

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.03.2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.25242 of 2018

1.K.Sambandham
2. S.Thamizh Selvan
3. P.Ramakrishnan
4. M.Asma Nachiyar
5. R.Saraswathy
6. R.Niraiivathy
7. U.Kudiyarasi ...Petitioners

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Backward & Minorities Welfare Department,
Secretariat, Chennai 600 009.
2. The Director,
Backward & Minorities Welfare Department,
Ezhilagam, Chepauk,
Chennai - 600 005.
3. The District Officer,
Backward & Minorities Welfare Department,,
Thiruvarur District. ...Respondents

PRAYER: Writ Petition 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 of the 3rd respondent vide proceedings No.O.MU.5879/2014/I-1 dated 27.03.2015 which was communicated along with their letter Na.Ka.No.3778/2015/I-1 dated 20.09.2017 and quash the same as illegal and direct the respondents to regularise the service of the petitioners from the date of original appointment.

For Petitioner

:Mr.R.Ganesh Babu

For Respondents

: Mr.A.N.Thambidurai,
Spl.Govt. Pleader

O R D E R

The order of rejection dated 20.09.2017, rejecting the claim of the writ petitioner, for regularisation of the

services with effect from their respective initial date of appointment is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner states that, the writ petitioners were initially appointed on consolidated pay during the year 2001. The writ petitioners were continuously in service for more than 10 years and their services were subsequently regularized with effect from the year 2010, now all the writ petitioners are serving in the sanctioned post in the regular time scale of pay.

3. The grievances of the writ petitioners are that, they are entitled to be regularised with effect from their respective date of initial appointment. This Court is of an opinion that, regularisation or permanent absorption cannot be granted in violation of the recruitment Rules in force. The services of the writ petitioners were already regularised by extending the benefit of concession. Once the concession is granted for grant of regularisation and permanent absorption, the writ petitioners cannot seek any further concession by claiming that their services should be regularised with retrospective effect. More specifically, from the date of their initial appointment.

4. The very concession of regularisation itself is not in accordance with the recruitment Rules in force. However, the Competent Authorities had extended the concession, based on the ground that the writ petitioners had already served for a considerable length of time. This being the factum, the writ petitioners cannot be regularised with retrospective effect, 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. However, the Government amended the Rule 11 of the Tamil Nadu Pension Rules, enabling these temporary employees to get the benefit of counting 50% of the service for the purpose of reckoning qualifying services for grant of Pensionary benefits. Thus, the writ petitioners are liable to get the benefit of 50% of the service for the purpose of grant of pensionary benefits. In this regard, the writ petitioners are at liberty to submit a representation to the respondents setting out all the facts and details and in the event of receiving any such representation, the respondents are directed to consider the representations, take a decision and pass appropriate orders as expeditiously as possible, on merits and in accordance with law.

6. With these directions, the writ petition stands disposed of. No Costs.

Sd/-
Assistant Registrar (CSvi)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Secretary,
State of Tamil Nadu,
Backward & Minorities Welfare Department,
Secretariat, Chennai 600 009.
2. The Director,
Backward & Minorities Welfare Department,
Ezhilagam, Chepauk,
Chennai - 600 005.
3. The District Officer,
Backward & Minorities Welfare Department,,
Thiruvarur District.

+1cc to Mr.R.Ganesh Babu , Advocate SR.No. 27141

+1 cc to Government Pleader SR.NO. 28023

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rv(CO) A.SK(06/05/2019)

सत्यमेव जयते

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