

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.17923, 17924 and 20177 of 2010

and M.P.No.1 of 2011, 1 of 2012

and WMP.Nos.7365 to 7366 of 2017

W.P.No.17923 of 2010

- 1.Smt.S.Selvi Jabamalai
- 2.Smt.K.P.Saradha
- 3.V.Sivakumar
- 4.D.Saravanan
- 5.Selvi A.Kumudhini
- 6.Smt.K.Kala
- 7.C.Kousalya
- 8.R.Krishnaveni
- 9.Smt.S.Jabamalai Mary
- 10.Smt.S.Tamilmani
- 11.E.Prabhakar
- 12.S.Selvi

.. Petitioners

vs.

- 1.The State rep by its Secretary to Government,
Labour and Employment (R2) Department,
Govt. of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Tamil Nadu Public Service Commission,
Rep. by its Secretary, Chennai.
- 3.The Assistant Director,
District Employment Exchange Office,
Coimbatore-29.
- 4.The Assistant Director In-charge,
District Employment Exchange Office,
Kancheepuram.

5.The District Employment Officer,
District Employment Exchange Office,
Vellore.

6.The District Employment Officer,
Ootacamund, The Nilgiris District.

7.The District Employment Officer,
District Employment Exchange Office,
Nagapattinam.

8.The Assistant Director,
District Employment Exchange Office,
Salem-7.

9.The District Employment Officer,
District Employment Exchange Office,
Perambalur.

10.The District Employment Officer,
District Employment Exchange Office,
Tiruvellore. ... Respondents

W.P.No.17924 of 2010

1.G.D.Ravichandran

2.M.Balaji

3.C.Suresh

4.R.Hari

vs.

Petitioners

1.The State rep by its Secretary to Government,
Labour and Employment (R2) Department,
Govt. of Tamil Nadu, सतयमेव जयते
Secretariat, Fort St.George,
Chennai-600 009.

2.The Tamil Nadu Public Service Commission,
Rep. by its Secretary, Chennai.

3.The District Employment Officer,
District Employment Exchange Office,
Vellore.

4.The District Employment Officer,
District Employment Exchange Office,
Tiruvellore. .. Respondents

W.P.No.20177 of 2010

- 1.R.Thamaraiselvi
- 2.S.Saradha
- 3.R.Krishnaveni
- 4.Mrs.R.Pappu Kalaimani
- 5.Mrs.A.Babitha
- 6.Smt.V.Aparna
- 7.Smt.R.Velammal
- 8.D.Venkatesan
- 9.V.Padma

.. Petitioners

vs.

- 1.The State rep by its Secretary to Government,
Labour and Employment (R2) Department,
Govt. of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Tamil Nadu Public Service Commission,
Rep. by its Secretary, Chennai.
- 3.The District Employment Officer,
District Employment Exchange Office,
Virudhunagar.
- 4.The Assistant Director,
District Employment Office,
Madurai-7.
- 5.The District Employment Officer,
District Employment Exchange Office,
Dindigul.
- 6.The District Employment Officer,
District Employment Exchange Office,
Tuticorin.
- 7.The District Employment Officer,
District Employment Exchange Office,
Tirunelveli.
- 8.The District Employment Officer,
District Employment Exchange Office,
Krishnagiri.

.. Respondents

Prayer in W.P.No.17923 of 2010: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to regularize the services of the petitioners in the post of Typists from their respective dates of employment with all

attendant benefits.

Prayer in W.P.No.17924 of 2010: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to regularize the services of the petitioners in the post of Typists from their respective dates of employment with all attendant benefits.

Prayer in W.P.No.20177 of 2010: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to regularize the services of the petitioners in the post of Typists from their respective dates of employment with all attendant benefits.

For Petitioner : Mrs.AL.Gandhimathi
in all W.Ps.

For Respondents : Mr.S.T.S.Moorthy,
in all W.Ps. Special Government Pleader
assisted by Mr.S.Rajeswaran
for State Government in all W.Ps.

C O M M O N O R D E R

The petitioners in W.P.No.17923 of 2010 would aver among other things that they are fully qualified to be appointed as Typists and they have also got their names registered with the District Employment Exchanges for suitable employment and were eagerly waiting for their turn and while so, the first respondent issued a Government Order in G.O.Ms.No.72 dated 25.08.2006, wherein a scheme was framed for giving monthly stipend of Rs.150/- to unemployed persons who have completed X standard, Rs.200/- for those who have completed Higher Secondary Education and Rs.300/- for those who have completed their Graduation and under the said scheme, totally 272 posts consisting of Typists, Steno-Typists and other posts were created permanently for appointment on regular basis. Subsequently, the second respondent had instructed all the Employment Exchanges to go for direct recruitment from qualified persons for filling up the vacancies of 81 posts of Typists which have been sanctioned under the above said Government order. Thereafter, vide G.O.Ms.No.185 dated 23.11.2006, correction was made in the earlier G.O.Ms.No.72 dated 25.8.2006 stating that the posts of Typists and Steno Typists sanctioned under G.O.Ms.No.72 shall be filled up temporarily with a consolidated pay of Rs.4000/- per month till regular recruitment is made by the second respondent herein and as such, the petitioners were called for interview as per seniority list in the respective employment exchanges and they were appointed as Typists with the respondents 3 to 10 and their service particulars are as follows:

