

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.12.2018
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.Nos.14287 to 14294 of 2018

1.S.Shakila	...	Petitioner in WP.No.14287/18
2.M.Krishnaveni	...	Petitioner in WP.No.14288/18
3.A.Jesi	...	Petitioner in WP.No.14289/18
4.G.Sumathi	...	Petitioner in WP.No.14290/18
5.R.Baskaran	...	Petitioner in WP.No.14291/18
6.T.Babina	...	Petitioner in WP.No.14292/18
7.P.Murugesan	...	Petitioner in WP.No.14293/18
8.G.Lilly Pushpam	...	Petitioner in WP.No.14294/18

Vs.

1.The Principal District Judge,
Coimbatore District, Coimbatore.
... First Respondent in WP.No. 14287/18

2.The Registrar General,
High Court of Madras. ... Respondents 2 & 3 in All WPs

(R2 impleaded as per the order dated 11.07.2018
made in WMP.Nos.18669 to 18676 of 2018)

3.The Secretary to Government,
Home (Courts) Department,
Fort St.George, Chennai-9.

(R3 impleaded as per order dated 06.08.2018 in WMPs.No. 23695 to
23702/18 in WP's 14287 to 14294/18)

4. The Principal District Judge,
Erode District, Erode.

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying for a Writ of Mandamus directing
the respondent to consider the petitioner for appointment to any
other suitable post, which is not required to be filled up
through the TNPSC, in the light of the orders dated 10.06.2009
passed in W.P.Nos.9710 and 10189 of 2009.

For Petitioners in all: Mr.P.Rajendran

For Respondents in all : Mr.S.Thangavel for R1 and R2
Mr.J.Pothiraj, Special Govt. Pleader for R3

COMMON ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent all these writ petitions are taken up and disposed of by this common order, as the issue to be adjudicated is one and the same.

2. The petitioner in W.P.No.14287 of 2018 is working as a Typist in the Court of District Munsif cum Judicial Magistrate, Valparai, Coimbatore District and she was initially appointed on 07.12.2011. Applications were called from eligible candidates and also from Employment Exchange to fill up the posts and in pursuant to the notification issued, she participated in the regular selection process and was successful and got appointed in the said post.

3. The petitioner in W.P.No.14288 of 2018 is working as a Junior Assistant in the Court of I Additional District Munsif, Erode and she was initially appointed on 02.05.2012 and like the petitioner in W.P.No.14287 of 2018, she underwent the regular selection process and got appointed in the said post.

4. The petitioner in W.P.No.14289 of 2018 is working as a Steno Typist in the Principal District Munsif Court, Bhavani and she was initially appointed on 16.06.2013 and like the petitioner in W.P.No.14287 of 2018, she underwent the regular selection progress and got selected and appointed in the said post.

5. The petitioner in W.P.No.14290 of 2018 is working as a Typist in the II Additional District Court, Erode and she was initially appointed on 22.01.2011 and like the petitioner in W.P.No.14287 of 2018, she underwent the regular selection progress and got selected and appointed in the said post.

6. The petitioner in W.P.No.14291 of 2018 is working as a Typist in the I Additional District Munsif Court, Bhavani and he was initially appointed on 06.01.2014 and like the petitioner in W.P.No.14287 of 2018, he underwent the regular selection progress and got selected and appointed in the said post.

7. The petitioner in W.P.No.14292 of 2018 is working as a Typist in the Court of Judicial Magistrate No.I, Erode District and she was initially appointed on 17.08.2012 and like the

petitioner in W.P.No.14287 of 2018, she underwent the regular selection progress and got selected and appointed in the said post.

8. The petitioner in W.P.No.14293 of 2018 is working as a Typist in the Court of Judicial Magistrate No.II, Bhavani, Erode District and he was initially appointed on 17.06.2011 and like the petitioner in W.P.No.14287 of 2018, he underwent the regular selection progress and got selected and appointed in the said post.

9. The petitioner in W.P.No.14294 of 2018 is working as a Typist in the Court of Judicial Magistrate No.II, Erode District and she was initially appointed on 20.01.2014 and like the petitioner in W.P.No.14287 of 2018, she underwent the regular selection progress and got selected and appointed in the said post.

