

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.04.2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.6720 to 6722 of 2018
and
WMP.Nos.8348 to 8351 of 2018

1. P.Vijayakumar (WP.No.6720/2018)
2. S.Michel (WP.No.6721/2018)
3. R.Elayaraman (WP.No.6722/2018) ...Petitioners

vs

1. The State of Tamil Nadu,
Rep by its Secretary to Government,
Adi Dravidar & Tribal Welfare Department,
Secretariat, fort St.George,
Chennai - 600 009.
2. The Director of Adi Dravidar Welfare,
Ezhilagam, Chepauk, Chennai - 600 005.
3. The District Adi Dravidar & Tribal Welfare Officer,
Salem District, Salem.
4. The Special Tahsildar (ADW),
Omalur Taluk, Salem. ...Respondents
(in the writ petitions)

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent in Na.Ka.186/2017(A) dated 17.11.2017 and to quash the same and consequently directing the respondents to allow the petitioner to continue to work in the post of Cook in Adi Dravidar Welfare Department in Salem District with payment of salary based on the order of appointment issued by the 3rd respondent in Na.Ka.No.32623/2011/D4 dated 06.01.2016.

For Petitioners : Mr.G.Sankaran
in all the Petitions

For Respondents : Mrs.P.Rajalakshmi,
in all the Petitions Addl.Govt.Pleader
(for all the writ petitions)

COMMON ORDER

The orders of relieving issued to these writ petitioners, relieving them from service and directing them to approach the Salem District Adi Dravidar and Welfare Officer for further postings are under challenge in these batch of writ petitions.

2. The learned counsel for the petitioners contends that all the writ petitioners were appointed in accordance with the procedures notified. There was no irregularity or illegality in respect of the appointments made as far as the petitioners are concerned to the post of cooks and sweepers in Adi Dravidar and Welfare Department.

3. The learned counsel for the writ petitioners states that the impugned proceedings state that the writ petitioners are relieved from the posts of cook and sweepers on administrative grounds and further, the petitioners are called for to appear before the third respondent for obtaining the posting orders. The said opportunity provided to the writ petitioners are admitted. Even through in the affidavit filled in support of the writ petitions, the writ petitioners have stated that the writ petitioners were called to appear before the third respondent for obtaining the posting orders, the petitioners instead of approaching the District Adi Dravidar Welfare Officer, moved the present writ petition, on the ground that the department has issued the orders, without providing any opportunity to these writ petitioners to offer their explanation. The writ petitioners are of the view that they have not committed any mistake and they all are innocent persons and got appointment only through the process of selection. Thus, according to the learned counsel for the writ petitioners, the impugned orders are liable to be scrapped.

4. The learned Additional Advocate General appearing on behalf of the respondent disputed the contentions raised on behalf of the writ petitioners. It is contended that all the appointments are the illegal appointments made in violation of the Recruitment Rules in force. Two officials, namely one Mr.P.T.Sundaram and Mr.Saravana Kumar, committed grave illegalities and acted unbecoming of the public servant and appointed many persons, who are all not possessing requisite qualification and without following the process of selection as contemplated under the Recruitment Rules. All the appointments are illegal, as far as the Salem District of Adi Dravidar Welfare Department is concerned and more specifically to the posts of cook and sweeper.

5. The said illegality was found by the higher officials and the Directorate of Vigilance and Anti-corruption Department submitted a report which reads as under:

CONFIDENTIAL

From the Directorate of Vigilance and Anti-Corruption,
Chennai 16.

VR.No.10148/2018/VR/ADW/SL

Dated:24.04.2018

The Vigilance Commissioner,
Secretariat,
Chennai-9

Sub:Public Servants - Adi Dravidar and Welfare Department - Allegations against SO-Tr. P.T.Sundaram, formerly District Adi-Dravidar and Tribal Welfare Officer, Salem District, now Project Director, Tribal Welfare, Salem District - Vigilance Report sent - Requesting concurrence to take up a Detailed Enquiry - Reg.

