

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.04.2018

Delivered on : 27.06.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.A Nos.971 and 989 of 2017,
C.M.P.Nos.13493 and 13801 of 2017

1.Union of India rep. by
Govt. of Puducherry
Chief Secretariat, Puducherry 605 001.

2.Govt. of Puducherry, rep. by
its Secretary, Education Department,
Puducherry 605 001.

3.The Principal
Pondicherry Engineering College,
Kalapet, Puducherry 605 014.

...Appellants
in both Appeals

Vs

1.M.Velmurugan
2.G.Velusamy

...Respondents in
W.A.No.971/2017

1.M.Velmurugan
2.C.Selvaradjou
3.S.Soumathy
4.G.Lakshmigandhi
5.S.Dhananjayan
6.S.Ashokaraj
7.M.Ellappane
8.G.M.Aquilane
9.M.Hariharan
10.P.Kalimamani
11.K.Kathavarayan
12.M.Kaliselvy
13.M.Anbarasan
14.R.Munusamy
15.S.Seran
16.G.Sinouvassane

सत्यमेव जयते

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17.K.Devarajaperumal
18.P.Tamilselvy
19.S.Kathavarayan
20.P.Vizean
21.P.Ajitha
22.K.Arulmozhi
23.G.Sakthivel
24.K.Haridoss
25.K.Banugoban

...Respondents in
W.A.No.989/2017

Prayer:- Writ Appeals filed under clause 15 of the Letter Patent against the order dated 10.02.2017 made in W.P.Nos.16816 of 2012 and 31798 of 2015 respectively.

Prayer in W.P. No.16816 of 2012: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the third respondent to fill up the SC vacancy for the post of Helper in the third respondent's college as per the 2005 notification dated 01.12.2005 in No.693 info/ADVT/2005-2006 and 2008 notification dated 13.03.2008 in No.P.E.C/Est.Sec.4/Employment/2008 and follow the constitutional reservation.

Prayer in W.P. No.31798 of 2015: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records from the file of the third respondent dated 28.09.2015 bearing in No.P.E.C/E7/Regularization/2015/No.3035 and quash the same and consequently direct the third respondent to fill up the SC vacancy for the post of Helper in the third respondent's college as per the 2005 notification dated 01.12.2005 in No.693 info/ADVT/2005-2006 and 2008 notification dated 13.03.2008 in No.P.E.C/Est.Sec.4/Employment/2008 by following the communal reservation.

For Appellants : Mr.Syed Mustafa
Special Govt.Pleader (in both appeals)

For Respondents: Mr.M.Ravindran
Senior Counsel
for Mr.D.Sreenivasan
for R1 and R2 in W.A.No.971/2017 &
for R1 in W.A.No.989/2017
Mr.V.Ajaykumar for R2 and R25
in W.A.No.989/2017
Ms.A.Shanthi for R3 to R24
in W.A.No.989/2017

C O M M O N J U D G M E N T

K.K.SASIDHARAN, J.

Introductory

The initial appointment on daily wages and regularisation thereafter appears to be the modus operandi in the Union Territory of Puducherry for legalising the back door appointment. These intra court appeals before us support our view regarding large scale back door and side door appointments in public service in Puducherry giving a go-by to Article 16 of the Constitution of India.

Brief Facts

2. The respondents in W.A.No.971 of 2017 filed a writ petition in W.P.No.16816 of 2012 for issuance of a Writ of Mandamus to direct the Pondicherry Engineering College to fill up the post of Helper reserved for Scheduled Caste based on the notification dated 1 December 2005. The first respondent in W.A.No.989 of 2017 filed a writ petition in W.P.No.31798 of 2015 to quash the order dated 28 September 2015 regularising the services of respondents 2 to 25 and to fill up those posts of Helpers in accordance with the vacancy Notification dated 1 December 2005.

3. According to the writ petitioners, though a notification was issued on 1 December 2005 for filling up 17 posts of Helpers under the Scheduled Caste category, without taking follow up action, respondents 2 to 25 in W.A.No.989 of 2017 were appointed on contract basis and later by order dated 28 September 2015 their services were regularised. Though the writ petitioners submitted applications pursuant to the Notification dated 1 December 2005, their candidature were not considered.

4. The learned single Judge found that respondents 2 to 25 in W.A.No.989 of 2017 were not sponsored by the Employment Exchange. They were not from Scheduled Caste community. Their appointment as Helpers on casual basis was not by following a transparent selection process. Subsequently, their services were regularised. The learned single Judge without quashing the order of regularisation, directed the Puducherry administration to appoint the writ petitioners as Helpers. Feeling aggrieved, the appellants have filed the intra court appeals.

