

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA  
and  
THE HONOURABLE Mrs. JUSTICE S.RAMATHILAGAM

W.A.No.1449 of 2014  
and M.P.No.1 of 2014

1. State of Tamil Nadu,  
Rep. by The Secretary to Government School,  
Education (R1) Department,  
Secretariat, Chennai - 9.
2. The Director of School Education,  
College Road,  
Chennai - 6.
3. The District Educational Officer,  
Thiruvallur District. ... Appellants

versus

1. N.A. Kumaravel
2. V.E.Bharathi
3. M.Victor
4. V.P.Dhanasekaran
5. G.K.Uma Devi ... Respondents

Appeal filed under clause 15 of Letters of Patent against  
the order dated 03.06.2013 passed in W.P.No.14100 of 2013.

W.P.No.14100 of 2013:

Petition filed under Article 226 of the constitution of India for issuance of Writ in the nature of certiorarified Mandamus, to call for the records on the file of the 1st respondent in connection with the order passed by him in G.O. (3D) No.145 School Education (R1) Dept. dated 22.11.11 and quash the same to the extent of regularizing their service w.e.f. 22.11.11 and direct the respondents to regularize the service of the petitioners w.e.f the date of initial appointment with all monetary and service benefits as done in the case of all other similarly situated candidates by way of G.O.Ms.No.247 School Education(R1) Dept. dated 03.10.12 and G.O.(MS)No.111 School Education (R1) Dept. dated 9.5.12.

For Appellants :Mr.K.Karthikeyan,  
Special Government Pleader (Education)

For Respondents :Mr.Singaravelan, Senior Counsel  
for Mrs.M.Srividhya

|             |               |
|-------------|---------------|
| Reserved on | Pronounced on |
| 11.04.2018  | 23.04.2018    |

#### JUDGMENT

DR. S.VIMALA, J.

The services of the writ petitioners, who are the respondents herein, were ordered to be regularized on the completion of 10 years of their services with monetary benefits and the G.O. regularizing the petitioners from the date of issuance of G.O. was quashed, vide the order dated 03.06.2013 passed by the learned single Judge in W.P.No.14100 of 2013. Challenging this order, the appellants have filed this Writ Appeal.

2. The writ petitioners are part-time sweepers in the Education Department. The first and fifth petitioners joined the services on 27.08.1994 and the petitioners 2 to 4 joined the service on 29.08.1994. The Government regularized their services by issuance of the G.O.(3D) No.145, School Education (R1) Department, dated 22.11.2011 and their services were regularized with effect from the date of Government Order.

3. Contending that the services of the writ petitioners should have been regularized on completion of 10 years of service, as per G.O.Ms.No.22 (P&AR) Department, dated 28.02.2006 and not from 22.11.2011, the petitioners preferred the writ petition.

3.1. The contention of the writ petitioners was accepted by the learned Single Judge and writ petition was allowed with a direction to regularize the services of the petitioners on the completion of 10 years of service. The learned single Judge also quashed G.O.(3D) No.145 dated 22.11.2011, which permitted regularization from the date of issuance of G.O. The justifiability of the above order is under challenge in this Writ Appeal.

4. The main contention raised by the learned counsel for the appellants is that the writ petitioners, being the part-time employees, are not entitled to regularization as per the decision of the Hon'ble Supreme Court reported in 2014 (4) SCC 769 (Secretary to Government, School Education Department, Chennai versus R.Govindasamy and others). In the above

decision, reliance was, in turn placed on the decision in the case of State of Rajasthan vs. Dayalal (2011 (2) SCC 429), where under, the regularization of part-time temporary employees were considered. The relevant observation reads as under:

"(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization of services of an employee which would be violative of 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an 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 regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization 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 regularization as they are not working

against any sanctioned posts. There cannot be a direction for absorption, regularization 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."

5. It is contended on behalf of the appellants that placing reliance on the above decision, a Division Bench of this Court, in W.A.No.2911 of 2012 and etc. relating to a batch of cases filed by the Government against grant of regularization and cases filed by the employees relating to denial of regularization, allowed the appeals filed by the Government of Tamil Nadu and in respect of the appeals filed by individual claimants, challenging the dismissal of their claim for regularization, the same were dismissed.

6. Placing strong reliance on the above decisions, the learned counsel for the appellants contend that the writ appeal has to be allowed and the order of the learned single Judge is liable to be set aside.

7. In the decision reported in Govindasamy's case (supra), it is specifically pointed out that as the Government of Tamil Nadu had already implemented the order, it was therefore submitted that the Government does not want to disturb the services of the respondents therein, whose services were regularized. In such view of the matter, the Hon'ble Supreme Court has thought it fit to record the undertaking given on behalf of the State of Tamil Nadu. In the above factual background, it is evident that wherever the services of the employees have been regularized, in the interest of the State as well as the employees, the State is not interested in disturbing the position of those employees.

8. Pointing out this, the learned counsel for the respondents submit that prior to the decision in Govindasamy's case (supra) dated 21.02.2014, the services of the writ petitioners have been ordered to be regularized, i.e., even on 22.11.2011 and that the issue is not with regard to regularization as such, but the issue is with regard to the date of regularization or the commencement of regularization and

therefore, the decision in Govindasamy's case would not apply to the facts of this case. It is further contended that even if it is held that the decision in Govindasamy's case (supra) is applicable, it is more favourable to the writ petitioners and the same is not against the writ petitioners.

