

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.33510 of 2012

M.Muniammal

.. Petitioner

vs.

1.The Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

3.Education Officer,
Education Department,
Corporation of Chennai,
Park Town, Chennai - 600 003.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the first and second respondents to regularise the petitioner's service with effect from the date of completion of 10 years of service i.e., with effect from 14.8.1988 with all monetary and services benefits considering the petitioner's long service from 14.8.1978 with the second respondent in the light of the Hon'ble High Court Orders in W.P.No.34522 of 2006 dated 30.10.2009 by applying the orders of regularisation from the date of completion of 10 years in respect of those appointed in similar circumstances issued in G.O.Ms.No.22 P & AR (F) Department, dated 28.2.2006, G.O.Ms.No.99 School Education (R.1.) Department, dated 08.06.2011 and G.O.Ms.No.247 School Education (R.1) Department, dated 3.10.2012.

For petitioner

: Mr.K.R.Gunashekar

For 1st respondent

: Mr.S.Navaneetham,
Additional Government Pleader

For respondents 2 & 3

: Mr.G.Anandarangam
Standing Counsel for
Corporation of Chennai

ORDER

This Writ Petition has been filed by the petitioner praying for the relief stated above.

2. It is submitted by the learned counsel for the petitioner that the petitioner was temporarily appointed as Sweeper with effect from 14.8.1978 under contingency. The petitioner had been continuously working in the Corporation Middle School, Gokulam, Corporation of Chennai. Though the petitioner was working continuously in the Corporation Middle School from the year 1978, she was getting only a meagre consolidated pay, as her services were not regularised. But, the services of contingent employees working in Health and other departments of the Corporation of Chennai were regularised consequent to the various orders issued by the Government from time to time. In G.O.Ms.No.1644 Rural Development and Local Administration Department dated 12.10.1978, the Government issued orders for the regularisation of contingent staff who have completed 10 years of service as on 1.10.1979 and also those who complete 10 years in future. Therefore, the petitioner made representations on 22.7.1997 and 18.2.1998 to the second respondent for regularising her service. But, her representations were rejected. Therefore, she filed an Original Application in O.A.No.9146 of 1998 before the Tamilnadu Administrative Tribunal, seeking for a direction to the respondents to regularise her service from the date of her initial appointment. Subsequently, it was transferred to the file of this Court and re-numbered as W.P.No.34522 of 2006 (T). By order dated 30.10.2009, this Court has set aside the impugned orders and allowed W.P.No.34522 of 2006 (T) with a direction to the respondents to consider the case of the petitioner for regularisation, taking into consideration of her continuous service from 1978 as Part-time Sweeper in the Corporation of Chennai. Subsequently, the petitioner's pay has been fixed in the Special Time Scale of Pay with effect from 30.10.2009 by the first and second respondents herein. By G.O.Ms.No.22 P & AR (F) Department dated 28.2.2006, the Government had issued orders for regularising the services of Daily Wages employees who had completed more than 10 years of service in Government Department as on 1.1.2006. As the petitioner's service has not been regularised from the date of appointment after completing 10 years, the petitioner has filed the present Writ Petition seeking for regularisation of her service from the date of completion of 10 years of service i.e., with effect from 14.8.1988 with all monetary and service benefits.

3. On the contrary, the learned Standing Counsel for respondents 2 and 3 submitted that, originally, the petitioner was appointed as Part-Time Employee and therefore, she is not entitled to seek for regularisation of service with retrospective effect, in the light of G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.2.2006. Further, the learned Standing Counsel for the respondents 2 and 3 has placed a decision rendered by the Hon'ble Supreme Court in SLP Civil Appeal Nos.2726-2729 of 2014 with

Civil Appeal Nos.2730-2731 of 2014, dated 21.2.2014 in Secretary to Government, School Education Department vs. Thiru.R.Govindasamy and others reported in CDJ Law Journal 2014 SC 146. Based on the aforesaid judgments, the learned standing counsel for the respondents 2 and 3 prayed for dismissal of the Writ Petition.

4. Heard the learned counsel appearing for the parties.

5. The fact that the petitioner was temporarily appointed as Sweeper under contingency is not in dispute. The learned Standing Counsel for the respondents 2 and 3 has relied on a decision rendered by the Hon'ble Supreme Court in SLP Civil Appeal Nos.2726-2729 of 2014 with Civil Appeal Nos.2730-2731 of 2014, dated 21.2.2014 reported in CDJ Law Journal 2014 SC 146 wherein the Hon'ble Supreme Court in Paragraph Nos.7 and 8 has held as follows:-

"7. This Court in State of Rajasthan & Others v. Daya Lal & Others., 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:

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 adhoc 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, adhoc or daily wages 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 or 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 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 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.

A perusal of the aforesaid extract shows that part time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be direction for absorption, regularisation or permanent continuance of part-time temporary employees. Temporary, adhoc or daily wages service for a long number of 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 or regularisation in the absence of a legal right.

6. Following the aforesaid dictum, Madurai Bench of the Madras High Court has allowed a Batch of Cases vide Judgment dated 17.4.2014 in W.A.(MD) Nos.1157 of 203, 992 to 994 of 2013 etc., (Batch) preferred by the State against the orders passed by the Writ Court in favour of the regularisation of service of the part-time employees, after considering various Government Orders and the judgments relied on by the part-time employees therein.

7. In the light of the above decisions, as the service of the petitioner has already been regularised from 30.10.2009, the petitioner cannot claim any right over regularisation of service, retrospectively as she was temporarily appointed initially. Hence, the Writ Petition fails and the same is liable to be dismissed.

8. With the above observation, the Writ Petition is dismissed. No costs.

asvm

Sd/-
Assistant Registrar
/TRUE COPY/
Sub-Assistant Registrar

To

- 1.The Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.
- 2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.
- 3.Education Officer,
Education Department,
Corporation of Chennai,
Park Town, Chennai - 600 003.

+1 CC to Mr.K.R.Gunashekar Advocate SR.NO.722
+1 CC to Mr.Mr.G.Anandarangam Advocate SR.NO.1245
+1 CC to the Govt Pleader SR.NO.1684

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MK:07/03/2017