGAR BHAVAN
NO.12 CGO COMPLEX
LOADHI ROAD
NEW DELHI - 110 003.
- 2 THE DIRECTOR
NATIONAL INSTITUTE OF OCEAN TECHNOLOGY
VELACHERY-TAMBARAM MAIN ROAD
PALLIKARANAI, CHENNAI-600 100.
- 3 THE CENTRAL ADMINISTRATIVE TRIBUNAL
REPRESENTED BY ITS REGISTRAR
CHENNAI-104.

... Respondents in all W.Ps

These Writ petitions have been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the third respondent in O.A.No.386,383,388,392,384,382,387,382,386,382,383,380 & 382 of 2009 respectively dated 12.07.2010 and quash the same and direct the respondents 1 and 2 to regularize the services of the Petitioners with effect from the date of their initial appointment and grant all consequential benefits to the Petitioners.

For Petitioner : Mr.P.Rajendran in WPs.22461,22933
to 22935/10,9755/11,11194 to
11197/14 and 22510/10

Mr.R.Parthiban in W.P.3012/11

Mr.B.Ravi in W.P.18165&18166/11

For Respondent-1 : Mr.G.Santhosh Kumar
Central Government Standing
Counsel for R1 in W.P.22461/10

Mr.J.Madanagopal Rao CGSC for R1
(in W.Ps.22933 to 22935/10,9755,
11194 to 11197/14 & 22510/10)

For Respondent-2 : Mr.V.Vijay Shankar for R2 (in
all WPs)

For Respondent 3 : Tribunal (in all WPs)

COMMON ORDER

(Order of the Court was delivered by V.PARTHIBAN,J.)

All these Writ Petitions arise out of a common order passed by the Central Administrative Tribunal, Madras Bench dated 12.07.2010 in O.A.Nos.382 to 392 of 2009 filed by the petitioners herein, disposing of the Original Applications with certain directions as contained in paragraph-7 of the impugned Judgment, which is extracted below:-

"7. However, taking into account the fact that the respondents are taking steps to get sanction for the posts to be filled as per recruitment rules, We feel that ends of justice will be met if a direction is given to the respondents to consider the case of the applicants while filling up the sanctioned posts as per recruitment rules and giving service weightage to the applicants for the services already rendered by them, when the vacancies are notified and subject to their eligibility in all other respects, the respondents are directed to grant age relaxation in such of the cases wherever it is necessary. In other words, no applicant will be denied appointment on regular basis merely on the ground of overage if they satisfy other conditions of the recruitment rules."

2. The petitioners, who are working as Junior Assistant, Helper etc., under the second respondent have approached the Tribunal seeking regularisation of their services, with effect from the date of their original appointment from 2002 to 2003, as they have been continuously employed uninterruptedly without any break. According to the petitioners, at the time of recruitment, originally in the year 2002-2003, they were subjected to regular selection in terms of the Recruitment Rules and in terms of the Policies of the Government. However, their appointment is termed as 'contractual' for a period of three years alone. Admittedly, the said appointment has been continued without any break. The factum of due selection and appointment of the petitioners by the second respondent in terms of the Government Regulations and Rules has been admitted by the second respondent. In spite of the same, they were continued on contract basis without their services being regularised all these years. In those circumstances, the applicants were constrained to approach the Tribunal praying for regularisation of their services from the date of their initial appointment.

3. Per contra, the learned counsel appearing for the second respondent contended before the learned Tribunal that the second respondent, being a Society fully funded by the Government of India, they were under the obligation to follow the Government norms and regulations for appointment. Moreover, the petitioners having been appointed against the project work, their services cannot be regularised in the absence of sanctioned regular posts. The learned counsel appearing for the second respondent relied upon the decision of the Hon'ble Supreme Court of India rendered in the following cases:-

- (i) State of Karnataka ..vs.. Uma Devi reported in 2006 (4) SCC 1;
- (ii) Official Liquidator ..vs.. Dayanand & Others reported in 2008 (10) SCC 1.
- (iii) Union of India ..vs.. Kartik Chandra Mondal and another reported in 2010 (1) SLR 554.

4. After taking note of the submissions of the learned counsel on both sides and the law laid down by the Hon'ble Supreme Court of India, the learned Tribunal disposed of the Original Applications with the directions as extracted supra. Not satisfied with the direction passed by the learned Tribunal, the applicants therein are before this Court.

5. The learned counsel appearing for the petitioners in all the Writ Petitions strenuously contended that as far as the petitioners are concerned, they were not back door entries, as they were subjected to regular selection in terms of the Government Rules and Regulations and the petitioners were also put on the regular pay scale as applicable to regular

Government servants. The learned counsels appearing for the petitioners have drawn our attention to the reply statement filed by the second respondent, in which, it is admitted that the petitioners were subjected to regular selection. Therefore, the learned counsels appearing for the petitioners emphasised that the petitioners' claim would stand on a different footing than the employees, who were covered under the orders passed by the Hon'ble Supreme Court of India in the above mentioned matters.