9. The learned counsel for the respondents further pointed out that the case of the writ petitioners would not be hit by the decision in Govindasamy's case, as the writ petitioners did not enter into service through backdoor entry, but, they came into service through Employment Exchange, i.e., the procedure approved by the Government. The observation of the learned Single Judge dated 20.07.2010 in WP Nos.25872 & 25873 of 2009, is relied upon to substantiate that the entry of the petitioners were through the employment exchange. The relevant observation is extracted hereunder:

"6. That being so, the impugned order of rejection of the petitioners claim on the ground that part time employees are not eligible for absorption on regular time scale of pay contrary to the direction of our High Court is invalid and illegal and cannot be legally sustained. The petitioners herein having been employed through employment exchange and having put in more than 15 years of service are covered under the above Government Orders and the clarification letters and are entitled to the benefit of the Government Orders as interpreted by our High Court decision. There is no valid ground available to the respondents to reject their legitimate claim for absorption of regular time scale of pay as such the impugned orders passed without following the earlier orders of this Court is bad in law and are hence liable to be set aside.

10. It is relevant to point out that relying upon the above order, G.O.(3D) No.145, School Education (R1) Department, dated 22.11.2011 was issued regularizing the services of the writ petitioners. However, the regularization was not ordered from the date of 10 years of completion of service, but from the date of G.O., i.e., on and from 22.11.2011, which has driven the writ petitioners to file another round of litigation.

11. The learned counsel for the respondents further pointed out that the services of 614 part-time employees have been ordered to be regularized on the completion of 10 years of service and there is no reason as to why equal protection and equal treatment be not accorded to the writ petitioners herein.

12. Perusal of the papers available in the typed set reveal that G.O.Ms.No.247, School Education (R1) Department, dated 03.10.2012, would prove that the contention referred to supra by the petitioners is correct with reference to regularization of 614 part-time employees. It is also pointed out that though they are styled as part-time employees, in reality, they are full-time employees doing cleaning, scavenging, sweeping, not only the floor, but also the utensils and doing other work throughout the day. From the above, it is clear that the order passed by the Apex Court in Govindasamy's case (supra) would not stand in the way of the order passed by the learned single Judge, as the order passed by the learned single Judge is earlier in point of time, i.e., on 03.06.2013.

13. The learned counsel for the respondents relied upon the decision of Hon'ble Supreme Court rendered in the case of Netram Sahu vs. State of Chhatisgarh & Anr. (Civil Appeal No.1254 of 2018) dated 23.03.2018, where under, the case of daily wagers engaged by the Water Resource Department of State of Chhatisgarh had been regularized and the dispute was only with regard to payment of gratuity. While considering the issue regarding total length of service and the Supreme Court has pointed out that the law laid down in Uma Devi's case would not apply, where the services stand regularized.

14. For the reasons aforesaid, this Court concurs with the view taken by the learned single Judge and, accordingly, finding no merit the writ appeal is dismissed confirming the order passed by the learned single Judge.

Before parting with the case, it would be appropriate to mention the observation made by the Supreme Court in Civil Appeal No.1254 of 2018 and the same is extracted hereunder:

"Now, we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person."

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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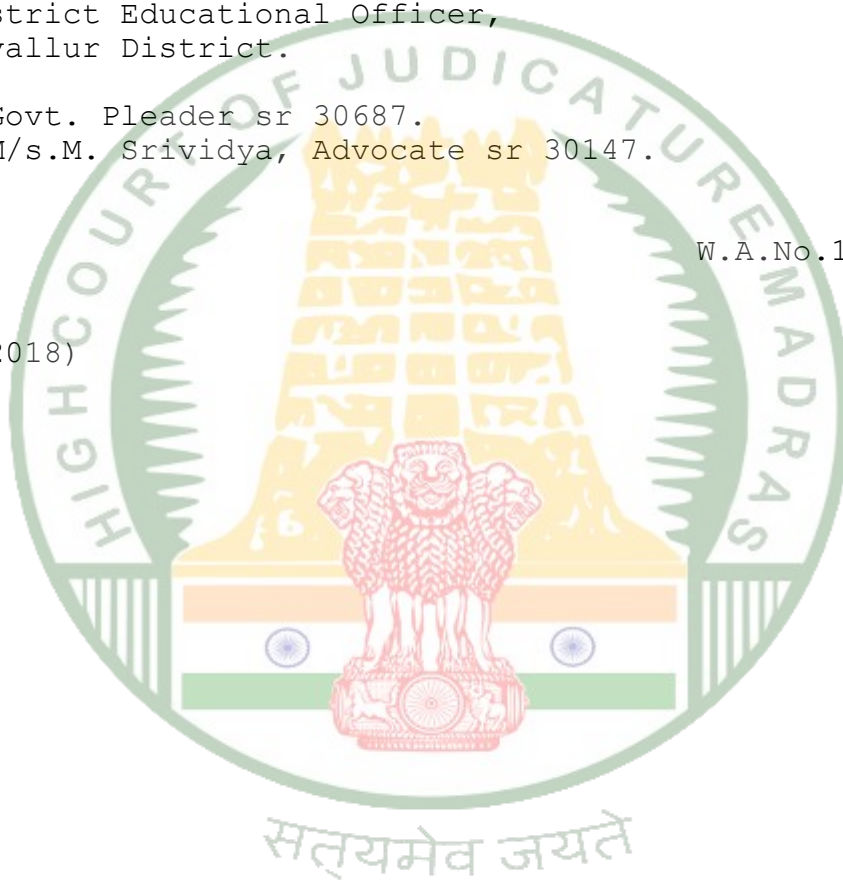
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+1 CC to Govt. Pleader sr 30687.

+1 CC to M/s.M. Srividya, Advocate sr 30147.

W.A.No.1449 of 2014

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SP(11/10/2018)



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