



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.05.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

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W.P(MD)No.2306 of 2015
and M.P.(MD)No.2 of 2015
and

W.M.P (MD) Nos.1229 of 2016 and 7761 of 2017

1. P.Anbalagan
2. S.Amuthavalli
3. A.Geethanjali
4. A.Sekar
5. S.Latha
6. K.Mallika
7. N.Santhi
8. C.Vijayalakshmi
9. R.Usha Rani
10. G.Shanthi
11. M.Muneeswari
12. G.Sivakami
13. S.Premavathi

.... Petitioner

Vs.

1. The State of Tamil Nadu, Rep. by
The Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai-9.
2. The Director / Commission of
Employment & Training,
Chennai-32.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents to absorb the petitioners as the scheme under which they were appointed was made permanent by way of a Government Order in G.O.Ms.No.8, dated 24.01.2014 with effect from the date of initial appointment with all monetary and service benefits.

For Petitioner
For Respondents

: Mr.D.Selvanayagam
: Mr.T.R.Janarthanan,
Additional Government Pleader.

**ORDER**

This Writ petition is filed for issuing a Writ of Mandamus, directing the respondents to absorb the petitioners as the scheme under which they were appointed was made permanent by way of a Government Order in G.O.Ms.No.8, dated 24.01.2014 with effect from the date of initial appointment with all monetary and service benefits.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondents.

3. The brief facts that are necessary for the disposal of the Writ petition are as follows:-

The petitioners were appointed to the post of Typists under Unemployment Assistance Scheme through Employment Exchange on merits (on the basis of their seniority in the Employment Exchange) introduced by way of G.O.(Ms) No.72, dated 25.08.2006. The petitioners 1 to 3 are physically handicapped candidates, and they are entitled to the benefit of Disabilities Act 1995(Act 1 of 1996) and the Government order in G.O.(Ms)No.151, dated 16.10.2008. The petitioner's appointment are not made permanent as per G.O.Ms.No.8, dated 24.1.2014. The petitioners' service particulars are as follows:-

Sl.No.	Name of the petitioner	Date of Appointment
1.	P.Anbalagan	11.12.2006
2.	S.Amuthavalli	14.12.2007
3.	A.Geethanjali	16.04.2008
4.	A.Sekar	22.02.2007
5.	S.Latha	21.02.2007
6.	K.Mallika	05.01.2007
7.	N.Shanthi	17.12.2007
8.	C.Vijayalakshmi	01.06.2012
9.	R.Usha Rani	23.06.2010
10.	G.Shanthi	06.11.2007
11.	M.Muneeswari	04.05.2007
12.	G.Sivakami	29.05.2013
13.	S.Premavathy	17.02.2012

4. 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 13.02.2015 and since no response is forthcoming, came forward with this Writ petition.

5. The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set as well as the additional typed set of documents and would submit that pendency of this Writ petition, 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 as that of regular incumbents, they are entitled for regularization and other consequential reliefs.

6. Per contra, the learned Additional Government Pleader appearing for the respondents has submitted 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 10.10.2008 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 this Writ petition.

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, reported in (2017) 1 SCC 148**, has considered the issue with regard to pay to the Writ petitioners who are daily wagers, working 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 earlier decision in **State of Haryana V. Jasmer Singh, reported in (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 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



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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.'



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(emphasis supplied)

India is a signatory to the above Covenant having ratified the same on 10.04.1979. 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.



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 pointed 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 is 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, this Writ petition is 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(RTI)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Labour and Employment Department,
Secretariat, Chennai-9.

2. The Director / Commission of
Employment & Training,
Chennai-32.

+1cc to Mr.Mr.D.Selvanayagam, Advocate, SR.57834

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