

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.11952, 11959, 11970, 11972, 11973, 11974, 11976, 11979,
11980, 11988, 11999, 12002, 12011, 12025 of 2019

and

W.M.P.Nos.12181, 12182, 12186, 12192, 12193, 12202, 12210,
12212, 12214, 12215, 12216, 12218, 12221, 12222, 12223, 12224,
12226, 12228, 12229, 12230, 12231, 12236, 12237, 12238, 12240,
12241, 12244, 12247, 12249, 12251, 12254, 12257, 12259, 12261,
12264, 12268, 12278, 12280, 12281, 12289, 12299, 12301 of 2019

AMIT JHA ... PETITIONER in WP No.11952 of 2019
D.RAMACHANDRAN ... PETITIONER in WP No.11959 of 2019
T.RAGUNATH ... PETITIONER in WP No.11970 of 2019
LYDIA SONA LIZZY.W ... PETITIONER in WP No.11972 of 2019
VAIRALINGAM.C. ... PETITIONER in WP No.11973 of 2019
RAJKUMARYEDDULA ... PETITIONER in WP No.11974 of 2019
S.SURENDRAN ... PETITIONER in WP No.11976 of 2019
C.SENTHILMURUGAN ... PETITIONER in WP No.11979 of 2019
KAVUSALIA ... PETITIONER in WP No.11980 of 2019
DR.J.JELIN ... PETITIONER in WP No.11988 of 2019
T.BALAJI ... PETITIONER in WP No.11999 of 2019
K.ROHINI DEVI ... PETITIONER in WP No.12002 of 2019
A.KAMALAVINAYAGAM ... PETITIONER in WP No.12011 of 2019
K.MAREESWARAN ... PETITIONER in WP No.12025 of 2019

- Vs. -

- 1.The Union of India,
Rep.by its Secretary,
Ministry of Health and Family Welfare,
156, 'A' Wing, Nirman Bhavan, New Delhi - 110 011.
- 2.The Chairperson,
Food Safety and Standard Authority of India,
FDA Bhavan, Kotla Road, New Delhi - 110 002.
- 3.The Chief Executive Officer,
Food Safety and Standard Authority of India,
FDA Bhavan, Kotla Road, New Delhi - 110 002.
- 4.The Executive Director,
Food Safety and Standard Authority of India,
FDA Bhavan, Kotla Road, New Delhi - 110 002.
- 5.The Director,
Food Safety and Standard Authority of India,
Southern Regional Office, 2nd Floor
Central Documentation Complex, Ch.P.T.Building,
Rajaji Salai, Chennai - 600 001. ... Respondents
in all W.Ps.

Common Prayer in W.P.No.11952 of 2019, 11959, 11970/2019, 11972/2019, 11973/2019, 11974/2019, 11979/2019, 11980/2019, 11988/2019, 12002/2019, 12011/2019:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the advertisements, Viz.No.DR-02/2019 dated 26.03.2019 by the 3rd respondent herein in so far as post code 04 Technical Officer (Pay level 7) and quash the same and consequently, direct the respondent organization to regularize the services of the petitioner as a Technical Officer in the 5th respondent organization with effect from the date of her initial appointment.

Prayer in W.P.No.11976/2019, 11999/2019 and 12025/2019:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus Calling for the records relating to the advertisements Viz No.DR-02/2019 dated 26/03/2019 by the 3rd respondent herein in so far as post code 07 Accounts Assistant (Pay Level 6) and quash the same and consequently direct the respondent organization to regularize the services of petitioner as a admin cum Accounts Assistant in the 5th respondent organization with effect from the date of his initial appointment.

For Petitioner :Mr.V.Stalin
for M/s.R.Rajiv Gandhi

For Respondents : Mr.G.Baskaran
Standing Counsel
..in all 14 WPs.

O R D E R The recruitment notification issued by the Food Safety and Standards Authority of India, in advertisements No.DR-02/2019, dated 26/03/2019 is under challenge in these writ petitions.

2.The learned counsel appearing on behalf of the writ petitioners states that the writ petitioners are working as Technical Officer in the Food Safety and Standards Authority of India on contract basis. The writ petitioners are serving in the respondent organization for more than 8 years on contract basis and the period of contract is periodically extended every year and therefore, they are entitled to be absorbed in the sanctioned post in the regular time scale of pay as regular employees.