6. The learned counsels for the petitioners cited a decision reported in 2006 (6) SCC 310 in the matter of 'Mineral Exploration Corporation Employees' Union ..vs.. Mineral Exploration Corporation Limited and another', in which the Hon'ble Supreme Court of India has held that it shall be proper to regularise services of such workmen, who had worked for several years. That was the matter arose from the Industrial Disputes, where award was passed in favour of the employees therein. However, the Hon'ble Supreme Court remitted the matter back to the learned Tribunal to verify each of the claims by the workmen concern for regularisation in terms of directions given in 'Umadevi's (3) case {2006 (4) SCC 1}'. As far as the present case on hand is concerned, the decisions cited by the learned counsels for the petitioners may not be a much help as factually the case on hand and the case of 'Mineral Exploration Corporation Employees' Union' is distinguishable, since those employees are working for several years even as on 2006 and many of them may be covered under one time regularisation as granted in paragraph-53 of 'Umadevi's case {2006 (4) SCC 1}' . As far as the present case is concerned, the initial appointment itself was taken place only in 2002-2003 and therefore, either the Tribunal or this Court cannot straight away direct the first or second respondent to regularise the services of the petitioner.

7. Be that as it may, the fact remains that the petitioners have been continuously in employment for the past 13, 14 years having been subjected to regular selection before their initial appointment. During the course of arguments, the counsel for the second respondent submitted that the services of some four employees have been regularised after getting due sanction from the competent authority. In fact, in the additional counter affidavit filed on behalf of the second respondent, it is stated that some of the applicants numbering about 13 or 14 were appointed on regular basis and it is also stated in the additional counter affidavit that the second respondent has been very earnest in addressing the concern of contract employees and it is striving hard to ensure that its contract staff can be accommodated in the regular posts, whenever the regular vacancies arise in this case, We do not see anything wrong in the final direction granted by the learned

Tribunal as found in paragraph-7, which is extracted supra.

8. Having concluded thus, We cannot lose sight of the fact that regular work has been extracted from the petitioners for more than 13 to 14 years continuously without any certainty of future employment. Instability of employment will have its toll on the performance of the petitioners and that will not in the interest of administration. Moreover, the case of the present petitioners is factually distinguishable for the reason that they were admittedly subjected to regular selection before their appointment. The Government norms and regulations have been followed in their appointment. That being the case, they cannot be denied regular appointment indefinitely, as that would do violation to the principle of legitimate expectation and equity. Therefore, in the fitness of things, in view of our considered opinion, that the second respondent may take up the case of the petitioners with the competent authority and seek appropriate directions for sanctioning of adequate posts in the respective categories, whether the petitioners are working either as one time measure or in a phased manner, in the near future, so that the petitioners shall be accommodated on regular basis like their counterparts who were accommodated on regular basis earlier. This direction is issued on the peculiar facts and circumstances of the case, particularly in view of the fact that the work, though termed as contractual in nature, appears to be permanent in nature and the petitioners have been in employment uninterruptedly, without any break, for 13 - 14 years and they were subjected to regular selection process before their initial appointment in terms of Government regulations and norms. In the whole, the second respondent will initiate steps towards the directions indicated above as expeditiously as possible.

9. With this observation, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

mra

To

- 1 THE SECRETARY TO GOVERNMENT
THE UNION OF INDIA
MINISTRY OF EARTH SCIENCES
GOVERNMENT OF INDIA
MAHA SAGAR BHAVAN
NO.12 CGO COMPLEX
LOADHI ROAD
NEW DELHI - 110 003.
- 2 THE DIRECTOR
NATIONAL INSTITUTE OF OCEAN TECHNOLOGY
VELACHERY-TAMBARAM MAIN ROAD
PALLIKARANAI
CHENNAI-600 100.
- 3 THE REGISTRAR,
THE CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI-104.

+1cc to Mr.V.Vijay Shankar sr.8687

+1cc to Mr.P.Rajendran sr.8478

+1cc to Mr.J.Madanagopal Rao sr.8439

+1cc to Mr.T.L.Thirumalaisamy sr.8628

+1cc to Mr.G.Santhosh Kumar (ACGSC) sr.8822

+4ccs to Mr.R.Subramanian sr.8345

+1cc to Mr.A.Stalin sr.9188

सत्यमेव जयते

Pre-delivery Judgment in
W.P.Nos.22461 of 2010 etc., batch
and connected M.Ps.

WEB COPY