IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 08.10.2018	Delivered on 30.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.Nos.26044,26030,26034,26123,26126,26297,26072,26075,26078,
26081,26086,26088,26092,26097,26101,26107,26109,26116 and 26118
of 2018

1.R.Shanthi ...petitioner in W.P.No.26044 of 2018

2.M.Jayasree ...petitioner in W.P.No.26030 of 2018

3.R.Suguna ...petitioner in W.P.No.26034 of 2018

4.N.Rani ...petitioner in W.P.No.26123 of 2018

5.T.Tamilselvi ...petitioner in W.P.No.26126 of 2018

6.N.Nithya ...petitioner in W.P.No.26297 of 2018

7.B.Vijayalakshmi ...petitioner in W.P.No.26072 of 2018

8.I.Sulochana ...petitioner in W.P.No.26075 of 2018

9.M.Malleeswari ...petitioner in W.P.No.26078 of 2018

10.V.Sureshkumar ...petitioner in W.P.No.26081 of 2018

11.C.S.Thulasimani ...petitioner in W.P.No.26086 of 2018

12.K.P.Saradha ...petitioner in W.P.No.26088 of 2018

13.R.Ramuthai ...petitioner in W.P.No.26092 of 2018

14.A.Gandhirani ...petitioner in W.P.No.26097 of 2018

15.R.Mary Sheela ...petitioner in W.P.No.26101 of 2018

16.M.Janaki ...petitioner in W.P.No.26107 of 2018

17.D.Aruljothidevi ...petitioner in W.P.No.26109 of 2018

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18.C.K.Padmavathy ...petitioner in W.P.No.26116 of 2018

19.K.Usharani ...petitioner in W.P.No.26118 of 2018

versus

1.The Secretary to the Government,
Home (Courts) Department,
Fort St.George, Chennai - 600 009.

2.The Registrar General,
High Court, Madras.

3.The Chief Metropolitan Magistrate,
Egmore, now at Allikulam,
Chennai - 600 003. ... Respondents
(in W.P.Nos.26044,26030,26034 and 26297 of 2018)

1.The Secretary to the Government,
Home (Courts) Department,
Fort St.George, Chennai - 600 009.

2.The Registrar General,
High Court, Madras.

3.The Principal District Judge,
Coimbatore,
Coimbatore District. ... Respondents (in W.P.Nos. 26123,26126,26072,26075,26078, 26081,26086,26088,26092,26097, 26101,26107,26109,26116 and 26118 of 2018)

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the third respondent to consider the petitioners 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 by this Hon'ble Court in W.P.Nos.9710 and 10189 of 2009 and W.P.Nos.30329 to 30340/2017 dated 27-11-2017 respectively.

For Petitioners : Mr.P.Rajendran

For Respondents : Mr.J.Pothiraj,
Special Government Pleader for R1
Mr.Haja Mohideen Gisti for R2 & R3

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C O M M O N O R D E R
(Order of the Court made by R.SUBRAMANIAN, J.)

The prayer in the above writ petitions is as follows:

All these petitioner's were appointed as Steno-Typists and Typists in various Courts in the years 2010 and 2011. Though the posts to which they were appointed were to be filled up through a selection process undertaken by the Tamil Nadu Public Service Commission, since, such process was delayed, they were appointed as temporary employees under Rule 10 (a) (i) of the recruitment rules. It is not in dispute that while appointing them as temporary employees, a process of selection was undertaken and the rules of reservation were also followed. Their services were also continued till date. Though these temporary employees had served as such for nearly 7 to 8 years as on date, their services could not be regularized in view of the fact that they were not appointed by following the selection process as contemplated under the rules. All of them have now come forward with the above writ petitions seeking a direction that they should be accommodated in other suitable posts which are not required to be filled up through the Tamil Nadu Public Service Commission.

2. The petitioner's would rely upon the orders of the Division Bench of this Court made in W.P.Nos.9710 and 10189 of 2009 dated 10.06.2009, wherein this Court had issued the following directions:

> "...
> (1) The candidates who have been selected by the TNPSC and allotted to different districts 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 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

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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 Assistants 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."

3. Relying upon the above said directions in support of his contentions Mr.P.Rajendran, learned counsel for the petitioners would submit that the petitioners who were also similarly placed should also be extended the benefits of the judgment of the Division Bench in W.P.Nos.9710 and 10189 of 2009 dated 10.06.2009. Contending contra, Mr.J.Pothiraj, learned Special Government Pleader would submit that subsequently several other Division Benches have considered the similar requests made by the temporary employees and rejected the same.