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During the course of collection of Vigilance intelligence by an officer of this Directorate, the following information was gathered against the Suspect Officer (S.O) Tr.P.T.Sundaram, formerly District Adi-Dravidar and Tribal Welfare Officer, Salem District from 30.07.2015 to 04.06.2017, now Project Director, Tribal Welfare, Salem District. He belongs to Group 'B'. His Date of retirement is 30.06.2023.

2) it is revealed through reliable sources that AdiDravidar and Tribal Welfare Department of the State Government runs Hostels for SC/St Students those who are studying in various Government Schools and Colleges. Apart from these, separate Government Tribal Residential (GTR) Schools including Elementary, Middle, High Schools and Higher Secondary Schools are being run by this department all over the State. The SC/ST students are staying in the hostels attached with the GTR schools. In Salem District, 42 Adi-Dravidar Welfare Hostels, 7 Tribal Welfare Hostels and 53 Government Tribal Residential Schools (GTR) are functioning under the control of AdiDravidar and Tribal Welfare Department. The District AdiDravidar and Tribal Welfare Officer, Salem is responsible for the smooth running of the above hostels and schools.

3) it is apparently through reliable sources that normally, one Warden, one Watchman, one Cook and one Sweeper posts have been sanctioned for each Hostels. According to the work load, an additional Cook is posted for a Hostel by sharing the post from other

less crowded Hostels. Total posts of Cooks sanctioned to Salem, District are 184. As on 01.08.2015, totally 80 posts of cooks and 14 posts of Sweeper in such Hostels were identified as vacant.

4) As per the instructions of the Director, AdiDravidar and Tribal Welfare Department, Chennai, the District Adi-Dravidar and Tribal Welfare Officer Proposed to fill 80 Posts of Cooks and 14 posts of Sweeper in vacant places as assessed on 01.08.2015 through employment seniority and also inviting applications from the eligible persons directly. For this purpose, a News paper notification was issued by the District Adi-Dravidar Tribal Welfare Officer in the name of the District Collector on 21.10.2015 via his office Na.Ka.No.36263/2011/D4 and invited applications from the eligible persons. A person who is having reading and writing ability are suitable for the post of Cooks and Sweeper. They should have experience in cooking vegetarian and non-vegetarian food. The age limit is minimum 18 and maximum 35 years. Pay Scale of Rs.4,800-10,000 + Grade Pay Rs.1,300/- is fixed for Cooks and consolidated pay of Rs.2,000/- is fixed for Sweepers.

5) As per the orders of the Director of this department, a team of Selection Committee including 1) SO Tr.P.T.Sundaram, Member/Secretary, District AdiDravidar and Tribal Welfare Officer, Salem, 2) Tr.Panneerselvam, Member/Assistant Director, Directorate of Adidravidar Welfare, Chennai and 3) Tr.Shanmugasundaram, President/PA to Director, Directorate of Adi-dravidar Welfare, Chennai is appointed for this purpose. The eligible candidates those who are selected by the Selection Committee only will be appointed for the post of Cook and Sweeper. The appointing authority is District Adi-dravidar and Tribal Welfare Officer, Salem. 6) It is also revealed through reliable sources that for this purpose, a list of eligible candidates from the Salem District Employment Office and applications were obtained directly from the eligible persons. Totally 1149 applicants attended interview conducted by the above Selection Committee on 29.10.2015. From them, the Selection Committee selected 80 eligible candidates to appoint as Cooks and 14 eligible candidates for the post of Sweepers. They were issued appointment order by the SO on 06.01.2016. They have joined in their respective posts and are now working as Cooks and Sweepers in the respective hostels.

7) It is learnt through reliable sources that the District Adi-Dravidar and Tribal Welfare Officer has

to appoint the Cooks in the places where the Cook posts are already sanctioned by the Government. He has no power to appoint Cooks independently without approval of the Selection Committee and the order of the Director, ADW & Tribal Welfare Department. He has no power to appoint even in the name of additional Cooks in the hostels where Cooks in the sanctioned posts are already working.

8) Moreover, pay drawing officer for Cooks appointed in G.T.R elementary and middle schools and for other SC/ST hostels is the Special Tahsildar, ADW of the concerned Taluk. Pay drawing officer for Cooks appointed in G.T.R High Schools and Higher secondary schools is the Head Master of the concerned schools.

