

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

WEB COPY

W.P. (MD) No.16374 of 2013

and

M.P. (MD) .Nos.1 and 2 of 2013

- 1.P.J.Johny
- 2.Syamala
- 3.Lalitha Bai
- 4.G.Baby
- 5.Leela
- 6.Thulasi
- 7.Vasanth
- 8.Sadi Bai
- 9.T.Mahadevan
- 10.T.Kumaresan
- 11.J.Nelson
- 12.Rathinam

... Petitioners

Vs.

1. The Director of Horticulture,
Chennai.
2. The Assistant Director of Horticulture,
Nagercoil, Kanyakumari District.
3. The Horticulture Officer,
State Horticulture Farm,
Pechiparai,
Kanyakumari District.

... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned letter of the first respondent in letter No.Ka.Pa.Ni.1/23172/06, dated 22.12.2010 and quash the same and direct the respondent to regularise the services of the petitioners on completion of 10 years of service and grant all other monetary benefits within a time stipulated by this Court.

For Petitioners
For Respondents

: Mrs.J.Anandhavalli
: Mr.R.Sethuraman
Special Government Pleader

ORDER



their services from the date on which they completed 10 years of temporary services is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioners states that all the writ petitioners were appointed as Mazdoor in the third respondent farm on daily wage basis. The petitioners were continuously working as Mazdoor on daily wages basis and after a lapse of many years, the Government issue G.O.Ms.No.494 dated 29.11.2007 and by taking into consideration the letter of the Commissioner of Horticulture dated 06.12.2006 and 22.02.2007. The services of the writ petitioners were already regularised. Even the impugned order states that the based on the above G.O.Ms.No.494 dated 29.11.2007, the daily wage employees were completed 10 years of service as on 01.01.2006, numbering 1083 were regularised as permanent employee. Therefore, the retrospective regularisation cannot be granted. However, it further states that since the benefit of regularisation was granted to the 1083 daily wage employees including in the writ petitioner, the retrospective regularisation cannot be granted.

3.The learned counsel for the petitioner states that the writ petitioners are working for long years and therefore, as per G.O.Ms.No.22 dated 28.07.2006 their services ought to have been regularised on completion of 10 years of services.

4.The learned Special Government pleader appearing for the respondents states that G.O.Ms.No.22 itself and modified and G.O.Ms.No.74 was issued imposing certain restriction on regularisation. This being the factum the writ petitioners cannot be granted retrospective regularisation. This apart, the claim of the writ petitioners were already considered by the respondents and they were brought under regular establishment. Now all the writ petitioners are serving as regular employees in the regular establishments with effect from in the year 29.11.2007. Such being the factum, the writ petitioners cannot file further writ petition seeking retrospective regularisation based on G.O.M.S.No.22.

5.This court is of an opinion that admittedly all the writ petitioners were appointed as daily wages employees in violation of the recruitment rules in force. Admittedly, initial appointment of the writ petitioners were not made in accordance with the recruitment rules in force. Thus, the appointment of the writ petitioners was irregular. Granting regularisation in respect of irregular appointment itself is a concession. The case of the writ petitioners was considered in the year 2006 pursuant to one time relief granted by the constitution bench of the Honourable Supreme Court of India in the case of **the Secretary, State of Karnataka and others vs. Umadevi (3) and others reported in (2006) 4 Supreme Court Cases 1**, more specifically in 53 of the judgment. The cases



and proposal pending for regularisation were completed during the relevant point of time. Accordingly, 1083 daily wages employees were regularised by the respondents department in violation of recruitment rules such a regularisation itself was a concession shown to the employees. Thus the question of extending further concession by granting retrospective regularisation in violation of the legal principles settled by the constitution bench of the Supreme Court of India in the case cited supra, does not arise at all.

6.The regularisation or permanent absorption cannot be granted in respect of the appointments made contrary to the recruitment rules in force. However, the petitioners were regularised by way of the one time measure granted in Para No.53 of the judgment of the Constitution Bench. This being the factum of the case, further concession for retrospective regularisation cannot be granted as the initial appointments of the writ petitioners were not in accordance with the rules in force. Accordingly, this Writ Petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, M.P.(MD).Nos.1 and 2 of 2013 are also dismissed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Director of Horticulture,
Chennai.
2. The Assistant Director of Horticulture,
Nagercoil, Kanyakumari District.
3. The Horticulture Officer,
State Horticulture Farm,
Pechiparai,
Kanyakumari District.

+1cc to Mrs.J.Anandhavalli, Advocate SR.No.51168

+1cc to The Spl. Government Pleader Sr.No.51997

VSG

VB/JC/SAR2/28.03.2018/3P/6C

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