3.The writ petitioners has submitted representations to regularize them in the post of Technical Officer and permanently absorb all the writ petitioners. Writ petitioners were initially joined in the respondent organization as out-sourcing employees through an agency and subsequently, the respondents have directly engaged the writ petitioners on contract basis. Accordingly, the writ petitioners have joined in the organization during the year 2012 - 2013. The period of contract was one year and periodically the period of contract was extended by the respondent. The representations sent by the writ petitioners to absorb them as a permanent employees has not been considered by the respondents. Thus, the writ petitioners are constrained to move these writ petitions.

4.The learned counsel for the writ petitioners states that when the writ petitioners were initially engaged through out-sourcing agent and subsequently, directly engaged as contract laborers by the respondents and now they must be absorbed in the sanctioned post as regular employees before going for a recruitment activities from the open market.

5.It is the contention of the writ petitioners that the writ petitioners has already served for 8 years and the respondents are bound to consider the writ petitioners before going for a direct recruitment for open market. The writ petitioners states

that they are fully qualified for appointment to the post of Technical Officer and therefore, they are entitled for the relief as sought for in these writ petitions.

6.The preliminary question is to be considered by this Court, in respect of the issues raised in these writ petitions are that whether the contract labourer engaged by the organization can claim the benefit of regularization or permanent absorption or challenge the recruitment notification issued by the respondents based on the service rules in force.

7.These writ petitions are filed challenging the recruitment notification issued by the respondent authority on 26.03.2019, inviting the application from the eligible candidates for appointment to the various posts including the post of Technical Officer and Administrative Officer. The recruitment notification is issued under the recruitment rules in force. The eligibility criteria made on application details of posts, number of posts, rule of reservation, etc., are notified in the impugned recruitment notification. The writ petitioners have challenged the recruitment notification on the ground that they must be permanently absorbed in the post of Technical Officer and Administrative Officer.

8.This Court is of the considered opinion that undoubtedly the writ petitioners were engaged from the out-sourcing agent and thereafter, directly engaged as contract employees by the respondent organization on contract basis. Even as per the notification issued by the Ministry of Health and Family Welfare (Food Safety and Standards Authority), procedure for contract appointments are unambiguously enumerated in Paragraph No.15, which is extracted hereunder:

"15.Contract Appointment:

1.The Competent authority may appoint employees on contract basis for a specified period to meet interim requirements arising out of failure to fill vacancies through normal mode of recruitment, on entry qualification, as required for equivalent sanctioned posts and terms and conditions as required with the approval of Chairperson of the Authority: Provided that the total number of such appointments shall be within the sanctioned posts and shall be restricted to five percent of the total number of sanctioned post.

2.The competent authority may hire services of consultants from open market for such other disciplines related to the duties entrusted to the

Food Authority, where special skills and competencies, not covered in these regulations, are required, on terms and conditions as may be required with the approval of Chairperson of the Authority. Such appointments shall be over and above the sanctioned posts, but shall not exceed at anytime five percent of the overall sanctioned posts.

3. The consultants, under sub-regulation (1) and (2) above, shall be appointed on contract basis for a period not exceeding three years with no claims for subsequent permanent employment.

4. Procedure and norms for selection of appointment of employees appointed on contract basis shall be broadly aligned to these regulations and may be decided in each case by the Chairperson of the Authority.

5. There shall be no provision for lien against the post in which officers have been appointed on contract basis."

9. The rule permits the Competent Authorities to engage employees on contract basis, however, certain terms and conditions are imposed for contractual engagements. It is made clear that such contractual engagements would not confer any right to claim regularization or permanent absorption in a sanctioned post in the regular time scale of pay. The provisions for contractual appointments are made in order to meet out the administrative exigencies and therefore, such a provision would not confer any right on the contractual employees to claim permanent absorption in the sanctioned post in the regular time scale of pay.

10. The procedures for contractual employees are unambiguously enumerated in the rules itself. Undoubtedly, the writ petitioners are working as contractual employees for about 8 years. Thus, the authorities competent may provide some weightage marks in the process of selection, if these writ petitioners have chosen to participate in the process of selection. In other words, the respondents may provide due weightage for the services rendered and the experience acquired in the organization by these writ petitioners at the time of conducting selection process. However, the writ petitioners cannot claim the regularization or permanent absorption as a matter of right, in view of the fact that their initial appointments were not made in accordance with recruitment rules in force. The contractual employees cannot confer any right to claim regularization or permanent absorption.

