

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.03.2017

Coram

The Hon'ble Mr.Justice Nooty. Ramamohana Rao

and

The Hon'ble Mr.Justice S.M.Subramaniam

W.P.No.2552 of 2013

and

M.P.No.1 of 2013

1. R. Murugaboominathan,
2. B. Sarasu,
3. K. Kannagi,
4. P. Chitra,
5. Selvi. S. Anbukarasi,
6. Tmt. A. Krishnakumari,
7. Tmt. V. Yogambal,
8. Selvi. M.P. Maheswari,
9. S. Arockiyadoss,
10. M.A. Mohammed Jalaudhin,
11. Tmt. T. Bhuwaneswari,
12. P. Anbazhagan,
13. K. Karthik,
14. Tmt. R. Selvakumari,
15. Tmt. K. Sakthi .. Petitioners

सत्यमेव जयते
Versus

1. State of Tamil Nadu,
rep. by Secretary to Government,
Home (Courts) Department,
Secretariat, Chennai - 600 009.
2. The Registrar General,
High Court, Chennai - 104.

3. The District Judge,
District Combined Court,
Tiruvarur.

4. The District Employment Officer,
District Employment Office,
Tiruvarur.

.. Respondents

Prayer:

This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent 1 to 3 to consider and regularize the service of the petitioners in the Tamil Nadu Judicial Sub-ordinate service by framing a scheme on the lines approved by this Hon'ble Court in its Judgement in W.P.No.9710 of 2009 dated 10.06.2009 or in the alternative, to direct the third respondent to consider and absorb the petitioners in the post of Examiners, Readers and Senior Bailiff or any other suitable post and till then not to terminate the service of the petitioners.

For Petitioners : Mr.R.Shivakumar
for K.M. Vijayan Associates
For Respondents 1 &4: Mrs.A.Sri Jayanthi
Special Government Pleader
For Respondents 2 & 3: Mr. P.K. Rajagopal

O R D E R

This Writ Petition is instituted by fifteen individuals, seeking mandamus to respondent 1 to 3, viz., i) State of Tamil Nadu, ii) Registrar General, High Court and iii) District Judge, Thiruvarur, to regularize their services by framing a Scheme on the lines approved by the Division Bench of this Court, in its Judgement rendered on 10.06.2009, in W.P. No.9710 of 2009, in re (Judicial Temporary Employees' Welfare Association and another Vs. State of Tamil Nadu, rep. by Secretary, Chennai and 19 others) or, in the alternative, to direct the third respondent, District Judge, to absorb them in the post of Examiners, Readers and Senior Bailiff, or in any other suitable post, and till then, to continue them in service.

2. The petitioners were all working as Typist in various Courts of the Thiruvarur District Unit. They were recruited on a temporary basis, pending selection of regular candidates by the Tamil Nadu Public Service Connection (TNPSC). Since the work in the Courts is suffering for want of adequate hands, the petitioners came to be appointed on temporary basis, and they continued to function as such, till regularly selected

candidates by TNPSC have been allocated to Thiruvavarur District Unit. It is hardly in doubt that, when once regularly selected candidates through TNPSC become available, the candidates, who were recruited on temporary basis have to be replaced by candidates selected on regular basis, and as and when such a need arises, the temporary candidates will be replaced based upon the principle of 'last come should go first'. Since the petitioners have put in service for a considerable period in the District Unit, in various Courts, they sought for regularization, or, in the alternative, to absorb them in the post of Examiners, Readers and Senior Bailiff or any other suitable post, instead of terminating their service.

3. Heard Mr.R.Shivakumar, learned counsel for the petitioner, and Mrs.A.Sri Jayanthi, learned Special Government Pleader, for respondents 1 &4, Mr.P.K. Rajagopal, learned counsel for respondents 2 and 3, and we have also perused the judgment, dated 10.06.2009, rendered by the Division Bench of this Court, in W.P. No.9710 of 2009 (cited supra) relied upon by the learned counsel for the petitioners.

4. It is no doubt true that the Division Bench of this Court, in the above referred judgement, observed that 'the State of Tamil Nadu should consider holding a Special Examination for the temporary employees, so as to enable them to prove their talents and merits, and get regularised in the service', nonetheless, no such direction can be issued herein, particularly, after the judgement of the Hon'ble Supreme Court, rendered in re (Secretary, State of Karnataka and others Vs. Umadevi and three others) reported in (2006) 4 S.C.C. 1. This apart, when an identical issue came up for consideration before a Division Bench of this Court, in W.P. No.3498 of 2013 and batch of cases, in re (S.Sornalatha and others Vs. The State of Tamil Nadu rep. By Secretary to Govt. Home (Courts) Dept. Chennai) wherein, reliance was placed on the similar judgment, dated 10.06.2009, made in W.P. No.9710 of 2009, the Division Bench clearly held that directions sought for, cannot be issued on account of three reasons, and we feel that, it would be quite apposite to extract the relevant para from the said judgement, which read as under:-

"We have examined the said submission. We are of the considered view that, such a direction cannot be granted for more than one reason. Firstly, the petitioners, while working in the post on temporary basis, had an opportunity to participate in the examination conducted by the Public Service Commission for appointment in the said post. Some of the

candidates had appeared for the examination and also come out successfully. The petitioners, it appears, have not participated in the selection process. Secondly, the petitioners, while accepting the appointment on temporary basis, were conscious of the fact that their appointment was only till regularly appointed incumbents are available. Thirdly, the petitioners' appointment was not in accordance with the Constitutional scheme of employment. Thus, it cannot be directed to conduct a separate examination for regularisation of the present employees.''

5. However, the Division Bench taking into account the pathetic plight of the candidates/appellants, who have put in their service for a considerable period, so as to balance the equities, make both ends meet, granted certain reliefs, and it would be beneficial to refer to the relevant excerpts from the said judgment, which read as under:-

"....we feel just and proper that in future, whenever, selection takes place and the petitioners apply for the same post in which they are working, the Government may take into account, their work as temporary employees and grant age relaxation to them, to the extent of their service in the same post.

We also make it clear that, if the petitioners make a representation to the employment exchange for maintaining seniority in the list, as on account of their appointment temporarily, their names have been struck off, the authorities will consider the same sympathetically to restore their seniority in the list."

6. We are in respectful agreement with the views expressed by the Division Bench, in the judgement dated 27.11.2014, rendered in W.P. No.3498 of 2013 (batch). It is only appropriate that the afore mentioned two reliefs granted by the Division Bench would meet the ends of Justice in this case as well. Thus, as per the extract, quoted supra, the present Writ Petition also stands disposed on the same terms. However, there shall be no order, as to costs. Consequently, connected

Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sd

To

1. State of Tamil Nadu,
Rep. By Secretary to Government,
Home (Courts) Department,
Secretariat, Chennai - 600 009.
2. The Registrar General,
High Court, Chennai - 104.
3. The District Judge,
District Combined Court,
Tiruvarur.
4. The District Employment Officer,
District Employment Office,
Tiruvarur.

+lcc to Mr.K.M. Vijayan Asso, Advocate, S.R.No.14968
+lcc to the Government Pleader, S.R.No.15307

vsn(CO)
md(10/04/2017)

W.P.No.2552 of 2013 and
M.P.No.1 of 2013

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