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He would draw our attention to the following judgments of various Division Benches of this Court:

(i) W.P.No.3462 of 2010 dated 19.10.2010
(ii) W.P.Nos.30871,30881 and 31036 of 2012 dated 22.11.2012
(iii) W.P.No.29656 of 2013 dated 21.11.2014
(iv) W.P.No.3498 of 2013 and other connected matters dated 27.11.2014
(v) W.P.No.33090 of 2014 dated 21.07.2015
(vi) W.P.Nos.2206 to 2218 dated 01.02.2017
(vii) W.P.No.27895 of 2014 dated 21.03.2017
(viii) W.P.Nos.42870 to 42875 of 2016 dated 19.04.2017

4. We have considered the rival submissions. The only question that arises for consideration in these writ petitions is as to whether the petitioner's who were admittedly appointed as temporary employees under Rule 10 (a) (i) would be entitled to demand regularisation as of right. No doubt, the Division Bench in W.P.Nos.9710 and 10189 of 2009 had thought it fit to confirm certain benefits on these temporary employees by directing them to be accommodated in other posts which do not require a selection process to be conducted by the Tamil Nadu Public Service Commission. However, subsequent Division Benches have held that the temporary employees having accepted their appointment consciously cannot now turn around and claim the benefit of regularization. The Division Bench in W.P.No.3462 of 2010 by its judgment dated 19.10.2010, has in fact, considered the earlier judgment in W.P.Nos.9710 and 10189 of 2009 and declined to grant such relief. In a subsequent judgment in W.P.Nos.30871,30881 and 31036 of 2012 dated 22.11.2012, a Division Bench of this Court has considered the right of such temporarily appointed persons to seek regularisation in the light of an earlier pronouncements of this Court as well as a G.O.Ms.No.61 dated 22.05.2009 which provides for a special recruitment process to be held by conducting a competitive examination amongst the temporary employees, had concluded that the relief as sought for by the petitioners therein, viz., issuance of a writ of mandamus directing the respondents 1 and 2 therein to regularise the services of the petitioners in Tamil Nadu Judicial and Ministerial Service with all attendent benefits cannot be granted. The Division Bench however observed as follows:

"However, while filling up the vacant posts if any in future, if the petitioner's applied for the said post, the director of the respondent shall consider the case of the petitioner's by giving them such regularization and preference during such selection process"

5. This direction of the Division Bench has also been

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followed in two other cases by the Division Benches of this Court in W.P.No.29656 of 2013 and W.P.No.3498 of 2013 by the judgments dated 21.11.2014 and 27.11.2014 respectively. In both these judgments, the Division Bench has also considered the earlier judgments in W.P.Nos.9710 and 10189 of 2009 dated 10-06-2009. In W.P.Nos.2206 to 2218 of 2017 again a batch of writ petitions filed by the temporary employees, the Division Bench observed that the prayer for regularization cannot be granted. While doing so, the Division Bench had issued the following directions:

> "...(1) As and when any regular recruitment or temporary appointments are undertaken by the State Government and or in particular by the Principal District Judges/Court of Small Causes/High Court as the case may be, the cases of the writ petitioners may be considered duly relaxing the upper age limit to some extent, rounding it off to the nearest whole number, such as 3 or 4 as the case may be, corresponding to the length of service put in by the respective petitioners.
>
> (2) The respective District Employment Officers would also grant similar consideration for the purpose of sponsoring the names of the writ petitioners concerned to any other appointing authority.
>
> (3) The District Employment Exchange concerned will restore the original seniority of the respective writ petitioners, if at all their names have been struck off/rounded off from their Rolls."

6. The same Division Bench in its judgment dated 21.03.2017 in W.P.No.27895 of 2014 reiterated the said directions. In view of the above pronouncements of this Court, the prayer sought for by the petitioners in these writ petitions cannot be granted. However, in the given circumstances of this case, considering the fact that the petitioners are in continuous service from the date of their respective appointments in the years 2010 and 2011, we pass 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.

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(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.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

krk/ay

To

1.The Secretary to the Government,
Home (Courts) Department,
Fort St.George, Chennai - 600 009.

2.The Registrar General,
High Court, Madras.

3.The Chief Metropolitan Magistrate,
Egmore, now at Allikulam, Chennai - 600 003.

4.The Principal District Judge,
Coimbatore, Coimbatore District.

+1cc to Mr.P.Rajendran, Advocate, S.R.No. 75143
+1cc to Mr.S.Haja Mohideen Gisthi, Advocate, S.R.No. 74474
+1cc to the Government Pleader, S.R.No. 75300

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GN(20/11/2018)

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