

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: /4/2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition Nos.18145 to 18153 of 2013

G.Chandramohan	... Petitioner in W.P.No.18145 of 2013
Shamundeeswari	... Petitioner in W.P.No.18146 of 2013
M.Mageswari	... Petitioner in W.P.No.18147 of 2013
M.Senthil Murugan	... Petitioner in W.P.No.18148 of 2013
Vanitha	... Petitioner in W.P.No.18149 of 2013
C.Kavitha	... Petitioner in W.P.No.18150 of 2013
T.Loganathan	... Petitioner in W.P.No.18151 of 2013
Lavanya @ Pattammal	... Petitioner in W.P.No.18152 of 2013
S.Devi	... Petitioner in W.P.No.18153 of 2013

Vs

1. The Director
Institute of Road Transport
Taramani
Chennai 600 113.
2. Institute of Road Transport
Medical College & Hospital
rep. By its Additional Director
Sanatorium Post
Perundurai Taluk
Erode District. Respondents in all WPs

These Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus to direct the respondents to regularise the services of the petitioner from the date of joining and direct the respondents to pay all service and monetary benefits to the petitioner.

For petitioners ... Mr.M.Guruprasad in all WPs

For Second Respondent ... Ms. Kala Ramesh
for R.2 in all the writ petitions
...R1 NA

C O M M O N O R D E R

In these batch of writ petitions, which have been disposed of by a common order, the facts are similar.

2. Among the nine writ petitioners, five writ petitioners have joined as Hospital worker, in the Institute of Road Transport Middle College & Hospital, Erode District, between 1997 and 2004. It is the contention that they have been working for more than 10 years with the second respondent, as Contract Labourer, on shift basis, but, they are not being regularised. Petitioners state that their salary is being deducted towards Employees Provident Fund Scheme, 1952. Petitioner states that work of a Hospital Worker is perennial in nature. In any event, the petitioners are entitled to Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act (Tamil Nadu Act No.XLVI of 1981. Petitioner would also state that second respondent had promised that they will regularise all the workers in the regular scale of pay and further assured that they would pay all monetary benefits. But the second respondent adopted the method of pick and choose and regularised only few workers.

3. Petitioners would further state that they are very much similar to those persons, who are regularised. Petitioner, relying on G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28/2/2006, state that the said G.O., has been relaxed and many persons who had not completed ten years of service, as on 1/1/2006, were also extended the benefit of G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28/2/2006.

4. Petitioners would also state that their case is completely covered by a Division Bench of this Court, in W.A. (MD) No.743 of 2015, dated 22/4/2016 {Government of Tamil Nadu and Ors Vs. M. Vincent & Ors}. In the said judgment, the Hon'ble Division Bench of this Court has extended the benefit of G.O.Ms.No.22, to persons who had not completed, ten years of service, as on 1/1/2006. In cases where the work is of a perennial in nature and the Department continued to engage people, on contract labourer rather than going for appointment, under the Recruitment Rules.

5. Petitioner also submit that in G.O.Ms.No.325, Health and Family Welfare (C1) Department, dated 11/9/2017, 28 persons were regularised, who were working in various posts, like Lab Technician Grade - I, Storekeeper, Steno Typist, Record Clerk, Lab Assistant, Sweeper, Junior Assistant, Assistant be filled up on contract basis, on consolidated pay. Petitioner states that

in compliance with an order of Madurai Bench of Madras High Court, in W.A.(MD) Nos.339 and 340 of 2008, the services of the petitioner in the case were also regularised after 10 years of service like the one it has been done in the case of others.

6. Respondents have vehemently opposed the writ petitions. Respondents submit that all the petitioners are Contract Labour. They have filed a detailed counter.

7. In the counter affidavit, the respondents have averred that the respondent College is running out of the interest accrued from the funds collected from the employees of the State Transport Undertakings. It is stated in the counter affidavits that many of the unskilled workers are outsourced and contractors were engaged initially on monthly basis and then on annual basis through Open Tender System.

8. According to the respondents, petitioners are only Contract Workers and employers contribution is being paid by the Contractor and not by the second respondent. Payment is made to the Contractor and not to the petitioners/workers. It is therefore, stated in the counter affidavit that wages are not paid directly to the respondents. Respondents also state that petitioners are not working continuously for 240 days in a year and 480 days in two years.

