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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.12.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH., J

W.P.No.33807 of 2018 &
W.M.P.No.39264 and 39265 of 2018

1. S.Vettyvel Kumar
2. P.Krishnan
3. Y.Mahesh
4. S.Vedananth
5. G.Richard Dhas
6. T.Jeba Daya

.. Petitioners

Vs

1. The State of Tamil Nadu Rep.by
The Secretary, Public Works Department,
Fort St.George, Chennai 600 009.

2. The Chief Engineer and Engineer in Chief (General),
Public Works Department,
Chepauk, Chennai - 600 005.

3. The Chief Engineer(Buildings),
Public Works Department,
Chepauk, Chennai - 600 005.

4. The Executive Engineer,
Water Resources Organisation,
Kodayar Basin Division,
Nagercoil - 629 001.

5. The Assistant Engineer,
Planning and Designing Sub Division,
Nagercoil

.. Respondents

6.N.Prasad

7.John Durai Singh

8.N.RajKumar

(R6 to R8 are deleted vide court
order dt 23/01/2019 made in WMP.No.40034/18
in WP.No.33807/2018)



Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified Mandamus to call for the records relating to the impugned orders letter No.4485 /C2/2017-4 dated 31.07.2017 and further letter No.4485/C2/2017-13 dated 26.07.2018 passed by the 1st respondent and quash the same as illegal, improper, arbitrary, unreasonable and thereby direct the 1st respondent to regularise the petitioners service as Mazdoor Grade I and II and pay back all service and monetary benefit.

For Petitioner : M/s.D.Charles Muthu Santhan
For Respondents : Mr.P.S.Siva Shanmugasundaram
Special Government Pleader
for R1 to R5.

O R D E R

This writ petition has been filed challenging the impugned letters dated 31.07.2017 and 26.07.2018 of the 1st respondent and for a consequential direction to regularise the service of the petitioners as Masdoor Grade I and II and to pay all the service and monetary benefits.

2. The case of the petitioners is that they were appointed as Casual labourers / NMRs in the office of the 5th respondent during the year 2008-10 and they have been continuously working as a casual labourer. According to the petitioners, they have also completed 10 years of service and therefore, they should have been regularised in service. Therefore, a representation was made by the petitioners pursuant to the orders passed by this Court in WP No.42324 of 2016 dated 01.12.2016. The representation has been rejected by the 1st respondent through the impugned letters dated 31.07.2017 & 26.07.2018 . Aggrieved by the same, the present writ petition has been filed before this Court.

2. The learned counsel appearing for the petitioners submitted that earlier similarly placed persons had approached this Court and filed a writ petition and the same was allowed. As against the same, a Writ Appeal was filed in W.A.No.493 of 2016 and the Division Bench of this Court by an order dated 25.04.2016 dismissed the appeal filed by the Department and upheld the orders passed by the learned Single Judge. The learned counsel submitted that while disposing of the writ petition filed by the petitioners in WP No.42324 of 2016, this Court has specifically directed the 1st respondent to consider the representation in the light of the orders passed by the Division Bench in W.A.No.493 of 2016 dated 25.04.2016 and the other related GOs. The learned counsel submitted that many of the juniors were regularised by the Department by proceedings



dated 23.02.2018 and the petitioners alone are being discriminated and they should be treated similar to that of their Juniors, who have now been regularised by the department. The learned counsel concluded his argument by submitting that the petitioners have been engaged by the 5th respondent continuously for more than 10 years and the petitioners are dependent upon this work and they cannot be deprived of being regularised in service.

3. Mr.P.S.Siva Shanmugasundaram, learned Special Government Pleader appearing on behalf of the respondents 1 to 5 submitted that after the Judgement of the Hon'ble Supreme Court in [State of Karnataka Vs.A.Umadevi and others] reported in 2006(4) SCC 1, no such regularisation can be done unless the persons have been holding a sanctioned post. The learned counsel submitted that even if the petitioners are to lay their claim based on G.O.Ms.No.22, Personnel and Administrative(Reforms) Department dated 28.02.2006, they have to come within the cut off date, which was fixed as 01.01.2006. The learned counsel submitted that the petitioners did not have the legal right to be considered for regularisation and therefore, there is absolutely no ground to interfere with the impugned letters of the 1st respondent.

4. The learned counsel for the respondents in order to substantiate his submissions, replied upon the judgement of this Court in [State of Tamil Nadu, rep. by its Secretary to Government Vs.M.Seeniammal and others] reported in 2014(5) CTC 474.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. Before going into the merits of the case, it will be useful to rely upon the judgement cited by the learned counsel appearing on behalf of the respondents.

7. The relevant portions of the judgement is extracted hereunder :-

5. The writ petitions filed by the respondents were allowed by the learned Judge based on G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006 and a few earlier judgments granting the benefit of regularisation upon completion of 10 years of service with time scale of pay.