10. Mr.P.Rajendran, learned counsel appearing for the petitioners has invited the attention of this Court to the common order dated 10.06.2009 made in W.P.Nos.9710 and 10189 of 2009 and would submit that the said writ petitions were filed by the Judicial Temporary Employee Welfare Association and one Mr.V.Chandramathi, praying for issuance of a Writ of Mandamus directing the official respondents to consider and regularize the services of the members of the said association in the Tamil Nadu Judicial Subordinate Service by framing a Scheme on the lines approved by this Court in it's order dated 11.06.2007 made in W.P.No.36371 of 2006 and grant all other attendant benefits and other consequential relief and also to consider and absorb them in the posts of Examiners, Readers, Senior Bailiffs carrying equivalent Scale of Pay as Typist, based on the ratio laid down in the judgement dated 28.09.2000 made in W.P.Nos.894 to 898, 1810 to 5176 of 2000 [S.Padmanabhan and Others v. The Judicial Temporary Typists' Association, Rep. By its Secretary, Coutrallam, Tirunelveli-2 and Others] and also to regularize the services of the petitioners in their respective posts. The said writ petitions came to be disposed of, vide order dated 10.06.2009, with the following observations:

"21. Having regard to all these aspects, we feel interest of justice would be served by disposing of the writ petition with the following observations:-

(1) The candidates who have been selected by the TNPSC and allotted to different authorities for being appointed in the judicial ministerial service shall be appointed against the vacancies available as per their merit list in accordance with law.

(2) If, after permitting such persons to join,

vacancies would be still available, the temporarily appointed persons under Rule 16(i)(a) can be retained obviously keeping in view their respective inter se seniority in the concerned district.

(3) After completing such exercise, if such temporarily appointed ministerial employees are found to be surplus, efforts should be made by the concerned Principal District Judge to accommodate such persons in various other posts such as Reader, Examiner and Copyist as contemplated in the judgment dated 7.3.2006, in W.P.Nos.16321, 17630 and 18409 of 2001.

(4) Even after making adjustment as indicated above, if some temporary employees are found to be surplus, their names may be forwarded to other offices such as Revenue, Excise etc., in the same district so that question of adjusting them in any available vacancy can be considered by the appropriate Head of the Department in the concerned District. That is obviously a matter which has to be considered by such Head of the Department.

(5) While holding the special examination, upper age limit of any candidate, who was temporarily appointed and continuing as such on the date of issuance of G.O.Ms.No.61, shall be relaxed, if necessary.

(6) All the employees who have been appointed on temporary basis by invoking Rule 16(i)(a) and continuing as such on the date of G.O.Ms.No.61 shall be eligible to appear notwithstanding the fact that they have been terminated hitherto or likely to be terminated in order to accommodate the regularly selected candidates.

(7) The question as to whether Junior Assistant would be eligible to appear at such special examination is a matter which should be decided by the State Government as expeditiously as possible, preferably within a period of six weeks from the date of receipt of the present order.

(8) The State Government should make all efforts to hold the special examination through TNPSC as directed in G.O.Ms.No.61 as expeditiously as possible."

11. It is further submitted by the learned counsel appearing for the petitioners that in respect of Ministerial posts for which recruitment was done through Tamil Nadu Public

Service Commission [TNPSC], they were accommodated and persons who were temporarily appointed, sought to be ousted and therefore, aggrieved persons had filed W.P.No.21142 of 2015, praying for a Writ of Mandamus directing the official respondents to absorb them in their respective post with effect from joining service from 01.03.2013, without break in service by ousting for a day and entering into re-employment of service afresh in every year and that the service may be regularized by framing re-absorption rules or may permit the petitioners to write Special Test through the second respondent therein for absorption and regularization of service of the petitioners in the posts held. A Division Bench of this Court, in which one of us is a party [M.Sathyannarayanan, J.] has taken into consideration the earlier order dated 27.11.2014 made in W.P.No.3498 of 2013 etc., batch and observed that admittedly, the petitioners therein, at the time of appointment were put on notice that their appointment is purely temporary and they should give way to regular appointees and as such, they cannot seek regularization as a matter of right and dismissed the writ petitions, vide order dated 26.08.2016, subject to the observations made in paragraph Nos.6 to 8 of the order dated 27.11.2014 made in W.P.No.3498 of 2013 etc., batch.