9. Respondent Management in this Court has stated that it recruits permanent staff through Employment Office, on the basis of education qualification, communal rotation, age, seniority and interview. Such recruited persons are issued with proper appointment orders, setting out the scale of pay, terms and conditions of employment. It is averred that the management has fixed responsibility on them and take disciplinary action against them for violation of rules. It is also stated that, Attendance, service register, personal files and other records of permanent employees are being maintained by the management. Functions and important works such as assistance in the exam halls, handling of important files from one office to another office, operation theatre assistant work are done by the permanent qualified employees. The respondent Management follows all statutory obligations in respect of the permanent workers under various enactment. It is stated that, in respect of contract workers, like the petitioners, the nature of work comprised of (1) pulling wheel chairs stretchers (2). supplying of tea and coffee to the Doctors and attending them in petty works (3) some cleaning works (4) helping the patients to see the doctors for getting treatment etc., and they are being appointed by engaging contract labour.

10. It is further stated in the counter affidavit that one Uliyarzal Munnetra Sangam filed a case against the respondent in the year 2000 in W.P.No.1740 of 2000 and prayed to regularise the services of contract workers working in the respondent hospital. A Advocate Commissioner who was appointed, who enquired all the contract workers working in Perundurai Medical College and Hospital and submitted a report before this Court, that the services of 67 workers to be regularised. The respondent Management filed an objection to the Commissioner's report. This Court, referred the case to Labour Court, for adjudication, in I.A.No.133 of 2002. The above Trade Union filed a Memo, before the labour Court, on 7/8/2009, stating that only 40 persons were working in this respondent's Hospital and requested to regularise their services. After hearing the arguments of both the parties and perusal of evidence on record, the Presiding Officer of Labour Court, identified that 40 persons were continuously working and passed an award, directing the respondent Management, to regularise the services of 40 persons only. Against this order, the respondent preferred a writ petition before this Hon'ble Court. Thereafter, the respondent Management and 40 persons entered into agreements, under Section 18 (1) of I.D. Act and thereafter, 40 workmen's services were regularised. The name of the petitioner does not figure in the list.

11. It was also stated that, one Mrs.Leela filed a case against the respondent, in the year 2012, in W.P.No.29014 of 2012 and prayed to regularise her services, in the respondent's Hospital. Thereafter, the respondent Management and Leela entered into agreement, under Section 18 (1) of I.D.Act and thereby her service was regularised. It is false to say that the respondents have given assurance to the petitioners, to consider their claim. The fact of the above case is totally different and hence the petitioners are not entitled to take benefit or place any reliance upon the order made in the writ petition viz., W.P.No.29014 of 2012. Further, it is false to state that the respondents were taking very emergent steps to fill up the existing vacancies.

12. Heard Mr.M.Guruprasad, learned counsel for the petitioners in W.P.Nos.18146, 18148, 18149, 18152 and 18153 and Ms.Kala Ramesh, learned counsel for the second respondent.

13. Petitioners are Contract Labourers. They state that they are working with the respondent Department, for more than 10 years. This however is disputed by the respondent Management that they are not in continuous employment. Issue as to whether they can, as a matter of right, ask for regularisation, has been answered by the Hon'ble Supreme Court, in State of Karnataka Vs. Uma Devi {2006 (4) SCC - 1}. Other judgments, following

Umadevi's case have categorically stated that contract labourers/adhoc employees, casual workers, etc., who have been appointed contrary to the recruitment rules cannot claim regularisation, as a matter of right. Paragraph No.48 of the said judgment, reads as under:-

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

14. Similarly, the Hon'ble Supreme Court in State of Rajasthan Vs. Dayalal 2011 (2) SC - 429, has observed as under:-

"11. Two questions therefore arise for consideration in these appeals:

(i) Whether persons appointed as Superintendents in aided non-governmental hostels are entitled to claim absorption by way of regularisation in government service or salary on a par with Superintendents in government hostels?

(ii) Whether part-time cooks and chowkidars appointed temporarily by Mess Committees of Government Hostels, with two or three years' service, are entitled to regularisation by framing a special scheme?

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."

The above mentioned proposition is now well established and has been followed in a number of judgments all over the Country.

15. However, the case of Umadevi, makes one exception for those employees, who were in service, on the date of judgment of the Hon'ble Supreme Court of India and have worked for 10 years

or more in the same establishment. Paragraph 53 of the said judgment, reads as under:-

"There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N.NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme".

16. In terms of paragraph 53, various State Governments have issued Government Orders, stating that those persons, who have completed 10 years of service, on the date of G.O., issued by the State Government, they are entitled for regularisation of service. G.O.22 has been issued by the Government of Tamil Nadu. G.O.Ms.No.22, dated 28/2/2006, reads as under:

Personnel and Administrative Reforms (F) Department

G.O.Ms.No.22

Dated: 28/2/2006

O R D E R

The Hon'ble Chief Minister had announced during the Tamil Nadu Government Officials Union

and Government Servants and Teachers Associations General Conference held on 8/2/2006 that the services of the employees working in various Government Departments on daily wage basis who have completed more than 10 years of service as on 1/1/2006 will be regularised.

