

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03/09/2018
Delivered on	11/10/2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.1631 of 2018 &
against W.P.No.1060 of 2017.
C.M.P.No.13183 of 2018

- 1.The Secretary to Government,
Rural Development & Panchayat Raj Department,
Fort Saint George - Secretariat,
Chennai - 600 009.
 - 2.The Director,
Rural Development & Panchayat Raj Directorate,
Panagal Building,
Saidapet, Chennai - 600 015.
 - 3.The District Collector,
Villupuram District Collectorate,
Villupuram - 605 602.
 - 4.The Commissioner,
Sankarapuram Panchayat Union,
Villupuram District - 606 401. Appellants/Respondent
- vs.

N.Arumugam Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 06.02.2018 passed by a learned Single
Judge of this Court in W.P.No.1060 of 2017.

W.P.No.1060 of 2017:

Petition filed under Article 226 of the constitution of India
praying to issue a Writ of certiorarified Mandamus to call for
the records on the file of the respondent 3 respectively herein
relating to regularisation of the service of the petitioner in
the proceedings of R-3 in No. Na. Ka. Pa. A6/18150/2008-1 dt
28.12.2008 along with the impugned order in Na. Ka.
Pa.6/4678/2014 dt 29.5.2016 as rife with infirmities error in

law apparent on the face of record and illegal and quash the same and direct the respondents 1 to 3 to regularise the petitioners service from the date of his appointment dt 31.5.1985 in accordance with orders ending with G.O.Ms. 161 Rural Development (E-7) Department dt 26.6.2000 and to determine the petitioners regularisation date scale of pay and arrears of service dues inclusive of his retrial benefits and remit the same with interest at 10% p.a. thereon.

For Appellants : Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

For Respondent : Mr.M.A.Balasubramanian

J U D G M E N T

K.KALYANASUNDARAM, J.

This Appeal is directed against the order of the learned Single Judge dated 06.02.2018 passed in W.P.No.1060 of 2017, by which, the Writ Court directed the respondents to regularize the service of the writ petitioner from the date of initial appointment, viz., 01.06.1985.

2. According to the respondent herein, his name was sponsored by the Employment Exchange and he was initially appointed as a Part-time sweeper in Panchayat Union Elementary School, Devapandalam on 07.11.1984. Thereafter, the post of Night Watchman fell vacant and hence, the Assistant Educational Officer, Sankarapuram recommended his candidature to the post of Night Watchman. Based on the said recommendation, he was appointed as Night Watchmen on 27.05.1985. The grievance of the writ petitioner is that though the Government issued notification empowering the District Collector to regularize the services of Night Watchmen and based on the same, 171 Night Watchmen were regularized, the case of the respondent was not considered. Hence, the respondent filed W.P.No.20775 of 2007 seeking direction to the Authorities to regularize the service and based on the order dated 19.06.2017, the respondents regularized the service of the writ petitioner with effect from 01.06.1995 instead of 01.06.1985.

3. In the counter filed by the District Collector, Villupuram District, it is stated that the writ petitioner was originally appointed as Part-time sweeper in Panchayat Union Elementary School, Devapandalam on 07.11.1984. The said post was part time one on consolidated basis and thereafter, he was appointed temporarily as Night Watchman on 31.05.1985 by the fourth respondent and the salary was fixed at Rs.18/- per day and his service was treated as contingent service. The third respondent based on the G.O. (ID)No.622 dated 14.08.2008

regularized service of the writ petitioner with effect from 01.06.1995. It is further stated that the appointment to the post of Watchman was made temporarily without calling other names from the Employment Exchange and advertisement and without following due process and hence the petitioner is not entitled for the relief sought for in the Writ Petition.

4. The learned Single Judge taking into consideration the facts that the writ petitioner was sponsored by the Employment Exchange and thereafter, he was initially appointed as Part-time sweeper in Panchayat Union Elementary School and his name was recommended by the Assistant Educational Officer for appointment of Night Watchman, allowed the Writ Petition and directed the appellants to regularize the service with effect from 01.06.1985.

5. The learned Government Pleader for the appellants by placing reliance on the decision of the Hon'ble Supreme Court in the case of State of Tamil Nadu Vs. Singamuthu reported in (2017) 4 SCC 113, would argue that the persons appointed without following the Rules and Regulations on a temporary and a part time basis cannot seek for regularization of service in a Writ Petition and the Court should be slow in issuing the direction to regularize their service.

6. Per contra, the learned Counsel for the respondent / writ petitioner argued in support of the findings of the learned Single Judge.

7. The Hon'ble Supreme Court in the judgment, referred supra, by following the decisions in the case of State of Karnataka v. Umadevi (2006) 4 SCC 1 and School Education Department, State of Tamil Nadu vs. R.Govindaswamy (2014) 4 SCC 769 held that the persons appointed on a temporary and part time basis are not entitled for regularization on par with full time employees, who completed 10 years of continuous service. The relevant paragraphs would run thus:-

"15. In a similar issue, concerning part-time sweepers, the State of Tamil Nadu has filed an appeal before this Court, and those appeals were allowed by this Court by judgment dated 21-2-2014 in School Education Deptt., State of T.N. v. R. Govindaswamy [School Education Deptt., State of T.N. v. R. Govindaswamy, (2014) 4 SCC 769 : (2014) 2 SCC (L&S) 108] . After referring to various judgments on this issue, in paras 5 to 7, this Court held as under: (SCC pp. 770-71)

"5. The issue involved here remains restricted as to whether the services of the part-time sweepers

could have been directed by the High Court to be regularised. The issue is no more res integra.

6. In State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] this Court held as under: (SCC p. 40, para 48)

'48. ... 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.'

7. In Union of India v. A.S. Pillai [Union of India v. A.S. Pillai, (2010) 13 SCC 448 : (2011) 1 SCC (L&S) 399] 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."

16. In State of Rajasthan v. Daya Lal [State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340], this Court has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and this Court clearly laid down that part-time employees are not entitled to seek regularisation as they do not work against any

sanctioned posts. It was also held that part-time employees in government-run institutions can in no case claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Relevant excerpt from the said judgment is as under: (SCC pp. 435-36, para 12)

'12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) 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 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. " "

8. In the present case, it is not in dispute that the name of the writ petitioner was sponsored by the Employment Exchange for appointment to the post of Part-time sweeper. However, while filling up the post of Night Watchman, admittedly, no advertisement was given and none was sponsored by the Employment Exchange. Indisputably, the writ petitioner was appointed as a Night Watchman based on the recommendation made by the Assistant Educational Officer, Sankarapuram vide his letter dated 02.02.1985. The learned Single Judge without considering the grounds raised by the appellants in the counter, allowed the Writ Petition.

9. We are of the view that the principles laid down by the Hon'ble Supreme Court in the case of State of Tamil Nadu Vs. Singamuthu, would squarely apply to the case on hand. In such

view of the matter the order of the learned Singe Judge is set aside and accordingly, the Writ Appeal is allowed. There is no order as to costs. Consequently, connected CMP is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

- 1.The Secretary to Government,
Rural Development & Panchayat Raj Department,
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- 4.The Commissioner,
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Villupuram District - 606 401.

+2 Ccs to Mr.K.S. Narayanan, Advocate sr 70847

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W.A.No.1631 of 2018 &
C.M.P.No.13183 of 2018

RJ(CO)
SP(01/11/2018)

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