Sl.No.	Name of the Petitioner	Date of Appointment
1	S.Selvi Jabamalai	09.03.2007
2	K.P.Saradha	09.03.2007
3	V.Sivakumar	25.01.2008
4	D.Saravanan	09.09.2009
5	Selvi A.Kumudhini	29.12.2006
6	Smt.K.Kala	29.11.2006
7	P.Kausalya	02.11.2007
8	R.Krishnaveni	26.11.2007
9	Smt.S.Jabamalai Mery	04.01.2007
10	S.Tamilmani	04.01.2007
11	A.Prabhakaran	05.02.2007
12	Selvi S.Selvi	31.10.2008

2. The grievance expressed by the petitioners is that despite lapse of very many years, their services are yet to be regularized and they are continued to be paid with consolidate pay of Rs.4,000/- per month and in this regard, they had also submitted a representation dated 22.01.2010 and since no response is forthcoming, came forward with this writ petition.

3. The petitioners in W.P.No.17924 of 2010 also made similar claim and it is relevant to extract their service particulars:

Sl.No.	Name of the Petitioner	Date of Appointment
1	G.D.Ravichandran	07.12.2006
2	M.Balaji	29.12.2006
3	C.Suresh	07.12.2006
4	R.Hari	05.02.2007

The petitioners in W.P.No.17924 of 2010 had also submitted a representation dated 22.01.2010, praying for regularization of their appointment and since no response is forthcoming, came forward with this writ petition.

4. The petitioners in W.P.No.20177 of 2010 also made similar claim and it is relevant to extract their service particulars:

Sl.No.	Name of the Petitioner	Date of Appointment
1	R.Thamaraiselvi	14.02.2007
2	S.Saradha	06.02.2008
3	R.Krishnaveni	06.02.2008
4	R.Pappu Kalaimani	06.02.2008
5	A.Bapitha	08.10.2009
6	V.Aparna	14.02.2007
7	R.Velammal	21.01.2008
8	T.Venkatesh	30.09.2009
9	V.Padma	-----

The petitioners in W.P.No.20177 of 2010 had also submitted a representation dated 22.01.2010, praying for regularization of their appointment and since no response is forthcoming, came forward with this writ petition.

5. Mrs.AL.Gandhimathi, learned counsel appearing for the petitioners has drawn the attention of this Court to the typed set as well as additional typed set of documents and would submit that pendency of these writ petitions, the first respondent had issued G.O.(Ms)No.8, Labour and Employment (R2) Department dated 24.01.2014, wherein it has been stated among other things that among 281 posts originally sanctioned for Unemployed Assistance Scheme as per G.O.Ms.No.72 dated 25.08.2006, 278 posts which are originally filled up and continued upto 31.03.2012 be permanently retained with effect from 01.04.2012 and further clarified that the incumbents of the posts sanctioned temporarily in G.O.Ms.No.72 and retained permanently are eligible to draw Pay, Dearness Allowance, City Compensatory Allowance, House Rent Allowance and other Allowances admissible under the orders in force and the incumbents holding the posts on consolidated pay of Rs.4,000/- shall continue to draw the consolidated pay till the posts are filled regularly and since all the petitioners are performing works that of regular incumbents, they are entitled for regularization and other consequential reliefs.

6. Per contra, Mr.S.T.S.Moorthy, learned Additional Advocate General assisted by Mr.S.Rajeswaran, learned Special Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit of the first respondent and adoption counter affidavit of the second respondent and would submit that taking into consideration of the fact that large number of persons have registered with Employment Exchanges, the Government took a sympathetic view and passed G.O.Ms.No.72 dated 25.08.2006,

wherein creation of posts was ordered for 2 years and subsequently, the Government have accorded further continuance of the temporary posts for the period from 01.10.2008 to 31.12.2009 and 01.01.2010 to 31.03.2011 and also further continuance of the temporary posts have also been ordered in terms of G.O.Ms.No.97 of the first respondent dated 30.09.2011 and would further state that admittedly, the petitioners did not undergo the selection process and since their appointment is purely temporary, as a matter of right, they cannot seek regularization and prays for dismissal of these writ petition. The learned Additional Advocate General, in support of his submissions, placed reliance upon the decision in Secretary to Government, School Education Department, Chennai v. Thiru R.Govindaswamy and Others [2014 (4) SCC 769].