Appeal Grounds

5. The appellants have taken up a contention that the respondents 2 to 25 in W.A.No.989 of 2017 were appointed by giving preference to the "Land Affected Category". Their lands were acquired for establishing the Pondicherry Engineering

College and pursuant to a policy decision taken by the Government, employment was given. It is the further contention of the appellants that the appointments were not against the posts reserved for the members of Scheduled Caste Community. The appellants have not countered the contention regarding regularisation of back door appointments.

Submissions

6a. The learned Special Government Pleader appearing on behalf of the appellants contended that the candidates from the Land Affected Category alone were recruited by the College. The appellants have not appointed General or Other Category candidates against the post reserved for Scheduled Caste. According to the learned Special Government Pleader, since there was a ban, further process could not be taken to appoint the Scheduled Caste candidates. It was further contended that the learned single Judge was not correct in directing the appellants to appoint the respondents in W.A.No.971 of 2017 without realising the fact that they have merely made an application for appointment and there was no selection process.

b. The learned Senior Counsel for the respondents in W.A.No.971 of 2017 and the first respondent in W.A.No.989 of 2017 contended that the appellants have been giving false information with regard to the illegal appointments. The learned Senior Counsel contended that the vacancies earmarked for the Scheduled Caste candidates were not filled up by the appellants. They have given appointments illegally to several other candidates, through back door. Even those whose lands were not acquired were also given appointment. The appellants have gone to the extent of regularizing the services of the illegal appointees even during the pendency of the writ petition filed by the respondents in W.A.No.971 of 2017. The learned Senior Counsel contended that the learned single Judge was perfectly correct in directing the appellants to accommodate the writ petitioners as they were fully qualified for appointment.

Discussion

7. The Government of Puducherry acquired about 1081 acres of land situated in the Revenue Village of Pillaichavady and Kalapet in the Union Territory of Puducherry for the establishment of various educational institutions in 1984. The Government allotted 200 acres to establish Pondicherry Engineering College in 1986. The remaining land was allotted to Pondicherry Central University. The Government of Puducherry taking into account the request made by the people, whose lands were acquired for the Engineering College took a policy decision to give them preference in employment.

8. The Pondicherry Engineering College appointed 132 persons from the category of land affected persons initially on NMR basis. Subsequently, their services were regularised.

9. The Pondicherry Engineering College issued a Notification dated 1 December 2005 calling for applications for appointment on daily wage basis to fill up 17 posts earmarked for Scheduled Caste and 2 posts for Physically Handicapped persons. Subsequently, another notification was issued on 13 March 2008 calling for applications for appointment to fill up 38 vacancies of Helpers, which included 19 General Category, 17 posts for Scheduled Caste and 2 for Physically Handicapped. It was indicated that those who have given land to the College would be given preference. The writ petitioners submitted applications pursuant to the said employment notification. There were no Scheduled Caste candidates from the land affected category.

10. The documents available on record and the file produced by the appellants would show that after receiving applications pursuant to the Notification dated 1 December 2015, follow up action was not taken to fill up the notified vacancies.

11. The Pondicherry Engineering College instead of filling up the posts earmarked for Scheduled Caste / Physically Handicapped, engaged the respondents 2 to 25 in W.A.No.989 of 2017 as casual labourers, without calling for applications from Employment Exchange. They were appointed with a justification that appointees were all from the land affected category.

12. The first writ petition in W.P.No.16816 of 2012 was filed on 25 June 2012. It is a matter of record that during the currency of the said writ petition, the services of the casual labourers were all regularised as per order dated 28 September 2015. Thereafter, W.P.No.31798 of 2015 was filed to quash the order of regularisation.

13. There was no transparent selection process for appointing the respondents 2 to 25 on contract basis. The High Court in its order in W.P.No.6235 of 2001 directed the Pondicherry Engineering College to give preference to the land affected category. The College has already given appointment to several people under this category.

14. The Governing Council of the College took a decision on 17 May 2010 to appoint the respondents 2 to 25 on contract basis. The contract was extended periodically. Subsequently, they were appointed on consolidated pay basis with effect from 12 September 2012 pursuant to the proceedings of the Governing

Body dated 12 September 2012.

15. Thereafter, a decision was taken by the Governing Body on 21 September 2015 to regularise the services of 24 helpers on consolidated pay. The Principal of the College issued a Memorandum dated 28 September 2015 regularising the services of respondents 2 to 25 in W.A.No.989 of 2017. The decision was challenged in W.P.No.31798 of 2015.

16. The learned single Judge without quashing the order dated 28 September 2015 regularising the services of respondents 2 to 25 in W.A.No.989 of 2017 directed the appellants to provide employment to the respondents in W.A.No.971 of 2017.

17. The writ petitioners have not challenged the order negating their prayer to quash the order of regularisation. Therefore, the said part of the order has become final.