9) it is granted through reliable sources that at the time of preparing pay and arrear bills for the newly appointed posts, the original appointment order, order of post and financial sanctions must be enclosed with the pay bills. The concerned seat Assistant in the office of the Special Tahsildar, ADW, Special Tahsildars, Head Masters concerned have to verify as to whether the original appointment order and other relevant documents are enclosed in the bills or not. During the scrutinization of the bills, concerned Assistant/Additional Treasury officer has to confirm whether the original appointing order, financial sanctions and other relevant documents have been enclosed.

10) It is learnt from the reliable sources that the District Adi-Dravidar and Tribal Welfare Officer, Salem District, Special Tahsildars Adi-Dravidar Welfare of Salem, Sankari, Omalur and Attur Taluks, Head Masters and Wardens of Schools and hostels working under the above department, officers working in office of Special Tahsildar and the Treasuries of the above four Taluks and Private individuals have colluded with each other, violated the norms, prepared forged records, issued false appointment orders to 56 private individuals without following any procedures after getting Rs.5,00,000/- to Rs.8,00,000/- from each private individuals as illegal gratification, during period between January 2016 and November 2017. Then, they have joined as Cooks and additional Cooks in various Adi-Dravidar and Tribal Welfare Hostels and G.T.R School Hostels with the help of the Head Masters and Wardens of the schools and hostels. Further, it is learnt through reliable sources that they have claimed and drawn salaries from the date of joining and even for few previous months in which they have not at all worked, got several lakhs of rupees as salaries from

the treasuries with the help of the concerned Head Masters, Special Tahsildars, Clerks and Treasury Officers and gained several lakhs of rupees and caused huge loss to the Government exchequer. Few instances of such malpractices which came to light are given below.

11) (i) One Government Tribal Residential Elementary School is functioning in Rakkodu Village in Pathanaickenpalayam Taluk of Salem District. Tmt.Kasthuri is working as Head Mistress of this school. One Cook, Watchman and Sweeper are working in this school. One Private individual Tr.C.Gunaseelan has joined in this school as additional cook on 24.10.2017 with a xerox copy of an appointment order dated 03.03.2016 and signed in the Attendance Register as if he had joined in this school from 07.06.2017, with the permission of Tr.R.Perumal, former Head Master of this school. Tr.R.Perumal, former Head Master of this school allowed him to join in this school without any proper appointment order. Then, Tmt.Kasthuri has sent arrear and salary bills to the Attur Sub-Treasury and the then Treasury Officer passed the arrear bill of Rs.1,75,356/- (Gross) for the period from 01.03.2016, i.e, even for few days prior to the date of appointment order to 31.01.2017 and salary bills to the tune of Rs.1,30,063/- for the months of February 2017 to October 2017 (Total Rs.3,05,419). (ii) During the above period, Tr.Mani, formerly Special Tahsildar, ADW, was working in Attur Taluk, He was the Pay Drawing Authority for the Cook who is working in the above GTR School. He knowingly allowed the above private individual Tr.C.Gunaseelan, to join in the above school and arranged to get arrear and salary to the tune of Rs.3,05,419/- without any valid appointment order and any other connected documents. The above said Tr.C.Gunaseelan was not at all selected by the Selection Committee.

12. (i) One Government Tribal Residential Elementary School is functioning in Kumbapadi Village in Pethanaickenpalayam Taluk of Salem District. Tr.R.Perumal was working as Head Master in this School. Two cooks, one Sanitary Worker and one Watchman are working in that School. One Private individual Tmt.S.Saraswathi has joined in this School as additional Cook on 27.11.2017 without any appointment order and signed in the attendance register as if she had joined and worked in this School from the month of June 2017 as per the permission given by TR.Perumal, Head Master of this school and he allowed her to join in this school as a

cook without any appointment order from the District Adi Dravidar and Tribal Welfare Officer, Salem. But, scrutinization of the documents reveals that salary for the above Tmt.S.Saraswathi had been claimed for the period from March-2017 to October-2017 to the total tune of Rs.1,30,063/- from Attur Sub Treasury. The then Treasury Officer passed the above salary bills i.e., from the period of March 2017 to October 2017 without the original appointment order and connected and paid to her. (ii) During the above period, Tr.Mani, the then Special Tasildhar, knowingly allowed the above private individual Tmt.S.Saraswathi, to join in the above school and arranged to get salary to the tune of Rs.1,30,063/- without any valid appointment order and any other connected documents. Tmt.S.Saraswathi was not selected by the Selection Committee.