11. Equal opportunity in public employment is the constitutional mandate. All the persons eligible for public employments must be provided with an opportunity to participate in the process of selection. The equality clause enunciated under Article 14 & 16 must be scrupulously followed by Competent while undertaking the process of selection.

12. The very concept of contractual appointments are to be utilized to meet out the emergency circumstances and on certain administrative exigencies or to complete specific projects within a time schedule. This being the scheme of such temporary appointments, this Court is of the considered opinion that public appointments in a regular post must be done strictly in accordance with the recruitment rules in force. In the event making such permanent absorption in violation of the recruitment rules in force, the Constitutional rights of all other eligible candidates who all aspiring to secure public employment are infringed. Thus, the authorities competent must keep in mind that by regularizing the irregular or illegal appointments infringes the Constitutional rights of all other candidates, who are aspiring to secure public employment by participating in the open competitive process as well as the rule of reservation.

13. Under these circumstances, the process of selection in accordance with the recruitment rules in force under the constitutional schemes are of the paramount importance and only in the even of contract selections in accordance with the recruitment rules, the Constitutional principles and mandates are being implemented by the authorities consistently and in the interest of public at large.

14. This being the interpretation provided in the matter of dealing with the irregular and illegal appointments, this Court has to necessarily state that the contractual appointments and daily rated appointments can result in regularization or permanent absorption is in violation of recruitment rules in force.

15. Undoubtedly, the employees who all are serving in an organization for a considerable length of time may be provided with a preference or some weightage marks. Contrarily, they cannot directly absorb in a sanctioned post without undergoing the regular process of selection in accordance with the recruitment rules in force.

16. The legal principles are reiterated by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Umadevi and others reported

in 2006 (4) SCC Page No.1 and the relevant paragraphs are extracted as follows:

"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 non-compliance 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."

17. Subsequently, the Hon'ble Supreme Court of India reiterated the legal principles settled by the Constitution Bench in the case of Secretary TO Government, School Education Department, Chennai v. R.Govindaswamy and Others. [(2014) 4 SCC 769]. In paragraph No.8, the Hon'ble Supreme Court has observed as follows:

"8.this Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"(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." (Emphasis added) "

18. Even, the Hon'ble Supreme Court of India, in a recent case of State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another Vs. A.Singamuthu reported in 2017 [4] SCC 113 and the relevant paragraphs 18, 19 and 20 are extracted hereunder:-

"18. The learned Single Judge erred in extending the benefit of GOMs No. 22 dated 28-2-2006 to the respondent that too retrospectively from the date of completion of

ten years of service of the respondent. The respondent was appointed on 1-4-1989 and completed ten years of service on 31-3-1999. As rightly contended by the learned Senior Counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is, from 1-4-1999 till the date of his regularisation, that is, 18-6-2012, the financial commitment to the State would be around Rs 10,85,113 (approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned Senior Counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularised under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularisation of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

19. It is pertinent to note that even the regularisation of services of part-time employees vide G.O. (Rt.) No. 505 Finance (AA-2) Department dated 14-10-2009 and G.O. (2D) No. 32 Finance (T.A. 2) Department dated 26-3-2010 was effected by extending the benefit of G.O. dated 28-2-2006 only from the date of government orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that GOMs No. 22 P & AR Dept. dated 28-2-2006 is applicable only to full-time daily-wage employees and who had completed ten years of continuous service as on 1-1-2006 and not to part-time employees. As per G.O. (Rt.) No. 84 dated 18-6-2012, the respondent is entitled to the monetary benefits only from the date of issuance of government order regularising his service, that is, 18-6-2012. The impugned order [Commercial Taxes and Registration Deptt., State of T.N. v. A. Singamuthu, Writ Appeal No. 1209 of 2012, decided on 4-7-2012 (Mad)] of the Division Bench affirming the order [A. Singamuthu v. Commercial Taxes and Registration Deptt., State of T.N., WP No. 26702 of 2010, order dated 26-11-2010 (Mad)] of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside.

