

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A. No. 755 of 2013

1. K. Ramanathan
2. K. Sankar
3. M. Karthikeyan
4. A. Thirumalai
5. R. Vaithiyalingam
6. R. Thirumurugan

... Appellants

Vs.

1. The Secretary to Government
School Education Department,
Fort St. George,
Secretariat,
Chennai - 600 009.
2. The State Project Director,
Sarva Shiksha Abhiyan,
District Primary Education Program[formerly],
Chennai - 600 002.
3. K. Natarajan
4. R.Kumar
5. A. Pugazhenth
6. R. Senthilkumar

... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 28.08.2012 in W.P. No. 10046 of 2008 on the file of this Court.

Prayer in W.P.No.10046 of 2008:

Writ Petition filed under Article 226 of the constitution of India praying for a Writ of Mandamus directing the respondents to regularize the services of the Petitioners who were employed as a Junior Engineer [Civil] into the time scale of pay.

For Appellants : Mr. Vijayanarayanan, Senior Counsel
for Mr.N.Manokaran

For Respondents : Mr. P. Raja,
Government Advocate for R1 & R2
Respondents 3 to 6
(Given up)

J U D G M E N T

(Delivered by M.M.Sundresh,J.)

The appellants were originally working in the District Primary Education Programme. According to the appellants, they have been working from the year 1997 onwards. A Scheme was introduced by the Central Government by name Sarva Shiksha Abhiyan. For the purpose of implementing the scheme, the following decision was made by placing reliance upon the Manual of Financial Management and procurement of Sarva Shiksha Abhiyan published by the Department of Elementary Education and Literacy, Ministry of Human Resources Department, Government of India, which is extracted hereunder:-

"(i) No New permanent post should be created and the feasibility of using the Human Resource available in the Administrative structure in the Education Department and District Primary Education Programme should be explore first and (ii) The post created should be filled up only through contract basis or through deputation and no permanent liability should accrue on the society or the State Government due to filling up of the Post."

2. The aforesaid Scheme has been extended from time to time which is still in currency. By a subsequent proceedings dated 27.6.2002, the State Project Director extended the services from 01.04.2002 till further orders. The proceeding dated 27.06.2002 reads as follows:-

"It is hereby informed to the concerned District Project Organizers, even though the period of the consolidated employees working as the Civil Engineers and BT Assistants in the offices of the Dharmapuri, Cuddalore, Thiruvannamalai, Villupuram, Ramanathapuram, Pudukottai and Perambalur whose names are enclosed in the enclosure was expired as on 31.03.2002, they are permitted to continue their service from 01.04.2002 till further orders issued."

3. Accordingly, all these appellants are working till now but not with the help of the interim orders. It is to be noted that the scheme is still continuing. As they have been working for quite a number of years, they filed the writ petition seeking regularization of their services. The learned Single Judge by placing reliance upon the judgment of the Apex Court in Secretary, State of Karnataka and others v. Umadevi (3) and others, reported in (2006) 4 SCC 1 dismissed the writ petition and hence the present appeal.

4. Learned counsel appearing for the appellants would submit that the ratio laid down by Umadevi(3) (supra) may not have any application to the case on hand. It is a case of utilizing those employees who are working in the District Primary Education Programme as per the Manual of the Central Government. They have been working from the year 1997 onwards as seen from the proceedings of the State Project Director dated 04.11.1997, though on contractual basis. He submitted that for similarly placed persons a Scheme was directed to be framed by the High Court of Gauhati in the case of Kamrup District Siksha Sarathi (I) Association and others v. State of Assam and others, reported in 2018 (1) SCT 512(GH) and the said decision has become final. In fact, the petitioners involved therein have worked for less number of years than the appellants herein. Additionally, the appellants were already working in the District Primary Education Programme. They have been allowed to continue by the proceeding dated 27.06.2002 until further orders. Therefore, pursuant to the aforesaid order they are continuing. In such view of the matter, a Scheme will have to be directed to be framed by the respondents.

5. Learned counsel appearing for the respondents would submit that the Scheme does not contemplate any permanent employment. The initial appointment of the appellants was through back-door entry. The decision relied upon is not binding on this Court, since the facts and circumstances as also the respondents were different, though the Scheme is one and the same. The ratio laid down by the Umadevi(3) (supra) would certainly apply. Therefore, no interference is required.

6. The facts above said are not in dispute. However, we hereby reproduce the relevant paragraphs of the counter affidavit filed by the respondents which is extracted below:-

"8. It is submitted that considering the situation that the scheme will be continued till 2010 instead of issuing orders of continuance in piece-meal, an order was passed to continue the posts "until further orders".

This it does not confer any right on the incumbent holding the post to be regular.

