

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.11.2017

Coram

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.28857 of 2013
in M.P.No. 1 of 2013

1. P.Sankar
2. A.Magimaidoss
3. E.Mohandass
4. R.Murugan
5. V.Ravi
6. R.Murugesan
7. P.Narayanasami
8. P.Murthy
9. P.Parmasivam
10. S.Murugan
11. S.Thanigaivelu
12. M.Bhiman
13. P.Arumugam
14. G.Sreenivasan
15. B.Raju
16. C.Lurthusamy
17. B.Jayakumar
18. C.Thannamuthu
19. Adhimoolam.P

Vs.

....Petitioners

1. The State of Tamil Nadu
Rep by its Secretary to Govt,
Highways and Small Industries (HM2) Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The State of Tamil Nadu
Rep.by its Secretary to Govt,
Highways Department,
Fort St. George, Secretariat
Chennai-600 009.
3. The Chief Engineer
Highways Department,
Govt. of Tamil Nadu
Chepauk, Chennai 600 005.

4. The Divisional Engineer,
Highways & Rural Works Department,
Govt. of Tamil Nadu
Chengalpet Division
Alagesan Nagar
Chengalpet.

5. Asst. Divisional Engineer
Highways and Rural Works Dept.
Govt. of Tamil Nadu
Uthiramerur Sub Division
Uthiramerur, Kancheepuram District

6. The Asst. Engineer (H)
Rural Roads Section II,
Kancheepuram,
Kancheepuram District.

....Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 01.03.2012 in G.O.M.S.No.26 of the 1st respondent and quash the same and consequently, direct the respondents herein to regularize the services of the Petitioners.

For Petitioners : Mr.A.L.Ganthimathi

For Respondents : Mr.R.VijayaKumar
Additional Government Pleader

O R D E R

The relief sought for in this Writ Petition is to call for the records relating to the order passed by the first respondent in G.O.M.S.No.26 dated 01.03.2012 and quash the same and consequently, direct the respondents herein to regularize the services of the Petitioners.

2. The learned counsel appearing on behalf of the Writ petitioners made a submission that the Writ petitioners were initially appointed as NMRs in the Highways Department in the year 1987. The petitioners were continuing as daily wages employees for a considerable length of time and their services were not regularized till today. The learned counsel further states that earlier the Writ petitioners filed a petition in W.P.No.36623 of 2004 with a prayer to direct the respondents to absorb the petitioners as NMRs and regularize their services. This Court had passed a final order on 09.12.2005 stating as

follows.

"Para 3. Depending upon the needs, those casual workers/N.M.Rs, who have been working for less than three years, shall continue to be engaged, according to the seniority and eligibility, till their services are regularized in a phased manner depending upon the financial constraints.

Para 4. There shall not be any new recruitment of N.M.Rs till the services of the aforesaid applicants are regularized.

Para 5. Such of those applicants, who are entitled to the benefit of G.O.M.S.No.72, Transport Department dated 18.06.1981, G.O.M.S.No.135, Transport Department, dated 18.06.1981, G.O.M.S.No.135, Transport Department, dated 07.02.1983 and G.O.M.S.No.95, Transport Department, dated 04.02.1988, shall be given the benefit of the same. This process shall be completed on or before 30.04.2006". W.P.M.P.No.43959 of 2004 is closed. No costs."

3. The state preferred Writ Appeal No.1260 of 2008 and the Hon'ble Division Bench passed an order dated 11.12.2009 confirming the order passed by the learned Single Judge and the Writ appeal filed by the Government was dismissed. Thereafter, the order of this Court was implemented by the Government in G.O.M.S.No.26 dated 01.03.2012. However, the Government issued order stating that the proposal submitted by the Chief Engineer in respect of the appointment of 23 persons as NMRs are ratified. The ratification was done as a special case and the same cannot be cited as precedent in future. The grievances of the petitioners are that even after the Government order passed in G.O.M.S.No.26 dated 01.03.2012, the petitioners are allowed to continue only as NMRs on daily wages. Thus, the petitioners are entitled to be regularized in the permanent post in the time scale of pay.

4. The learned counsel appearing for the petitioners state that in this regard the petitioners are submitting representations to the respondents and the same has not been considered. Thus, the Writ petitioners are constrained to move this Writ Petition seeking regularization of services.

5. The learned Additional Government Pleader appearing for the respondents opposed the contentions by stating that the initial appointment of the Writ petitioners were irregular since their appointment was not in accordance with the recruitment rules in force. The Writ petitioners were allowed to continue only as NMRs and their services are not regularized for the reason that their initial appointment was not in accordance with the service rules in force. The learned Additional Government Pleader further submitted that the regularization cannot be granted in respect of irregular appointees, even the ratification to continue as NMRs by the Government was granted as a special case and as one time arrangement. Thus, the concession shown to the Writ petitioners to continue as NMRs itself is pursuant to the order of this Court passed in W.P.No.36623 of 2004 and under these circumstances, the respondents cannot extend the benefit of regularization in a permanent vacancy and the permanent vacancies are to be filled up only by following the regular recruitment rules in force.