12. It is also the submission of the learned counsel appearing for the petitioners that one Mr.P.Lakshmanan had filed W.P.No.30329 of 2017, praying for issuance of a Writ of Mandamus directing the first respondent, namely the Principal District Judge, Tiruppur District to consider his claim for appointment to any other suitable post which is not required to be filled up through TNPSC, in the light of the orders dated 10.06.2009 made in W.P.Nos.9710 and 10189 of 2009 and this Court, vide order dated 27.11.2007, had disposed of the said writ petitions by taking into consideration the above cited order.

13. The learned counsel appearing for the petitioners has also invited the attention of this Court to the order dated 30.10.2018 made in W.P.Nos.26044 of 2018 etc., batch which pertains to writ petitions filed for a Mandamus directing the third respondent, namely, Chief Metropolitan Magistrate, Egmore, Chennai, to consider the claim of the petitioners for appointment to any other suitable post, which is not required to be filled up through TNPSC, in the light of the orders dated 10.06.2009 passed by this Court in W.P.Nos.9710 and 10189 of 2009 and the order dated 27.11.2017 made in W.P.Nos.30329 and 30340 of 2017. A Division Bench of this Court, after taking note of the said order, has disposed of the said writ petitions, vide common order dated 30.10.2018 with the following directions:

"(i) It will be open to the petitioners to apply for the same post in which they are working or other posts, whenever a future selection takes place.

(ii) The Government will grant age relaxation to them to the extent of their service as temporary employees.

(iii) The Recruiting Authorities would also give them preference in the matter of appointment, subject to the communal reservation.

All the writ petitions are disposed of, with the above directions. However, in the circumstances there will be no order as to costs."

14. The learned counsel appearing for the petitioners by drawing the attention of this Court to the various orders passed by this Court and would submit that in the light of positive directions, some of them have been accommodated as Readers, Examiners and Copyists and also invited the attention of this Court to the additional typed set of documents filed by the petitioners dated 11.07.2018 and prays for appropriate orders.

15. Per contra, Mr.S.Thangavel, learned counsel appearing for the respondents 1 and 2 and Mr.J.Pothiraj, learned Standing Counsel appearing for the High Court/third respondent would submit that admittedly at the time of accommodating the petitioners, they were informed of the fact, that their appointment is purely temporary in nature and they should give way for regular recruits and though they were in service, the fact remains that they became age barred and the power of relaxation of age has been vested only with the departments concerned and the respondents will abide by the orders passed by this Court in that regard.

16. This Court has considered the rival submissions and also perused the entire materials placed before it.

17. A perusal and consideration of the materials placed before this Court as well as the submission made by the learned counsel appearing for the petitioners would prima facie indicate that the petitioners had underwent the regular selection process and got appointed and working in that capacity for quite some time. It is also brought to the knowledge of this Court by the learned Standing Counsel appearing for the High Court that almost half of the appointees recruited through TNPSC had resigned their job and the situation is being managed by resorting to temporary appointments. The petitioners gained experience by working in various Courts for quite number of years and in the light of various orders passed by this Court referred to above, the representations submitted by them dated 01.03.2018 in that regard are to be considered and disposed of on merits and in accordance with law at the earliest.

18. This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioners, directs the Principal Secretary to Government, Home (Courts) Department, Fort St.George, Chennai-600 009 and the High Court of Madras, Rep. By its Registrar General, Chennai-600 104, to consider and dispose of the representations submitted by the petitioners for regularization, by relaxing the age and qualification and pass appropriate orders within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioners and if possible, can upload the result of the disposal of the said representations in their respective websites also.

19. These Writ Petitions stand disposed of accordingly. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Jvm

To

- 1.The Principal District Judge,
Coimbatore District, Coimbatore.
- 2.The Principal Secretary to Government,
Home (Courts) Department,
Fort St.George, Chennai-600 009
- 3.The Registrar General,
High Court of Madras, Chennai-600 104.
- 4.The Principal District Judge,
Erode District, Erode.

+2cc to Mr.P.Rajendran, Advocate, S.R.No. 84727, 84728
+1cc to the Special Government Pleader, S.R.No. 85053

W.P.Nos.14287 to 14294 of 2018

SVN(CO)
GN(08/01/2019)