

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.34746 of 2014
and
M.P. Nos.2 and 3 of 2014

N. Maheswari

... Petitioner

Vs.

1. The Principal Secretary to Government,
Social Welfare and Noon-Meals Department,
Secretariat,
Chennai.
2. The District Project Director Cum
Additional Chief Educational Officer,
Sarva Siksha Abiyan,
Perambalur.
3. The District Coordinator,
Sarva Siksha Abiyan,
Perambalur District.
4. The Supervisor,
Sarva Siksha Abiyan,
Block Resource Centre,
Perambalur.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, Pleaded to a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent made in Na.Ka. No.517/A2/A/E/2014, dated 27.10.14 and quash the same and consequently direct the 1st respondent to issue suitable direction to the 2nd respondent to regularise the service of the petitioner and fix in the time scale of pay as computer coordinator (MIS-Coordinator) or in any other appropriate post in any other Department.

For Petitioner : Mr.N. Umapathi

For Respondents : Mr.K.Karthikeyan,
Government Advocate for RR1 to 4

ORDER

This writ petition has been filed to quash the proceedings issued by the 2nd respondent in Na.Ka. No.517/A2/A/E/2014, dated 27.10.14 same and for consequential direction to the 1st respondent to issue suitable direction to the 2nd respondent to regularise the service of the petitioner under time scale of pay in the post of MSI-Coordinator or any other post.

2. According to the petitioner, she is a physically challenged person, who joined the services of the 2nd respondent as Computer Co-ordinator on 23.01.2012 and posted at the Block Development Office, Perambalur. The said appointment is purely on consolidated basis and she was issued an identification card as MIS Co-ordinator. Whiles, the Government in G.O. Ms. No.151, issued by the Social Welfare and Nutrition Department, dated 16.10.2018 stating that physically challenged persons working in various department for more than two years on consolidated basis, be provided time scale of pay. Pursuant to the above G.O., she made a representation, dated 14.02.2014 to the respondents seeking for regularisation of her services in time scale of pay, but the same was not considered. Hence, she filed a writ petition seeking direction to consider her representation and this Court by Order dated 02.09.2014 issued directions to the respondents to dispose of the representation, within the time limit stipulated therein. In compliance to the said order of this Court, the 2nd respondent considered the representation and rejected her claim. It is her grievance that the aforesaid G.O. was issued to benefit physically challenged persons and in the light of the same, similarly placed persons were considered. Hence, the petitioner is before this Court with the abovesaid prayer.

3. Heard the learned counsel for the petitioner and perused the materials placed on record.

4. Per contra, the learned Government Advocate appearing for the respondents contended that the petitioner was appointed on consolidated basis under Sarva Shiksha Abhiyan scheme, which is a registered Society. Further reiterating the counter, he contended that services can be terminated either on completion of the scheme or the need for the continuous service is not fulfilled, whichever is earlier. Therefore, the petitioner cannot claim such a right on par with regular Government servants as per G.O.Ms.No.151, dated 16.10.2018.

5. Further, he placed reliance in the case of the SECRETARY TO GOVERNMENT, SCHOOL EDUCATION DEPARTMENT, CHENNAI v.

R.GOVINDASWAMY AND ORS.[(2014) 4 SCC 769], wherein it has been held as under :

"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."

6. Considering the submission so made by the learned Government Advocate appearing for the respondents, it is clear that the petitioner was appointed on consolidated basis. Further at the time of appointment itself, she has accepted the terms and conditions stipulated therein. Hence, this Court is of the view that the grounds raised by the petitioner to consider her appointment in regular time scale of pay cannot be countenanced.
7. However, from a perusal of the impugned order as also the representation submitted by the petitioner, it is evident that though the respondents have rejected the representation of the petitioner, however, the said order is bereft of reasoning and details for the rejection have not been furnished in the said order. Though the petitioner has worked for more than 4 years since 2012, however, the rejection does not clearly indicate the reasons on which her representation stands rejected.
8. In such a backdrop, this Court is of the considered view that it would be wholly unjustifiable to shut the doors on the petitioner, a physically challenged person, at this stage, on the basis of the impugned order, which is not a speaking order, setting out the reasons for rejection. Therefore, this Court is of the view that while setting aside the order passed by the second respondent rejecting the representation of the petitioner, the representation submitted by the petitioner is restored to the file of the respondents and the respondents are directed to consider the representation submitted by the petitioner in the light of the decision passed in Govindasamy's case (supra) coupled with G.O. Ms. No.151, issued by the Social Welfare and Nutrition Department, dated 16.10.2018

9. Accordingly, this writ petition stands allowed in the abovesaid terms. It is open to the petitioner to submit a fresh representation, if she so chooses within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, if so filed, or on the basis of the representation which stands restored to the file of the respondents, the respondents shall consider the representation and pass orders on the same on merits and in accordance with law within a period of twelve weeks from the date of filing of the representation or receipt of a copy of this order, whichever is earlier. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vsi2

To

1. The Principal Secretary to Government,
Social Welfare and Noo-Meals Department,
Secretariat,
Chennai.
2. The District Project Director Cum
Additional Chief Educational Officer,
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Perambalur.
3. The District Coordinator,
Sarva Siksha Abiyan,
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4. The Supervisor,
Sarva Siksha Abiyan,
Block Resource Centre,
Perambalur.

+1 CC to Govt. Pleader sr 19998.

+1 CC to Mr.N.Umapathi, Advocate sr 18688(17/07/2019)

W.P.No.34746 of 2014

BS(CO)

SP(07/06/2019)