20. In the result, the impugned order is set aside and this appeal is allowed. No costs."

19. The Hon'ble Supreme Court of India in unequivocal terms directed the High Court that "the High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization 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 regularized, back door entries, appointments contrary to the constitutional scheme and appointment of ineligible candidates cannot be regularised."

20. In the present lis on hand, all the writ petitioners were engaged initially through out sourcing agent and subsequently, brought under the contractual employment by the respondent organization. This being the admitted fact, the writ petitioners are at liberty to participate for the selection process, pursuant to the recruitment notification by the respondents in 26.03.2019 and accordingly, secure public employment on merits and as per the rules of reservation and as per the terms and conditions stipulated in the recruitment notification in the manner prescribed.

21. With these observations, all these writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

Pns

To

1. The Secretary,

Ministry of Health and Family Welfare,

156, 'A' Wing, Nirman Bhavan, New Delhi - 110 011.

2.The Chairperson,
Food Safety and Standard Authority of India,
FDA Bhavan, Kotla Road, New Delhi - 110 002.

3.The Chief Executive Officer,
Food Safety and Standard Authority of India,
FDA Bhavan, Kotla Road, New Delhi - 110 002.

4.The Executive Director,
Food Safety and Standard Authority of India,
FDA Bhavan, Kotla Road, New Delhi - 110 002.

5.The Director,
Food Safety and Standard Authority of India,
Southern Regional Office, 2nd Floor
Central Documentation Complex, Ch.P.T.Building,
Rajaji Salai, Chennai - 600 001.

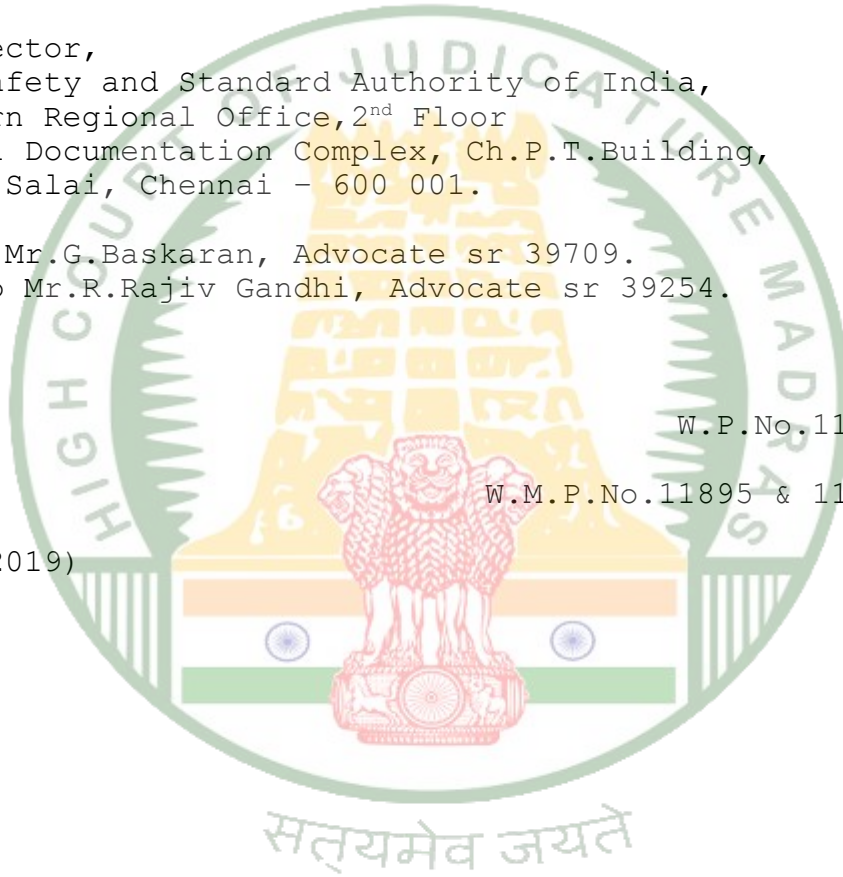
+2 CCS to Mr.G.Baskaran, Advocate sr 39709.

+14 Ccs to Mr.R.Rajiv Gandhi, Advocate sr 39254.

W.P.No.11664 of 2019
and

W.M.P.No.11895 & 11897 of 2019

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SP(12/06/2019)



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