2. Based on the announcement made by the Hon'ble Chief Minister on 8/2/2006, the Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 1/1/2006 be regularised by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned, subject to their being otherwise qualified for the post.

3. The Departments of Secretariat may therefore, be directed to pursue action to regularise the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 1/1/2006 as ordered in para 2 above, in consultation with the respective Heads of Departments wherever necessary. In special cases, wherein relaxation of rules is required, proposal shall be sent to Government.

4. This order issued with the concurrence of Finance Department, vide its G.O.No.985/FS/P/2006 dated 28/2/2006."

17. The petitioners have placed heavy reliance on a Division Bench judgment, made in Government of Tamil Nadu & Ors Vs. M. Vincent & Ors {W.A.No.743 of 2015, dated 22/4/2016}, reported in MANU/TN/0701/2016. In the said judgment, the Government had issued G.O.Ms.No.495, Health and Family Welfare Department, dated 22/9/1998, wherein the Government of Tamil Nadu, ordered for starting a new Government Medical College at Thoothukudi, after considering proposals sent by the Director of Medical Education, requesting for sanction of posts and sanction of expenditure for the newly established Government Medical College at Thoothukudi, the Government, accorded sanction in G.O.(Ms).No.87, Health and Family Welfare Department, dated 4/3/1999, for the creation of posts mentioned in Annexure - 1 to the said G.O.

18. Thereafter, the Government issued another G.O.Ms.No.252, Health and Family Welfare Department, dated 19/9/2011, creating certain posts, for conducting second year MBBS course. Since there was difficulty in recruiting teachers, some of these posts were filled up, on contract basis. Respondents in the said appeal were duly qualified to the respective posts in which they

are working and they had registered in the Employment Exchange. Since the respondents, who were registered on the rolls of Employment Exchange and had been appointed through contract basis for managing the institution apprehended that would be ousted from service. They had filed W.P.(MD) No.4282 of 2005, seeking for issuance of a writ of mandamus, for regularisation of their services in their respective posts. The writ petitions were disposed of by the learned Single Judge, directing the Government to consider their case favourably. Contract labour/employees/ respondents in the said writ petition filed W.A.Nos.339 and 340 of 2008. Order, dated 9/11/2006 passed by the Division Bench of this Court in Madurai Bench of Madras High Court, in W.P.(MD) No.4920 of 2004, wherein the High Court had observed as under:-

"All these petitioners have been working as substitute workers in the Government Hospitals and other hospitals attached to Medical Institutions and T.B.Sanatorium, Tambaram, Chennai from the date of their respective appointments. The appointment of all these petitioners were made after their name have been sponsored by the Employment Exchange. According to the petitioners, when they were appointed, it has been mentioned that they would be absorbed in the permanent vacancies. Though they had put in service for years together ranging between 10 to 14 years, their appointments have not been regularized and no regular time scale of pay were paid. Aggrieved by this, all the petitioners have preferred their respective original Applications before the Tribunal seeking for a direction to the Government to regularize their appointment and bring them under regular time scale of pay as Hospital Workers. By the orders impugned in these Writ petitions, the Tribunal has not granted the relief as sought for by the petitioner and upheld the policy decision of the Government in implementing the Outsourcing of Basic Government Servants in Government Hospitals. Challenging the same, the petitioners have preferred these writ petitions.

2.While admitting these Writ petitions, this court ordered to maintain status quo on 14.07.2004 and the same has been made absolute on 14.06.2005.

3.Today, when these Writ petitions are taken up for final disposal, Mr.K.Balu, learned Addl.Government Pleader appearing for the respondents placed G.O.Ms.No.22, P & AR Department, dated 28.02.2006, in and by which,

the Government have issued instructions to regularize the services of daily wages employees who have rendered 10 years of service as on 01.01.2006. The learned Addl.Government Pleader submitted that based on this issue, proposals have been sent in respect of the petitioners to regularize their services by relaxing relevant rules vide Director of Medical Education Ref.No.18228/E4/3/2006, dated 03.08.2005 and it is under consideration of the Government.