13) It is also gathered through reliable sources that one Government Tribal Residential Elementary School is functioning in Maniyarkundam Village in Pethanaickenpalayam Taluk of Salem District. Tmt.R.Manohari was working as Head Mistress in this School. One private individual Tr.Elayan has joined in this school as additional Cook on 23.11.2017 without any valid appointment order and signed in the attendance register as if he had joined and worked in this School from 28.02.2017. T.R.Mani, the Special Tahsildhar, Attur allowed him to join in this school as a Cook without any valid appointment as if he had joined and worked in this school from 28.02.2017. TR.Mani, the as a Cook without any valid appointment order from the District Adi Dravidar and Tribal Welfare Officer, Salem. But, perusal of the documents reveals that salary for the above Tr.Elayan had been claimed for the period from April-2017 to October 2017 to the total tune of Rs.1,14,011/- from Attur Sub Treasury. Then Assistant Treasury Officer passed the salary bill from Apr-2017 to Oct-2017 to the tune of RS.1,14,011/- and paid to him. Tr.Elayan was not at all selected and approved by the Selection Committee.

14) It is also revealed sources that one Government Tribal Residential Elementary School is functioning in Thumbal Village in Pethannaickenpalayam Taluk of Salem District. Tmt.S.Chandra was working as in charge Warden in this School. One private individual Tmt.K.Sudarmani has reported in this school as additional Cook on 22.10.2017 without any appointment order and signed in the attendance register as if she had joined and worked in this School from 10.02.2017. Tmt.S.Chandra allowed her to join in this school as a

Cook as per the oral instruction given by a staff Tr.Periasamy of office of the Special Tashildhar, ADW, Attur and without any valid appointment order from the District Adi Dravidar and Tribal Welfare Officer, Salem. She was there, for only two days and left the school on 24.10.2017 saying that she was instructed to come to office of the RDO, Attur. But, Perusal of the documents reveals that arrear for the above Tmt.K.Sudarmani had been claimed for the period from 13.01.2016 to 31.01.2017 to the tune of Rs.1,81,943/- and salary bills for the period from march 2017 to October 2017 to the tune of Rs.1,18,063/- (Total Rs.3,00,006/-) from Attur Sub Treasury. The then Assistant Treasury Officer passed the above bills and paid to her. She was not selected by the Selection Committee during the selection process.

15) It is further learnt through reliable sources that totally 56 such appointments have been made after the selection and appointment issued on 06.01.2016. They have appointed Cook posts even in closed hostels where the sanctioned post had been abolished. These appointments have been made without conducting any interview by the committee and without getting approval of the Director of this department

16) Generally, if a file relating to the appointment is processed, office administration processes should be followed. There was no office file relating to the appointment of those cooks maintained at the office of the DADWO. No Assistants and Superintendents had scrutinised and countersigned in the appointment orders. There are no entries regarding the despatch of these appointment orders. Similarly, there is no joining report even for a single Cook who has been appointed as said above was sent by the concerned Head Masters.

17) It is further apparently through reliable sources that, Tr.Saravanan, the present District Adi-dravidar Welfare Officer instructed the Special Tahsildhars, Attur, Salem, Omalur and Sankagiri to conduct enquiry. On basis of their report, he advised to relieve them from their posts and not to continue them in that places. These malpractices have surfaced recently in the daily New Papers. So along with the help of above said persons have tried to screen the offences, prepared false anti dated appointment orders viz., 01.08.2016, 06.01.2016, 03.03.2016 and 25.05.2016 in order to produce them before the DRO, Salem during scrutiny. The relieved Cooks are joining in the respective Hostels by giving the above illegally given appointment orders one by one.

