

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No. 771 of 2015
and
M.P.Nos.1 and 2 of 2015

A.M.Moorthy

...

Petitioner

Vs.

1. The District Collector,
Vellore District,
Vellore.

2. The Panchayat Union Commissioner,
Thirupathur,
Vellore District.

...

Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to appoint the petitioner in a suitable post in the panchayat Union in regular time scale of pay.

For Petitioner : Mr.V.Thirupathi

For Respondents : Mr.S.Gunasekaran

Additional Government Pleader (For R1)

Mr.P.Chinnadurai (For R2)

WEB COPY
O R D E R

The relief sought for in this writ petition is for a direction to the respondents to appoint the petitioner in any suitable post in the Panchayat union in regular time scale of pay.

2. The learned counsel appearing for the writ petitioner contended that though the writ petitioner was appointed as Mazdoor on daily wage basis from 15.06.1996 in the Primary Health Centre, Andiappanur vide Pro.Na.Ka.No.B1/1632/96 dated 14.06.1996 of the Panchayat Union Commissioner, Thiruppathur and he has served till December 2013, thereafter, the writ petitioner was ousted from the service and was not working for the past about 4 years. No order of ousting was passed against the writ petitioner. Therefore, the writ petition is filed for a direction to appoint the writ petitioner to any suitable post.

3. The Constitution Bench of the Hon'ble Supreme Court in the case of STATE OF KARNATAKA AND ORS. v. UMA DEVI (3) & ORS. reported in 2006 (4) SCC 1, reiterated and emphasised no back door employment, which will affect the opportunity of the other citizens under Articles 15 and 16 of the Constitution of India. Any appointment made contrary to the recruitment rules are to be dismantled. No authority is empowered to appoint a person contrary to procedure and rules prescribed under the Constitutional scheme of the recruitment. The legal position was again reiterated by the Hon'ble Supreme Court Acts in the case of Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and Others reported in 2014 (4) SCC 769. Para 8 of the judgment is relevant for the deciding the case on hand, which is extracted hereunder:

"8.this Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"(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) "

4. In view of the legal principles settled by the Apex Court of India, the prayer as such sought for in this writ petition cannot be granted. Accordingly, no further adjudication in this writ petition is required.

5. Thus, the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

may

To

1. The District Collector,
Vellore District,
Vellore.
2. The Panchayat Union Commissioner,
Thirupathur,
Vellore District.

+1 CC to Govt. Pleader sr 53262.
+1 CC to Ms. V. Thirupathi, Advocate sr 52413
+1 CC to Ms.P. Chinndurai, Adcocate sr 52298.

सत्यमेव जयते

W.P.No. 771 of 2015

PPA (CO)
sp (26/09/2017)

WEB COPY