7. This Court paid its best attention to the rival submissions and also perused the entire materials placed before it.

8. The Hon'ble Supreme Court of India in the decision in State of Punjab and Others v. Jagjit Singh and Others [(2017) 1 SCC 148] has considered the issue with regard to Pay to the writ petitioners who are daily wagers, workings as Pump Operators, Fitters, Helpers, Drivers, Plumbers, Chowkidars etc., minimum of the pay scale revised from time to time, with permissible allowances as were paid to similarly placed regular employees and since it was ordered, the matter reached the portals of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India, in the said decision has taken into consideration the concept of Equal Pay for Equal Work and also referred to the decision in State of Haryana v. Jasmer Singh [(1996) 11 SCC 77] and various other decisions. It is relevant to extract the following portions of the said judgment:

"51.3. For all the above reasons, we are of the view that the claim of the temporary employees for minimum wages on a par with regularly engaged government employees cannot be declined on the basis of the judgment in State of Punjab v. Surjit Singh [State of Punjab v. Surjit Singh, (2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696] .

.....

57. There is no room for any doubt that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the

principle have been summarised by us in para 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

59. We would also like to extract herein Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:

"7. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the

provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

(emphasis supplied)

India is a signatory to the above Covenant having ratified the same on 10-4-1979. There is no escape from the above obligation in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of "equal pay for equal work" constitutes a clear and unambiguous right and is vested in every employee—whether engaged on regular or temporary basis.

60. Having traversed the legal parameters with reference to the application of the principle of "equal pay for equal work", in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of "equal pay for equal work" summarised by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular

employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post."

9. A perusal of the annexure to G.O.(Ms) No.8, Labour and Employment (R2) Department dated 24.01.2014 would disclose that Typists are given Time Scale of Pay of Rs.5200 - 20200 + Grade Pay Rs.2400/- + Special Pay and in para 7 of the said Government Order also made it clear that the incumbents (holding the posts on regular time scale of pay) of the posts sanctioned temporarily in the G.O. first read above viz., G.O.Ms.No.72, dated 25.08.2006 and retained permanently are eligible to draw Pay, Dearness Allowance, City Compensatory Allowance, House Rent Allowance and other Allowance admissible under the orders in post and the incumbents holding the posts on consolidated pay of Rs.4,000/- shall continue to draw the consolidated pay till the posts are filled regularly and the petitioners who are performing same work as that of regular employees are also entitled to Time Scale of Pay, in the light of the ratio laid down in the above cited decision.

10. It is very pertinent to point out at this juncture that as per G.O.Ms.No.8 , Labour and Employment (R2) Department 24.01.2014, the need is permanent, but for the

reasons best known, the respondents did not fill up the regular vacancies and extended the services of temporary employees for years together. In the considered opinion of the Court, it also amounts to unfair labour practice and the Government, being the model employer, is expected to act fairly and accommodate the petitioners by way of regularization, but they have failed to do so.

11. In the result, these writ petitions are disposed of and the respondents are directed to consider the claim of the petitioners positively for regularization of their employment in the post of Typists and pendency of the same, shall accord Time Scale of Pay in the light of G.O.(Ms)No.97 and G.O.(Ms)No. 8, Labour and Employment (R2) Department dated 30.09.2011 and 24.01.2014 respectively and also in the light of the above cited decision and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioners. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Secretary to Government,
Labour and Employment (R2) Department,
Govt. of Tamil Nadu, Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Secretary,
The Tamil Nadu Public Service Commission, Chennai.
- 3.The Assistant Director,
District Employment Exchange Office, Coimbatore-29.
- 4.The Assistant Director Incharge,
District Employment Exchange Office, Kancheepuram.
- 5.The District Employment Officer,
District Employment Exchange Office, Vellore.
- 6.The District Employment Officer,
Ootacamund, The Nilgiris District.

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District Employment Exchange Office, Nagapattinam.
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District Employment Exchange Office, Salem-7.
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District Employment Exchange Office, Perambalur.
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District Employment Exchange Office, Tiruvellore.
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District Employment Exchange Office, Dindigul.
- 14.The District Employment Officer,
District Employment Exchange Office, Tuticorin.
- 15.The District Employment Officer,
District Employment Exchange Office, Tirunelveli.
- 16.The District Employment Officer,
District Employment Exchange Office, Krishnagiri.

+3cc to Mr.A.L. Ganthimathi, Advocate, S.R.No.21940
+1cc to Mr.M. Devendran, Advocate, S.R.No.21479
+1cc to the Government Pleader, S.R.No.21724

sr(CO)
md(25/04/2017)

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