4.Recording the same, since the Government itself has taken appropriate action in regularizing the services of petitioners and necessary proposals were also sent by the Director of Medical Education, while disposing of these writ petitions, we feel it appropriate to direct the Government/first respondent to finalise the proposals sent by the Director of Medical Education in Ref.No.18228/E4/3/2006, dated 03.08.2006 in regard to regularization of services of the petitioners forthwith without any further delay. No costs. Consequently WPMPs are closed."

19. The State Government had filed Special Leave Petitions to Appeal Nos.4577 and 4578 of 2011, with applications, for condoning the delay, in filing Special Leave Petitions. Vide, order, dated 11/2/2011, Special Leave Petitions were dismissed.

20. The Secretary to Government, in Letter No.23466/C2/2006-07, Health and Family Welfare Department, dated 27/11/2012, rejected the request of the employees, for regularisation of their services. This order was challenged in W.P.No.15909 of 2012. The learned Single Judge, allowed the writ petition, on the ground that G.O.Ms.No.134, Public Works (C2) Department dated 7/5/2010, considered similar claim of regularisation of daily wages employees (NMR) in Public Works Department and issued appropriate orders for regularisation of those who have completed ten years of service and above and while doing so, the Government decided to relax the rules relating to age, educational qualification and general rule of recruitment. The learned Single Judge further held that such regularisation ought to have been given to the writ petitioners as well. The learned Single Judge, held that denial of such method would result in unnecessary discrimination. Aggrieved by the order of the learned Single Judge, State Government filed Writ Appeal (MD) No.743 of 2015. The learned Division Bench dismissed the writ appeal, on the ground that the posts are sanctioned posts. The Dean, Thoothukudi Medical College had itself recommended, for relaxation of the conditions and for regularisation and therefore, dismissed the appeal. These

facts are not applicable to the present case. There is nothing to show that post in the present case are all sanctioned posts. Judgment of the Hon'ble Supreme Court in Umadevi case (supra) and other judgments following Umadevi case, categorically states that there is no fundamental rights to be absorbed in service, in respect of daily wage / contract labour employees. It also holds that such persons cannot be held to be holders of a post. Such persons cannot be treated equally with those persons who would be appointed under the Recruitment Rules.

21. Division Bench judgment supra, where relaxation was made, as stated supra, were all cases relating to sanctioned posts. There is no averment in the writ petitions that petitioners, who are working, on contract basis are working against sanctioned posts.

22. Learned counsel for the second respondent would reiterate the submission that the petitioners must approach the labour Court and satisfy that they have a claim under Tamil Nadu Industrial Establishment (Conferment to Permanent Status of Workmen) Act, 1981. Section 3 of the said Act, reads as under:-

"3. In addition to the powers conferred by Section 5 of the Act, an Inspector shall, for the purpose of giving effect to the provisions of the Act, have power to do all or any of the following things, that is to say -

(i). to satisfy himself at each inspection that the prescribed registers and forms are properly maintained;

(ii). to point out all such defects or irregularities as he may have observed and to give orders for their rectification and to record and furnish to the employer a summary of the defects or irregularities and of his orders;

(iii). to note how far the defects pointed out at previous inspections have been removed and how far orders previously issued have been complied with;

(iv). to require any employer to supply or send any return or true copy of any document or information relating to the provisions of the Act;

(v). to prosecute, conduct or defend before a Court any complaint or other proceedings arising under the Act."

23. Learned counsel for the second respondent states that 40 persons who were working in the Hospital moved the labour Court for regularising their services. There was an agreement, under Section 18 of the Industrial Disputes Act and the services of 40 persons were regularised. Learned counsel for the second

respondent submits that name of the petitioners do not figure in the list. Even a look at the statements filed under the Provident Fund Act, shows that petitioners are all contract workers and that the employer contribution is being paid by the Contractor. It is not for the Court to relax the conditions and as per the judgment of the Hon'ble Supreme Court, regularisation of persons appointed on contract basis, casual basis, adhoc basis, is not a matter of right. Only the Governor can relax the Rules for appointment. Petitioners have to substantiate their claim before the labour Court, claiming rights under Section 3 of the said Act and satisfy the Court that they have been worked for more than 240 days in one year or 480 days in 2 years.

24. In view of the above, all the writ petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mvs/Pkn.
To

1. The Director
Institute of Road Transport
Taramani
Chennai 600 113.
2. The Additional Director
Institute of Road Transport Medical College & Hospital
Sanatorium Post
Perundurai Taluk
Erode District.

+1cc to M/S.Bala Ramesh, Advocate Sr.33808
+1cc to Mr.M.Guruprasad, Advocate Sr.33583

W.P.Nos.18145 to 18153 of 2013

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srg 17/06/2019