6. This Court is of the opinion that appointment can never been claimed as a matter of right, regularization or permanent absorption cannot be granted in violation of the recruitment rules in force. Regularization can be granted only if a person is appointed in accordance with the recruitment rules. Irregular appointees cannot claim regularization or permanent absorption and the same will be in violation of the constitutional principles. Equal opportunity in public employment is a constitutional mandate and all the citizens who are eligible for public employment should be provided an opportunity to participate in the open competitive process and all the selection to the public post must be done in accordance with the rules in force.

7. Such being the legal principles to be followed for providing public employment, the authorities competent are not having any power to grant regularisation or permanent absorption in respect of the irregular appointees. The Constitutional Bench of the Hon'ble Supreme Court of India settled the legal principles in this regard in STATE OF KARNATAKA AND ORS. v. UMA DEVI (3) & ORS. [(2006) 4 SCC 1]. The relevant paragraphs are extracted hereunder:

5. This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people

who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

10. When these matters came up before a Bench of two Judges, the learned Judges referred the cases to a Bench of three Judges. The order of reference is reported in 2003 (9) SCALE 187. This Court noticed that in the matter of regularization of ad hoc employees, there were conflicting decisions by three Judge Benches of this Court and by two Judge Benches and hence the question required to be considered by a larger Bench. When the matters came up before a three Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General. The order of reference is reported in 2003 (10) SCALE 388. It appears to be proper to quote that order of reference at this stage. It reads:

"1. Apart from the conflicting opinions between the three Judges' Bench decisions in Ashwani Kumar and Ors. Vs. State of Bihar and Ors., reported in 1997 (2) SCC 1, State of Haryana and Ors vs., Piara Singh and Ors. Reported in 1992 (4) SCC 118 and Dharwad Distt. P.W.D. Literate Daily Wage Employees Association and Ors. Vs. State of Karnataka and Ors. Reported in 1990 (2) SCC 396, on the one hand and State of Himachal Pradesh vs. Suresh Kumar Verma and Anr., reported in AIR 1996 SC 1565, State of Punjab vs. Surinder Kumar and Ors. Reported in AIR 1992 SC 1593, and B.N. Nagarajan and Ors. Vs. State of Karnataka and Ors., reported in 1979 (4) SCC 507 on the other, which has been brought out in one of the judgments under appeal of Karnataka High Court in State of Karnataka vs. H. Ganesh Rao, decided on 1.6.2000, reported in 2001 (4) Karnataka Law Journal 466,

learned Additional Solicitor General urged that the scheme for regularization is repugnant to Articles 16(4), 309, 320 and 335 of the Constitution of India and, therefore, these cases are required to be heard by a Bench of Five learned Judges (Constitution Bench).

2. On the other hand, Mr. M.C. Bhandare, learned senior counsel, appearing for the employees urged that such a scheme for regularization is consistent with the provision of Articles 14 and 21 of the Constitution.

3. Mr. V. Lakshmi Narayan, learned counsel, appearing in CC Nos.109-498 of 2003, has filed the G.O. dated 19.7.2002 and submitted that orders have already been implemented.

4. After having found that there is conflict of opinion between three Judges Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.

5. Let these matters be placed before Hon'ble the Chief Justice for appropriate orders."

We are, therefore, called upon to resolve this issue here. We have to lay down the law. We have to approach the question as a constitutional court should.

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration

or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

13. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs. Jagdip Singh & Ors. (1964 (4) SCR 964). It was held therein,

"In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."

20. The decision in Dharwad Distt. P.W.D. Literate Daily Wage Employees Association & ors. Vs. State of Karnataka & Ors. (1990 (1) SCR 544) dealt with a scheme framed by the State of Karnataka, though at the instance of the court. The scheme was essentially relating to the application of the concept of equal pay for equal work but it also provided for making permanent, or what it called regularization, without keeping the distinction in mind, of employees who had been appointed ad hoc, casually, temporarily or on daily wage basis. In other words, employees who had been appointed without following the procedure established by law for such appointments. This Court, at the threshold, stated that it should individualize justice to suit a given situation. With respect, it is not possible to accept the statement, unqualified as it appears to be. This Court is not only the constitutional court, it is also the highest court in the country, the final court of appeal. By virtue of Article 141 of the Constitution of India, what this Court lays down is the law of the land. Its decisions are binding on all the courts. Its main role is to interpret the constitutional and other statutory provisions bearing in mind the fundamental philosophy of the Constitution. We have given unto ourselves a system of governance by rule of law. The role of the Supreme Court is to render justice according to law. As one jurist put it, the Supreme Court is expected to decide questions of law for the country and not to decide individual cases without reference to such principles of law. Consistency is a virtue. Passing orders not consistent with its own decisions on law, is bound to send out confusing signals and usher in judicial chaos. Its role, therefore, is really to interpret the law and decide cases coming before it, according to law. Orders which are inconsistent with the legal conclusions arrived at by the court in the self same judgment not only create confusion but also tend to usher in arbitrariness highlighting the statement, that equity tends to vary with the Chancellor's foot.

