

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.03.2019

CORAM

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

W.P.No.17035 of 2018

1.V.Dhakshnamoorthy

2.N.Arumugam

.. Petitioners

..vs..

1.The State of Tamil Nadu,
Rep.by the Secretary to Government,
Public (Ex-Servicemen) Department,
Secretariat,
Chennai - 600 009.

2.The Joint Director,
Directorate of Ex.Servicemen's welfare,
No.22, Raja Muthaiya Salai,
Chennai - 600 003.

3.The Deputy Director,
O/o. The Deputy Director of Ex-Servicemen's Welfare,
Bharathiyar Salai,
Vellore - 632 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to regularize the petitioners services from the date of their initial appointment with all attendant and monetary benefits based on the petitioners recent representation dated 13.03.2018 within the stipulated time that may be fixed by this Court.

For Petitioners : M/s.S.Kanmani

For Respondents : Mr.R.S.Selvam
Government Advocate

O R D E R

The relief as such sought for in the present writ petition is for a direction to direct the 2nd respondent to regularize the petitioners services from the date of their initial appointment with all attendant and monetary benefits based on the petitioners representation dated 13.03.2018 and the writ petitioners by the third respondent in proceedings dated 23.05.1997 & 16.06.1997 respectively.

2.The writ petitioners were paid the monthly consolidated pay as they were appointed as part-time Sweepers by the respondents.

3.The learned counsel appearing on behalf of the writ petitioners states that the similar cases of part-time employees were already considered by the Government and the services of those employees were already regularized and the same is extended to the writ petitioners. The Government issued various orders granting the benefit of regularisation to all such daily wage employees and other temporary employees. Under these circumstances, the similar benefit must be extended to the writ petitioners enabling them to get regularization on par with their colleagues whose services were already regularized.

4.The orders passed granting regularization and permanent absorption on earlier occasions must be cited as a precedent in view of the legal principles settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of State of Karnataka v. Umadevi [(2006) 4 SCC 1].

5.Even the High Courts as well as the Supreme Court granted the benefit of regularisation and permanent absorption for these temporary and daily wage employees by passing numerous orders. However, the progress of issuing direction to regularise the services are stopped pursuant to the legal principles settled by the Constitutional Bench of the Apex Court. As of now, the benefit of regularisation and permanent absorption can be granted only in accordance with the Service Rules in force. The persons appointed contrary to the Recruitment Rules cannot claim regularisation or permanent absorption according to the principles of settled by the Hon'ble Supreme Court of India.

6.More specifically, in respect of the part-time employees the Hon'ble Supreme Court of India reiterated the legal principles settled by the Constitutional 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 5 Page6 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) "

7. However, the part-time employees are not entitled to claim regularisation or permanent employees. The High Courts cannot issue any direction for regularisation of these employees.

8. The legal principles are once again reiterated by Apex Court in the 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 are extracted hereunder:-

16. In State of Rajasthan v. Daya Lal [State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340], this Court has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and this Court clearly laid down that part-time employees are not entitled to seek regularisation as they do not work against any sanctioned posts. It was also held that part-time employees in government-run institutions can in no case claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Relevant excerpt from the said judgment is as under: (SCC pp. 435-36, para 12)

"12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with

relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularisation of services of an employee which would be violative of 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.

[See State of Karnatakav.Uma Devi (3) [State of Karnatakav.Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , M. Rajav.CEERI Educational Society [M. Rajav.CEERI Educational Society, (2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334] , S.C. Chandrav.State of Jharkhand [S.C. Chandrav.State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943] , Kurukshetra Central Coop. Bank Ltd.v.Mehar Chand [Kurukshetra Central Coop. Bank Ltd.v.Mehar Chand, (2007) 15 SCC 680 : (2010) 1 SCC (L&S) 742] and Official Liquidatorv.Dayanand [Official Liquidatorv.Dayanand, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .]"

(emphasis supplied)

17.The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said GOMs No. 22 dated 28-2-2006 and directed the appellants to grant regularisation of respondent's service from the date of completion of ten years of service with salary and other benefits. The learned Judge failed to take note of the fact that as per GOMs No. 22 dated 28-2-2006, the services of employees working in various government departments on full-time daily-wage basis, who have completed more than ten years of continuous service as on 1-1-2006 will be regularised and not part-time masalchis like the respondent herein. In GOMs No. 84 dated 18-6-2012, the Government made it clear that GOMs No. 22 dated 28-2-2006 is applicable only to full-time daily wagers and not to part-time daily wagers. The respondent was temporarily appointed part-time worker as per Tamil Nadu Finance Code, Vol. 2, Appendix 5 and his appointment was completely temporary. The respondent being appointed as part-time masalchi, cannot compare himself to full-time daily wagers and seek benefit of GOMs No. 22 dated 28-2-2006. The Single Judge also failed to consider that the Government did not grant regularisation of services of any part-time employee on completion of ten years of his service as envisaged under GOMs No. 22 dated 28-2-2006.

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.

9. For above all the legal principles settled in the Judgments cited supra, the benefit of regularisation and permanent absorption cannot be extended to the writ petitioners, since they have served as part-time Sweepers and now for the purpose of securing public employment they have to participate in the process of selection through the open competitive process.

10. This being the factum of the case, the relief as such sought for in the present writ petition cannot be considered. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns

To

- 1.The Secretary to Government,State of Tamil Nadu,
Public (Ex-Servicemen) Department,
Secretariat, Chennai - 600 009.
- 2.The Joint Director,
Directorate of Ex.Servicemen's welfare,
No.22, Raja Muthaiya Salai, Chennai - 600 003.
- 3.The Deputy Director,
O/o. The Deputy Director of Ex-Servicemen's Welfare,
Bharathiyar Salai, Vellore - 632 001.

+1 cc to The Government Pleader, SR.No.20912
+2 cc to Mr.S.Kanmani, Advocate SR.No.20636

CSL/29.03.2019

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