18) It is further learnt through reliable sources that, Tr.Saravanan, presently working as the DADWO, Salem has reported vide his letter dated 19.02.2018 to the DRO regarding this malpractice that the following officials have aided appointed Cooks illegally to join in the said places. Those are 1) Tr.Venkatesan, Headmaster, GTR Elementary School, Kothambadi, 2) Tr.Uthayasooriyan, Headmaster, GTR Elementary School, Adimalaipatti, 3) Tr.Perumal, Headmaster, GTR Elementary School, Kurumbapadi 4) Tr.Karuppasamy, Warden (i/c), Tribal Welfare Hostel, Thumbal, 5) Tr.Periyasamy, Sweeper, GTR Elementary School, Pagudupatti, 6) Manimozhi, Head Master, GTR Hr.Sec.School, Karumanthurai, 7) TR.Thangavel, Special Tashildar, (Rtd), Omalur.

19) Further, the original arrears bills and salary bills of every appointment are collected by the concerned treasuries and then sent them to the office of Principal Accountant General, Chennai every month for scrutinisation. Accordingly all the above said bills relating to the above appointment were also sent to the Principal Accountant General office, Chennai then and there. To ascertain whether the actual document such as original appointment order, details of sanctioned posts and financial sanctions had been enclosed, scrutinised by the Tahsildars, Head Masters, Office staff and Treasury officers concerned, such original bills are needed.

20) It is further learnt through reliable sources that from the details ascertained so far, it came to light that SO Tr.P.T.Sundaram, formerly, DADWD, Salem along with the then Special Tashildars, Head masters, Wardens, Treasury Officers and Private individuals colluded with each other, with intension to receive several lakhs of rupees as bribe from the concerned private individual, posted the said private persons those who are not at all selected by the Selection Committee as Cooks in the SC/ST hostels and G.T.R Schools by forging the appointment orders and even without valid appointment orders. Then, they claimed salary and arrears to the tune of several lakhs of rupees by forging the records with the connivance of Treasury Officers.

21) Now, the original salary and arrear bills which were sent by the above said officers are in the office of the Principal Accountant General, Chennai. The file relating to the appointment of 80 Cooks by due process and the files related to the enquiry conducted by Tr.Saravanan, District Adi-Dravidar and Tribal Welfare Officer, Salem are with the Salem District Collector.

22). It is gathered through reliable sources that a detailed probe into these documents will fetch the facts such as the involvement of Special Tahsildars and their office staff, Head Masters, Wardens and the private persons to whom appointment orders issued and the Treasury staffs, actual amount misappropriated and period of offence.

23) The root cause of this scam is the SO TR.P.T.Sundaram. Hence, he has been identified as Suspect Officer in this report as ascertained so far. The actual involvement of the other persons said in this report and the persons who involved in the other appointment made in the entire Salem District will be decided after the scrutinisation of the records mentioned in the previous paragraphs. 24) Therefore, to unearth the entire episode of the above said malpractices, to find out actual involvement of the public servants and private individuals, the quantum of misappropriation and loss to the Government exchequer, a Detailed Enquiry is needed.

25) Under the above circumstances, it is requested that necessary concurrence may please be accorded to this Directorate to take up a Detailed Enquiry against the Suspect Officer Tr.P.T.Sundaram, formerly District Adidravidar and Tribal Welfare Officer, Salem District, now Project Director, Tribal Welfare, Salem District.

26) It is also requested that the Government may be moved to transfer SO TR.P.T.Sundaram, formerly District Adi-DRavidar and Tribal Welfare Officer, Salem District, now Project Director, Tribal Welfare, Salem, out of Salem District, immediately, to far away place in a non-sensitive post."

6. Based on the report of the Vigilance and Anti-corruption Department, all further actions have been initiated against those two officials who are responsible for the illegal appointments and they are now facing departmental disciplinary proceedings also.

7. In respect of the illegal appointments, it is contended that the petitioners have no right at all. If the appointments are made, in an illegal manner and without following the selection process, those appointments are considered to be declared as null and void and therefore, incumbents cannot claim any right over the appointment as the very appointment itself is unsustainable. Substantiating the said grounds, the learned Additional Advocate General cited judgment of the Hon'ble Supreme Court of India reported in (2007) 8 SCC 264 in the case of M.P.State Co-operative Bank Limited., Bhopal Vs. Nanuram

Yadav Paragraph No.24 of the judgment is extracted here under:

"24. It is clear that in the matter of public appointments, the following principles are to be followed:

"(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse or regularisation.