9. It is submitted that the District Primary Education Programme ended by 30.06.2003 was implemented only in 7 districts out of 29 Districts at that time in the State. The Sarva Shiksha Abhiyan Programme is a new programme introduced for the implementation in all the 30 districts of the State. Though the objectives of the two programmes are same, both the schemes are independent. Therefore, the contention of the petitioner on the Government order is untenable.

10. It is submitted that Sarva Shiksha Abhiyan, is not a scheme of continuance of District Primary Education Programme scheme. The District Primary Education Programme scheme came to an end by 30.06.2003. The Sarva Shiksha Abhiyan scheme was launched in 2001-2002 as a separate entity and the services of contractual employees utilized for District Primary Education Programme scheme is utilized for the newly formed Sarva Shiksha Abhiyan Scheme. The contention that District Primary Education Programme is considered to be Sarva Shiksha Abhiyan is not acceptable and both are independent."

7. It appears that the appellants have been working for more than two decades. They are continuing in employment not through the orders of the Court, but in pursuance of the orders passed, as indicated above. The Scheme is in continuance for more than fifteen years and is likely to continue further. The appellants were working at the earlier point of time under the District Primary Education Programme. For the similarly placed persons working under the Scheme, appropriate direction was issued by the Full Bench of the Gauhati High Court in Kamrup District Siksha Sarathi(I) Association (supra). The following paragraphs would be apposite:-

"27. This onetime measure provided by the Supreme Court in Umadevi (supra) was explained in detail by the Supreme Court in the later judgment in ML Kesari (supra), which may not be necessary to be gone into in this proceeding.

28. Suffice it to say, the issue before the Supreme Court in Umadevi (supra) was illegal appointments made by the State in the lower rungs of the services without following the due process of recruitment and continuing such illegal appointments for varying periods of time. While deprecating such practice, Supreme Court made it abundantly clear that there is no question of regularisation of such illegal appointments, be it on contractual basis or on temporary basis or as daily rated workers and also clarified that the Constitutional Courts would not be empowered to direct regularisation of such illegal appointments because such illegal appointments were made in violation of Article 14 of the Constitution as well as in violation of the constitutional scheme of recruitment to public service and a Constitutional Court is not expected to perpetuate such an illegality by issuing directions for regularisation.

x x x

42. Reverting back to the case of Siksha Sarathi, we find that notwithstanding their initial engagement for 11 months, their engagements have continued for more than a decade now; as a matter of fact, their engagement is now in the second decade, which clearly indicates the necessity and utility of Siksha Sarathis as assistants to the teachers.

43. In the recent decision in the case of State of Assam Vs. Sri Upen Das, WA No.45/2014, decided on 08.06.2017, a Division Bench of this Court was examining claim of the respondents who were muster roll workers, work charged workers and casual workers to regularisation of service with consequential benefits, such as, pension etc.. Learned Single Judge had directed the State to consider regularisation of the services of the respondents in terms of Cabinet decision taken on 22.07.2005 by framing an appropriate policy/scheme. While setting aside the judgment of the learned Single Judge, the Division Bench noted that State Government had agreed not to terminate the muster roll, work

charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement age except on disciplinary ground or on ground of criminal offence. The Division Bench also noted that the State Government had agreed to enlist such employees in health and accidental and death insurance schemes to be prepared in consultation with the State Cabinet. Appreciating the stand of the State, the Division Bench directed immediate implementation of the above measures; further directing the State to pay minimum pay scale to such categories of employees w.e.f. 01.08.2017. Relevant portion of the decision dated 08.06.2017 is extracted hereunder: -

"22. It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken as welfare measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in State of Punjab vs. Jagjit Singh, (2017) 1 SCC 148, also direct the State Government to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 1.8.2017."

44. Therefore, having regard to the grievance expressed by the petitioners and the discussions made above, we are of the view that it would meet the ends of justice if similar benefit as granted to the muster roll, work charged and similarly placed employees

working since last more than 10 years (not in sanctioned posts) is extended to the Siksha Sarathis. Accordingly, we direct the State to consider framing a scheme for the Siksha Sarathis on the above lines, which decision shall be taken within a period of 6 weeks from today."

8. In the light of the above said decision, we are of the view that the appellants are entitled to succeed. In fact they are in a better position than the petitioners involved in the aforesaid case. The decision in Kamrup District Siksha Sarathi (I) Association (supra) has taken into consideration all the judgments rendered by the Constitutional Courts. In this connection, it is useful to refer the following paragraphs:-

