

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 18322 of 2013
& M.P.No.2 of 2013

1. Ramaswamy Pillai
2. Gopi
3. Rengaswamy
4. Lavanya

.. Petitioner

Vs.

1. The State of Tamil Nadu
Additional Chief Secretary to Government
Environment and Forest,
FR-8 Department, Secretariat,
Chennai - 9.

2. The Managing Director,
Arasu Rubber Corporation Limited,
Nagercoil - 629 001.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus to call for the records relating to the impugned order, letter No.15784/FR.8/2011-17, dated 13.05.2013 made by the first respondent herein and quash the same and consequently direct the respondents to absorb the petitioners as Tally Clerks in the second respondent Corporation.

For Petitioner : Mrs.Selvi George
For RR1 : Mr.N.Inbanathan, GA(F)
For RR2 : Mrs.P.Rajalakshmi, GA

O R D E R

The petitioners have filed this petition to call for the records relating to the impugned order No.15784/FR.8/2011-17 dated 13.05.2013 made by the first respondent herein and quash the same and consequently direct the respondents to absorb the petitioners as Tally Clerks in the second respondent Corporation.

2. Heard Mrs.Selvi George, learned counsel appearing for the petitioners, Mr.N.Inbanathan, learned Government Advocate appearing on behalf of the 1st respondent and

Mrs.P.Rajalakshmi, learned Government Advocate appearing on behalf of the 2nd respondent.

3. The learned counsel for the petitioners submitted that the Government had passed the impugned order stating that G.O.Ms.No.22, Personnel And Administrative Reforms (F) Department, dated 28.02.2006 is not applicable to the employees of the Corporation and it is applicable only to the employees appointed on daily wages. But the petitioners have already completed 10 years of service as on 01.01.2006 in the Government Department. As per the service rules of Arasu Rubber Corporation Ltd., the mode of recruitment for the post of Tally clerk is "Direct recruitment". The learned counsel for the petitioners has submitted that the said G.O. is applicable to the petitioners only with regard to regularisation of their services, since they have completed 10 years of service as on 01.01.2006.

4. The petitioners have filed this Writ Petition to re-consider their requests, in the light of the proposal submitted by the Board, on the basis of the resolution passed by them for regularisation of service and to absorb the petitioners in the regular scale of pay.

5. In the case of Secretary to Government, School Education, Department, Chennai Vs. R.Govindaswamy & Others, reported in 2014 Supreme Court Cases 769, the Hon'ble Supreme Court has rejected the claim for regularisation of services for more than 10 years of service in the Government Department and has held as follows:

".....In State of Karnataka & Others Vs. Umadevi & Others, AIR 2006 SC 1806, this Court held as under:

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holds of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

6. In Union of India & Others. Vs. A.S. Pillai & Others (2010) 13 SCC 448, this Court dealt with the issue of regularisation of part-time employees and the court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority / employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

7. This Court in State of Rajasthan & Others Vs. 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 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)

8. The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgment. Therefore, the appeals are allowed. However, in light of the facts and circumstances of the case as Shri.P.P.Rao, learned Senior counsel has submitted that the appellant has already implemented the impugned judgment and does not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected."

6. However, it is submitted by the learned counsel for the petitioners that the proposal submitted by the second respondent can be considered independently by the first respondent, in accordance with law. According to the 2nd respondent, the proposal for regularisation has been sent to the Government and the Government has rejected the same on 13.05.2013.

7. In the light of the above decision of the Hon'ble Supreme Court, the petitioners are not entitled for regularisation in the post of Tally Clerks. However, it is for

the Government to consider the said proposal of regularisation of the petitioners, if they are otherwise eligible, as per the guidelines issued by the Government in G.O.(Ms).No.74, P & AR (F) Dept., dated 27.06.2013.

8. The counsel for parties submitted that the petitioners have been working as field workers continuously for more than 20 years in the Corporation and taking into consideration the length of service and also the fact that the petitioners have been working as daily wage workers in the said corporation, therefore, the Government is directed to consider the petitioners' representation afresh, in accordance with law, in the light of law laid down in the decision of the Supreme Court in the case of Govindaswamy case (cited supra) and the guidelines issued by the Government in G.O.(Ms).No.74, P & AR (F) Dept., dated 27.06.2013.

9. With the above observation, the Writ Petition is disposed of. No Costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1. The Additional Cheif Secretary to Government
The State of Tamil Nadu
Environment and Forest,
FR-8 Department, Secretariat,
Chennai - 9.
2. The Managing Director,
Arasu Rubber Corporation Limited,
Nagercoil - 629 001.

+1 CC to Mrs.Selvi George , Advocate sr 6330
+1 CC to The Spl. Govt. Pleader sr 6673

W.P. No. 18322 of 2013
& M.P.No.2 of 2013

EV(CO)
sp/3/4