6. But under the said Government order G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006, only full time daily wage



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employees were directed to be regularised on completion of 10 years of continuous service as on 01.01.2006. However, the part time employees, temporary employees and employees on consolidated pay and employees, who had completed 10 years of service even after 01.01.2006 sought for regularisation based on G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006. This Court accepted their claim and passed orders directing the department to regularise their services as per G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006.

7. But when similar claims were made on the basis of G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006, Government passed G.O.Ms.No.74 Personnel and Administrative Reforms Department dated 27.06.2013 and clarified that G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006, is applicable only to the full time daily wage employees, who had completed 10 years of continuous service as on 01.01.2006. It was made clear in that order that part time employees are not entitled for regularisation and that full time daily wage employees, who had completed 10 years of service after 01.01.2006 are also not entitled to regularisation. G.O.No.74 Personnel and Administrative Reforms Department dated 27.06.2013, reads as follows: "6) In supersession of the orders issued in the Government Order read above, the Government now issue revised orders on regularisation of services of full time daily wage employees working in all Government departments as detailed below:

(i) This Order shall be deemed to have been come into force with retrospective effect from 01.01.2006.

(ii) The services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamilnadu Basic Service and complete 10 (ten) years of service as on 01.01.2006 shall be regularised against regular vacancies in the sanctioned cadre strength.

(iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed.

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23(a)(ii) of the General Rules for Tamil Nadu State and Subordinate



Services;

(v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularisation;

(vi) The part-time and casual employees are not entitled to the concession referred to at para (ii) above;

(vii) The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularised;

(viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules against the person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the above said instructions are followed without fail and lapses if any found, responsibility will be fixed against them;

(ix) All the proposals for regularisation of the services of full time daily wage employees should be sent to the Government even in cases where relaxation of rules are not involved." But unfortunately this order G.O.Ms.No.74, could not be placed by the Government before the learned Judges, as it came only subsequently.

8. Apart from G.O.Ms.No.74, there was one more subsequent development. It was an order passed by this Court in request of a few persons employed in the School Education Department, which was reversed by the Supreme Court eventually on 21.02.2014. The facts leading to this development are as follows:

(i). Based upon the G.O.Ms.No.22 Personnel and Administrative Reforms Department dated 28.02.2006 several individuals approached this Court and obtained orders in a batch of cases in writ petition Nos. 4859 of 2009. Those orders were also confirmed on appeals in Writ Appeal No. 1520 of 2010 batch, by the Division Bench of this Court by order dated 25.10.2010. SLPs filed by the Government were dismissed by the Apex Court.

(ii). Therefore, the State issued G.O.Ms.No.123 School Education Department dated 17.08.2011 implementing the orders in favour of these individuals. Thereafter, other persons similarly placed started filing cases and all those cases were allowed by the learned Judges



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settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein, the same are as under: 8(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 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



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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)

8. The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgment. Therefore, the appeals are allowed. However, in light of the facts and circumstances of the case as Shri P.P.Rao, learned senior counsel has submitted that the appellant has already implemented the impugned judgments and does not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected."

10. Therefore, on the basis of law now declared by the Supreme Court in respect of the very part time sweepers in the School Education Department, the State of Tamil Nadu has come up with the present appeals as well as review petitions contending that the respondents are not entitled to regularisation. However, by the time, these appeals were filed with condone delay petitions and the delay was condoned, some of the employees pressurized the Government through contempt petitions and obtained orders of regularisation. Therefore, when we took up these appeals for hearing, the Government had already issued orders regularising the services of some of the employees with prospective effect.

11. Therefore, in the light of the above two developments, the question that arises for consideration in these appeals is as to whether the respondents in these appeals and review applications are entitled to seek regularisation or not.

12. In some of the orders out of which the present appeals arise, the learned Judges have relied upon the first portion of paragraph 55 of the decision of the Supreme Court reported in (2006) 4 SCC 1 (State of Karnataka vs. A.Umadevi and others.) But in the latter portion of paragraph No.55, the Apex Court has set aside the direction of the High Court to the Government to consider the cases for regularisation, which is as follows: "55..... In view of our conclusion, that the courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of



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the High Court directing the Government to consider their cases for regularisation. We also notice that the High Court has not adverted to the aspect as to whether it was regularisation or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant), the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos.3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weight age for their having been engaged for work in the Department for a significant period of time. That would be the extent of exercise of power by this Court under Article 142 of the Constitution to do justice to them."

13. There is no dispute about the fact that all the respondents are part time employees or consolidated pay employees. There are no Government orders for regularising part time employees and consolidated pay employees. G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006 was issued only in favour of full time daily rated employees. Even G.O.Ms.No.123 School Education Department dated 17.08.2011, had been issued only for implementing the judgement of this Court to avoid contempt in respect of persons mentioned therein. It is not applicable to all part time employees and consolidated employees. The respondents cannot claim the same relief.

14. We are conscious of the fact that some persons similarly placed as the respondents have escaped the guillotine. Therefore, the learned counsel for the respondents contend that if the appeals are allowed, one batch of employees will face hostile discrimination. Therefore, the respondents plead equality of treatment.