"31. In the process of answering this question, Supreme Court examined the ratio decidendi of Umadevi (supra). It was noted that the entire issue in Umadevi (supra) pivoted around the fact that the State had initially made appointments without following any rational procedure envisaged under the scheme of the Constitution in the matter of public appointments. While recognizing the authority of the State to make temporary appointments, Supreme Court, however, declared that regularisation of the employment of such person, which was made without following any rational procedure, cannot become an alternative mode of recruitment to public posts. Uma Devi (supra) further declared that jurisdiction of the Constitutional Courts may not be exercised to compel the State or to enable the State to perpetuate an illegality. Applying the principles laid down in Umadevi (supra), Supreme Court found that initial appointment of the petitioners in Nihal Singh (supra) was made in accordance with the statutory procedure contemplated under the Police Act, 1861 by a conscious decision taken at the highest level of the State. Such appointments could not be categorized as illegal or irregular. It was not a case where petitioners were arbitrarily chosen to the exclusion of other eligible candidates. Such a process of selection was sanctioned by law under section 17 of the Police Act, 1861. Observing that neither the State of Punjab nor the Public Sector Banks could continue such a practice consistent with their obligation to

function in accordance with the Constitution, it was held that sanction posts do not fall from heaven; State has to create them by a conscious choice on the basis of some rational assessment of the need. Judgment in Umadevi (supra) cannot become a licence for exploitation by the State and its instrumentalities. Accordingly, Supreme Court directed the State of Punjab to regularize the services of the petitioners by creating necessary posts.

x x x

37. In Nand Kishore (supra), Supreme Court held that it is a competent authority within the above expression; because Supreme Court is not merely the interpreter of the law as existing but much beyond that. Supreme Court as a wing of the State is by itself a source of law. The law is what the Supreme Court says it is."

9. We may hasten to add that the need for the appellants still continues. As stated, they have been working continuously for more than two decades now. To continue them as temporary and contractual employees forever would certainly amount to unfair labour practice. It is not as if they wanted to join the Scheme. They have been brought under the Scheme pursuant to the Manual of the Central Government. Though at that point of time it was thought to be a time-bound scheme, the fact remains that it is being continued over the years (15 years).

10. Thus, in the light of the above, we are inclined to direct the respondent No.1 to frame a comprehensive scheme for the purpose of absorbing the appellants as directed by the Full Bench in Kamrup District Siksha Sarathi(I) Association (supra). The above said exercise will have to be done by the State Government within a period of three months from the date of receipt of a copy of this order.

With the above said observations, this appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssm

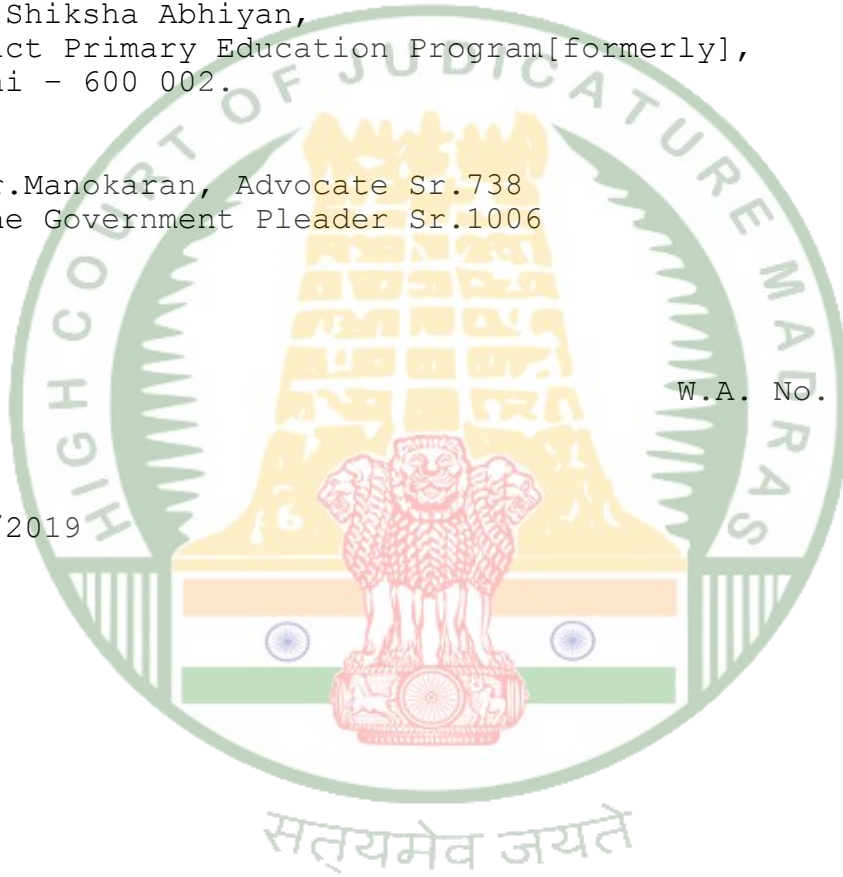
To:

1. The Secretary
School Education Department,
Fort St. George,
Secretariat,
Chennai - 600 009.
2. The State Project Director,
Sarva Shiksha Abhiyan,
District Primary Education Program[formerly],
Chennai - 600 002.

+1cc to Mr.Manokaran, Advocate Sr.738
+1cc to the Government Pleader Sr.1006

W.A. No. 755 of 2013

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