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order

upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the

economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been

working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad (supra), Piara Singh (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn [See Lord Diplock in Council of Civil Service Unions V. Minister for the Civil Service (1985 Appeal Cases 374), National Buildings Construction Corpn. Vs. S. Raghunathan, (1998 (7) SCC 66) and Dr. Chanchal Goyal Vs. State of Rajasthan (2003 (3) SCC 485)]. There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after the Dharwad decision. Though,

there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are

getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. 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 holders 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. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the

argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

8. The two judges of the Hon'ble Supreme Court subsequently in the case of SECRETARY TO GOVERNMENT, SCHOOL EDUCATION DEPARTMENT, CHENNAI v. R. GOVINDASWAMY AND ORS. [(2014) 4 SCC 769] reiterated the legal principles constituted by the Constitutional Bench and issued direction by stating that 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.

9. In view of the authoritative pronouncement of the Supreme Court of India, this Court cannot consider for issuing any direction to regularise the services of the employees, who were not appointed in accordance with the recruitment rules during the relevant point of time and this being the principles to be adopted, the relief sought for by the petitioners to regularise their services in the regular or permanent post in the time scale of pay cannot be considered.

10. Even for issuing direction to consider the representation, this Court has to take note of the legal right and only in the event of establishing that the legal right of the petitioners have been violated, the Court will be in a position to issue any such direction to consider their claim by the competent authority. In the absence of establishing any semblance of legal right, no writ proceedings can be entertained nor any direction can be issued in the matter of regularisation of service. This Court is of the opinion that large number of young people of this great country, on acquisition of higher qualification are made to wait and longing to secure public employment by putting hard labour and by participating in the open competitive process. If such method of regularisation through Courts and other modes, which is not constitutionally approved, is undertaken, then the rights of those youths will be deprived and it will result in frustration amongst young minds of this great nation. The constitutional Courts are duty bound to take care of the rights of all the citizen of this country more specifically in the matter of public employments. Equal opportunity in public employment is a constitutional mandate and there cannot be any deviation in this regard by Courts.

11. Thus, this Court is of the firm opinion that any leniency or displaced sympathy in the matter of appointment,

regularisation or permanent absorption will create inequality amongst the eligible youths, who are waiting to secure public employment through open competition process.

12. The learned counsel appearing for the writ petitioners contended that the daily rated workers, who are engaged after the writ petitioners were brought under regular establishment and their services are also regularised. Such being the position, the case of the writ petitioners also deserve to be considered on par with their juniors. However, such contentions require no further consideration in view of the legal principles stated by the Hon'ble Supreme Court of India. Further, a wrong precedent cannot be adopted or followed in perpetuity and at some point of time, this Court is bound to correct such wrong doing of the authorities in the matter of appointment, regularisation or permanent absorption.

13. Thus, the relief of regularisation sought for cannot be considered in this writ petition. Accordingly, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Secretary to Govt,
The State of Tamil Nadu
Highways and Small Industries (HM2) Department,
Fort St. George, Secretariat,
Chennai - 9.
2. The Secretary to Govt,
The State of Tamil Nadu
Highways Department,
Fort St. George, Secretariat
Chennai-600 009.

3. The Chief Engineer
Highways Department,
Govt. of Tamil Nadu
Chepauk, Chennai 600 005
4. The Divisional Engineer,
Highways & Rural Works Department,
Govt. of Tamil Nadu
Chingleput Division
Alagesan Nagar
Chingleput
5. The Assistant Divisional Engineer
Highways and Rural Works Dept.
Govt. of Tamil Nadu
Uthiramerur Sub Division
Uthiramerur, Kancheepuram District
6. The Assistant Engineer (H)
Rural Roads Section II,
Kancheepuram,
Kancheepuram District.

+1 cc to M/s.A.L.Gandhimathi Advocate sr 82244
+1 cc to Govt Pleader sr 82864

W.P.No.28857 of 2013
in M.P.No. 1 of 2013

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