18. The State is aggrieved by the direction given by the learned single Judge to accommodate the writ petitioners by giving them suitable posts.

19. Since the posts reserved for Scheduled Category remained unfilled, we have by order dated 6 March 2018 directed the Chief Secretary to Government (Education) cum Chairman, Pondicherry Engineering College, to file an affidavit with regard to the filling up of reserved posts.

20. The Chairman in his affidavit dated 18 March 2018 highlighted the poor financial condition of the College and its inability even to pay the salary and allowance of the employees. It was submitted that 9 NMRs working in the hostel are seeking regularisation now. The Chairman further submitted that there is a ban for recruitment and as such, it would not be possible now to fill up the posts earmarked for Scheduled Caste candidates.

21. The affidavit filed by the Chairman, Pondicherry Engineering College shows the recruitment of staff beyond the sanctioned strength and its difficulty to pay the salary to the employees.

Supreme Court on Illegal Appointments

22. The Hon'ble Supreme Court in its judgment in Secretary, State of Karnataka and others v. Umadevi (3) and others [(2006) 4 SCC 1] deprecated the practice of back door appointments and its regularisation subsequently in total violation of Article 14 of the Constitution of India.

The Supreme Court said:

"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...."

23. The Supreme Court in *State of Rajasthan and others v. Daya Lal and others* [(2011) 2 SCC 429] indicated the principles relating to regularisation in the following words:

"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 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."

Violation of Articles 14 and 16

24. It has now become a regular practice in the Union Territory of Puducherry to appoint employees through back door without the availability of sanctioned posts. This practice is not a new phenomena. We are informed that the Government sponsored Societies, Co-operative Societies and other Government undertakings are not in a position to pay the salary due to paucity of funds. Some of the state undertakings are stated to be working only to pay the wages to the employees who were appointed illegally by the successive Governments. The ban on appointments is projected to deny appointment to those who have registered their names in the Employment Exchange. However, appointments are regularly made in Government Societies and Semi-Government undertakings initially on daily wages and subsequently, the appointments were regularised. Even the services of hourly paid and consolidated pay Lecturers were regularised and they were given arrears of pay. The Government appears to have not addressed this issue so far. This is a serious matter which requires the immediate consideration of the Government in larger public interest.

25. The Government must conduct a comprehensive service audit of the State owned Corporations, Khadi Board and various Societies and must fix the total cadre strength. There should not be any kind of engagement of employees beyond the cadre strength in the financial interest of Corporations and Societies. The Government undertakings would perish in case there are excess appointments. The employees would continue in service with the hope that at one point of time their services would be regularised. It would not be in public interest to encourage such illegal appointments.

26. The learned single Judge was not correct in directing the appellants to appoint the writ petitioners notwithstanding the ban for recruitment and the poor financial condition of the College. The writ petitioners have no enforceable right on account of their submission of application for appointment. It is true that the College was at fault for engaging Helpers on temporary basis without following the process notified on 1 December 2005 and 13 March 2008. However that would not give a right to the writ petitioners to claim employment without undergoing a selection process. While setting aside the direction given by the learned Single Judge to appoint the respondents in W.A.No.971 of 2017, we give them liberty to make an application for appointment by giving age relaxation in case of issuance of vacancy notification by the Engineering College. Such application for age relaxation to the respondents in W.A.No.971 of 2017 shall be considered favourably by the Engineering College, taking into account the background facts.

27. We restrain the appellants from engaging employees in the Pondicherry Engineering College either by way of daily rated / consolidated pay or on contract basis till the posts earmarked for the Scheduled Caste are filled up by following a transparent selection process. In view of the direction given by the Hon'ble Supreme Court in Uma Devi (supra), the appellants are restrained from regularising the services of Helpers or employees working in any other non sanctioned posts, in case those appointments were not through Employment Exchange or by resorting to an open selection process, envisaged by Article 14 and 16 of the Constitution of India.

28. The intra court appeals are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

TO

- 1.Union of India rep. by
Govt. of Puducherry
Chief Secretariat, Puducherry 605 001.
- 2.Govt. of Puducherry, rep. by
its Secretary, Education Department,
Puducherry 605 001.
- 3.The Principal
Pondicherry Engineering College,
Kalapet, Puducherry 605 014.

+2cc to Mr.A.SHANTHI, Advocate, S.R.No.40567
+2cc to Mr.D.SRINIVASAN, Advocate, S.R.No.40814
+1cc to Mr.V.AJAYAKUMAR, Advocate, S.R.No. 41515
+1cc to the Government Pleader, S.R.No.41025 & 41020

Judgment in
W.A Nos.971 and 989 of 2017

JP (CO)
TR(06/07/2018)