15. In the judgement reported in 1995(Supp) 4 SCC 706 [HARPAL KAUR CHAHAL (SMT) VS. DIRECTOR, PUNJAB INSTRUCTIONS, PUNJAB AND ANOTHER], the Apex Court held that Article 14 cannot be extended to legalise the illegal orders though others had wrongly got the benefit of orders. The relevant portion is extracted herein:

"3.... The view of the High Court is obviously illegal



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and the judgement rendered would not form the ground for our holding that the others who got the benefit by illegal orders will be extended in favour of other candidates though illegally appointed. Article 14 cannot be extended to legalise the illegal orders though orders had wrongly got the benefit of the orders....."

16. In view of the above judgement, the respondents are not entitled to relief based on earlier orders of this Court. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud even by extending the wrong decisions made in other cases. The judgement reported in 2013 (10) SCALE 391 IN BASAWARAJ AND ANOTHER VS. THE SPL. LAND ACQUISITION OFFICER, considered the issue and held as follows:- "8.It is settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible."

17. G.O.22 is applicable only to full time daily wage employees appointed against the sanctioned vacancies paid not out of contingent fund or on consolidated pay. They must also have completed 10 years of continuous service as on 01.01.2006. A reading of the said G.O. clearly shows that it applies only to daily wage employees. Further by G.O.Ms.No.74, the Government clarified that G.O.Ms.No.22 Personnel and



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Administrative (Reforms) Department dated 28.02.2006, is not applicable to part time, the consolidated pay employees and employees appointed on temporary basis. In view of the authoritative pronouncement of the Apex Court referred to above in Secretary to Government, School Education Department vs. Thiru.R.Govindasamy and others reported in CDJ Law Journal 2014 SC 146, a direction to the department to regularise the services of daily wagers, temporary, part time, contract workers and persons employed on consolidated salary cannot be issued by this Court based on the Government orders issued contrary to statutory provisions of appointment being made without following the regular procedure. we also hold that in any event G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006, is applicable only to full time daily wage earners, who had completed 10 years of continuous service as on 01.01.2006. The said G.O., cannot be applied for part time employees, employees receiving consolidated salary and also to persons, who completed 10 years of service after 01.01.2006.

8. A careful reading of the above judgement of the Hon'ble Division Bench makes it clear that G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006, is applicable only to full time daily wage employees appointed against sanctioned vacancies. They must have completed 10 years of service as on 01.01.2006. While considering the claim of the petitioners, the Hon'ble Division bench has also taken into consideration the judgement of the Hon'ble Supreme Court in [State of Karnataka Vs.A.Umadevi and others], the Division Bench has also held that one set of employees were regularised de hors the fact that they were also similarly placed like that of the petitioners and that does not in any way give any right to the petitioners, since Article 14 cannot be extended to legalise the illegal orders.

9. In the facts of the present case, admittedly, the petitioners were not engaged / appointed against the sanctioned vacancies. That apart, the petitioners are claiming to have been engaged by the 5th respondent only from the 2008-2010 onwards. Therefore, the petitioners also do not fall within the cut off that was prescribed by G.O.Ms.No.22, which stated that it will apply only to those persons who fall within the cut off date 01.01.2006. The claim made by the learned counsel for the petitioner that similarly placed persons who were juniors to the petitioners were regularised, also cannot be a ground to direct the petitioners to be considered for regularisation, since there is no question of applying the principles of equality in



illegality.

10. The Hon'ble Supreme Court in Uma Devi case has categorically held that the Courts cannot issue directions to regularise or give permanency for employees, who are not employed in any sanctioned post / vacancy. The same has been taken into consideration by the Hon'ble Division Bench in the judgement referred supra.

11. The 1st respondent in his impugned letters has categorically indicated that the petitioners were not recruited through the Employment exchange and they did not fall within the cut off date of 01.01.2006. The 1st respondent has also stated in the impugned letters that the petitioners were not engaged in any sanctioned posts. Therefore, the 1st respondent has obviously taken into consideration the impact of G.O.Ms.No.22 and also the Division Bench judgement that has been referred supra. This Court does not find any illegality or perversity in the impugned letters of the 1st respondent.

12. In view of the above discussion, this Court does not find any grounds to interfere with the impugned letters of the 1st respondent, refusing to regularise the services of the petitioners and accordingly the present writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS VI)

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Sub Asst. Registrar

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To

1. The State of Tamil Nadu Rep.by
The Secretary, Public Works Department,
Fort St.George, Chennai 600 009.
2. The Chief Engineer and Engineer in Chief (General),
Public Works Department,
Chepauk, Chennai - 600 005.
3. The Chief Engineer (Buildings),
Public Works Department,
Chepauk, Chennai - 600 005.



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Water Resources Organisation,
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5. The Assistant Engineer,
Planning and Designing Sub Division,
Nagercoil

+1 cc to M/s.S.Ashok kumar Advocate sr101492

+1 cc to the Government Pleader sr102206

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