(4) Those who come by back door should be go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The Court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection."

8. The supreme Court of India in paragraph No:24 more specifically referred the legal principles settled by the constitutional Bench of the Supreme Court in the case of State of Karnataka Vs. Umadevi and other and the Constitutional Bench has categorically analysed the possibilities and probabilities in the matter of regularization of temporary / contract employment who were appointed otherwise than that of the recruitment rules in force. The following paragraphs are relevant to extract for the purpose of extending the legal principles stated by the Constitutional Bench:

"4. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on

contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

5. This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side

of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

10. In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and Public Service Commissions for the States. Article 320 deals with the functions of Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established

by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

13. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs. Jagdip Singh & Ors. (1964 (4) SCR 964). It was held therein, "In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the

post or given the particular status."

14. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In STATE OF MYSORE Vs. S.V. NARAYANAPPA [1967 (1) S.C.R. 128], this Court stated that it was a mis-conception to consider that regularization meant permanence. In R.N. NANJUNDAPPA Vs T. THIMMIAH & ANR. [(1972) 2 S.C.R. 799], this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated:- "Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment, whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority, but there has been some noncompliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

In B.N. Nagarajan & Ors. Vs. State of Karnataka & Ors. [(1979) 3 SCR 937], this court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only 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 regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no

prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates. 45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post

cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

"49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution."

9. The view expressed by the Hon'ble Supreme Court in Paragraph No.13 are more relevant in respect of the facts of the case on hand. The Hon'ble Supreme Court has dealt with similar circumstances and stated that,

"What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for

appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions" and it is also relevant to extract the following paragraphs:

"26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here -- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of *Piara Singh (supra)* are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

33. In the earlier decision in *Indra Sawhney Vs. Union of India* [1992 Supp. (2) S.C.R. 454], B.P. Jeevan Reddy, J. speaking for the majority, while acknowledging that equality and equal opportunity is a basic feature of our Constitution, has explained the exultant position of Articles 14 and 16 of the Constitution of India in the scheme of things. His Lordship stated:-

"6. The significance attached by the founding fathers to the right to equality is evident not only from the fact that they employed both the expressions 'equality before the law' and 'equal protection of the laws' in

Article 14 but proceeded further to state the same rule in positive and affirmative terms in Articles 15 to 18 7. Inasmuch as public employment always gave a certain status and power --- it has always been the repository of State power ---besides the means of livelihood, special care was taken to declare equality of opportunity in the matter of public employment by Article 16.Clause (1), expressly declares that in the matter of public employment or appointment to any office under the state, citizens of this country shall have equal opportunity while clause (2) declares that no citizen shall be discriminated in the said matter on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. At the same time, care was taken to, declare in clause (4) that nothing in the said Article shall prevent the state from making any provision for reservation of appointments or posts in favour of any backward class of citizen which in the opinion of the state, is not adequately represented in the services under the state.." (See paragraphs 6 and 7 at pages 544 and 545) These binding decisions are clear imperatives that adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment."

10. The legal principles culled out by the Constitutional Bench is almost reproduced in the said judgment by the Hon'ble two Benches of the Supreme Court of India.

11. In the case of Secretary, State of Karnataka vs. Uma Devi Case is also cited by the learned Additional Advocate General and it is pertinent to note that the Constitutional Bench has settled the legal principles in a vivid manner and even in paragraph No.54 of the judgment, the constitutional Bench reiterated that any judgment of any Court running contrary to the legal principles settled by the Constitution Bench become denuded to loose its status as precedent and such judgments cannot be followed. This Court is of the opinion that the appointments made contrary to the recruitment rules are to be declared as null and void, in view of the legal principles.

