

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.13058 of 2014

Nanjappan

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Erode.
- 2.The District Educational Officer,
Gobichettipalayam,
Erode.
- 3.The Assistant Elementary
Educational Officer,
Nambiyur,
Erode.
- 4.The Director of Elementary Education,
DPI Campus Chennai. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a WRIT OF MANDAMUS, directing the respondents to regularize the petitioner's mother services from the date of completion of 10 years in service i.e. from 01.12.1973, notionally and accordingly disburse her arrears of salary and pensionary and other retirement benefits to the petitioner from the date of her retirement and pass further orders.

For Petitioner : Ms.N.Kavitha Rameshwar

For Respondents: Mrs.P.Kavitha
Government Advocate (Education)

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O R D E R

The petitioner has filed the Writ Petition praying to issue a WRIT OF MANDAMUS, directing the respondents to

regularize the petitioner's mother services from the date of completion of 10 years in service i.e. from 01.12.1973, notionally and accordingly disburse her arrears of salary and pensionary and other retirement benefits to the petitioner from the date of her retirement and pass further orders.

2.The learned counsel for the petitioner fairly submitted that the petitioner seeking direction to regularize petitioner's mother service as prayed for in the writ petition. However, he requested to mould the relief to consider the petitioner's representation in accordance with the order passed by the Hon'ble Supreme Court of India reported in the case of Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others reported in (2014) 4 Supreme Court Cases 769, wherein the Hon'ble Supreme Court has considered and issued a direction to regularize the services of the part time sweepers.

3.The said portion of the direction in the case of R.Govindaswamy and others is extracted as follows:

8.This Court in State of Rajasthan v. Daya Lal⁵ has considered the scope of regularization 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: (SCC p. 435, para 12)

"(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 regularized, 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) Par-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. The right to

claim a particular salary against the State must arise under a contract or under a statute."

4.Considering the aforesaid Judgment, the respondent is directed to consider the petitioner's representation dated 15.04.2014 and to pass appropriate orders in the light of the direction issued by the Hon'ble Supreme Court of India in the case of R. Govindaswamy and others as cited supra, as expeditiously as possible, within a period of eight weeks, from the date of receipt of a copy of this order.

5.It is needless to say that the petitioner has to enclose a copy of the representation dated 15.04.2014, along with the necessary documents and the order copy of this Court, to the respondents.

6.Accordingly, the writ petition is disposed of with the above direction. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Educational Officer,
Erode.

2.The District Educational Officer,
Gobichettipalayam, सत्यमेव जयते
Erode.

3.The Assistant Elementary
Educational Officer,
Nambiyur, Erode.

4.The Director of Elementary Education,
DPI Campus Chennai.

+1cc to Ms.N.Kavitha Rameshwar , Advocate SR.No. 15342

+1 CC TO GOVERNMENT PLEADER SR.NO. 16085

W.P.No.13058 of 2014

A.SK(25/03/2019)