12. In the case of Management Assistant Salt Commissioner Vs. Secretary, Central Salt Mazdoor Union, the supreme Court held in Paragraph No.23 as follows:

"23. However, it must be borne in mind that the Central Government cannot be held to be bound by an act of one of its officers. In terms of the Rules, the job of a license could be taken over directly under Rule 130 of the Rules and not beyond the same. When a statutory action is performed, it is trite, it must be done in the manner laid down under

the statute or not at all. All actions of the statutory authorities must be confined within the four corners of the statute. If the appellant was not authorised under the statute to take recourse to Rule 130 of the Rules for the purposes as mentioned in the written statement before the Labour Court, the said action itself must be held to be a nullity. In such a situation and particularly in view of the fact that in making recruitments of the respondents, the equality clause contained in Articles 14 and 16 were not complied with, the respondents cannot derive any benefit therefrom."

13. Citing the above judgments, the Learned Additional Advocate General states that illegality was committed at the first stage of appointment and the procedures contemplated were not at all followed and no appropriate committee was constituted. Thus the appointments made by these two officials cannot be considered as appointments made by following the rules in force.

14. Based on the report of the Vigilance and Anti-corruption Department, all further actions were taken by the competent authorities in a swift manner and those officials are now facing the disciplinary proceedings as well as the other consequential proceedings. As far as the impugned orders in the present writ petitions are concerned, it is contended that opportunities are given to the writ petitioners and even in the impugned order, the respondents have not terminated the service, though the appointments are illegal. As far as the illegal appointments are concerned, no opportunity is required. However, the authorities thought it fit that these petitioners must be provided with an opportunity to represent their cases before the District Adi Dravidar Welfare by way of submitting explanations/objections or by way of personal hearing. The order impugned also states that the writ petitioners shall approach the District Adi Dravidar Welfare Officer, for the purpose of further posting orders. While doing so, the writ petitioners can submit their explanations/objections and explain that their appointments are proper or done otherwise in accordance with law. In the event of submitting any such application, the respondents are bound to consider the same and take appropriate decision and, thereafter, follow the procedures for the purpose of passing further orders.

15. The learned Additional Government Advocate General reiterated that the entire appointments made by the two officials were fraudulent and they had involved in corrupt activities. Those two officials are now prosecuted pursuant to the report of the Vigilance and Anti Corruption Department. The writ petitioners as well as other illegal appointees were colluded with these two officials for the purpose of securing such illegal Public appointments. Thus, the very contention of

the writ petitioners that they were appointed by following the procedures contemplated under the Recruitment Rules are far beyond the truth and therefore, there is no infirmity as such in respect of the actions now initiated by the respondents against all such illegal appointments.

16. An enquiry in this regard is in progress and on completion of the enquiry, all further actions would be initiated by the competent authorities against the persons who all are responsible for such illegal appointments. However, the order of appointment issued in favour of these writ petitioners are yet to be cancelled and they have not yet terminated. The impugned order states that the petitioners were relieved from the post and further, they are directed to approach the District Adi Dravidar Welfare Officer for further postings. Thus, the opportunity provided to these writ petitioners are to be availed by them. That is to say the writ petitioners are bound to submit their explanations/objections, if any, before the competent authority. So that their objections and explanations also shall be considered by the competent authorities for the purpose of taking a decision and for passing final order assigning the reasons.

17. This being the factum, the writ petitioners are at liberty to approach the District Adi Dravidar and Tribal Welfare Officer pursuant to the impugned order and submit their explanations /objections regarding their respective appointments and on receipt those explanations/objections, the District Adi Dravidar and Tribal Welfare Officer is empowered to consider the materials available on record as well as the explanations submitted by the writ petitioners and take a decision and pass speaking order.

18. With these observations, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Secretary,
The State of Tamil Nadu,
Adi Dravidar & Tribal Welfare Department,
Secretariat, fort St.George,
Chennai - 600 009.
2. The Director of Adi Dravidar Welfare,
Ezhilagam, Chepauk, Chennai - 600 005.
3. The District Adi Dravidar & Tribal Welfare Officer,
Salem District, Salem.
4. The Special Tahsildar (ADW),
Omalur Taluk, Salem.

+lcc to Government Pleader sr.41314

+lcc to Mr.G.Sankaran, Advocate sr.51588

W.P.Nos.6720 to 6722 of 2018

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