



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.08.2019
CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD).No.18351 of 2013
and
M.P. (MD)No.2 of 2015

- 1.P.Shankar
- 2.M.RAjalakshmi
- 3.B.Marikannu
- 4.K.Pandiammal
- 5.T.Savithri
- 6.T.Kamaraj
- 7.K.Rajam
- 8.M.Kamala
- 9.R.Chandra
- 10.V.Dhanalakshmi
- 11.S.Anthonisamy
- 12.A.Panchanathan
- 13.A.Subramanian
- 14.R.Sivagami
- 15.N.Vimala
- 16.S.Azhagammal

... Petitioners

-Vs-

- 1.The State of Tamil Nadu,
The Secretary to Government,
Municipal Administration and Water Supplies Department,
Fort St. George, Chennai-600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.
- 3.The Commissioner,
Pattukkottai Municipality,
Thanjavur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the relevant records pertaining to the orders passed by the Commissioner, Pattukkottai Municipality, the 3rd respondent herein vide his proceedings Na.Ka.4269/97/H1, dated 28.02.2006 and quash the same in for as regularizing the services of the petitioners w.e.f. 01.03.2006 only is concerned as illegal, arbitrary, unreasonable, being violative of principles of natural justice and thereby direct the respondents herein to regularize the services of the petitioners retrospectively with effect from respective dates of commencement of their services for 3 years of service as per G.O.Ms.No.71 (Municipal Administration and Water Supply) (MC.3), department dated 5.5.1998.



WEB COPY

For Petitioner
For Respondents

: Mr.A.R.Suresh
: Mr.M.Jeyakumar
Additional Government Pleader
(for R1 and R2)
Nr.J.Gunaseelanmuthiah
Additional Government Pleader
(for R3)

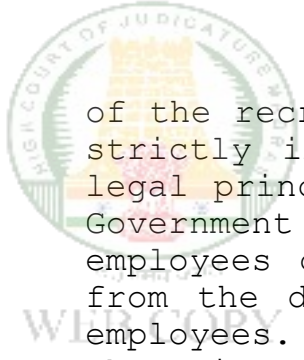
ORDER

The order passed by the third respondent granting the benefit of regularization and the time scale of pay with effect from 01.03.2006, is sought to be quashed.

2.The writ petitioners were initially engaged as daily wage employees on temporary basis. The Government issued an order granting the benefit of regularization and permanent absorption in respect of the daily wage employees who have completed 10 years of service and accordingly proposals were submitted and the case of the writ petitioners were considered by the competent authorities and the services of the writ petitioners were regularised with effect from 01.03.2006. Now, the writ petitioners are working as permanent employees in the regular time scale of pay. However, they have challenged the order of regularization issued in proceeding, dated 28.02.2006, on the ground that they were initially engaged in the year 1998 and 1999 and therefore, they are entitled for retrospective regularization and their services in the time scale of pay.

3.Regularization or permanent absorption cannot be granted in violation of the recruitment rules in force. Admittedly, the writ petitioners were initially engaged as daily wage employees on temporary basis. Thus, the initial appointment of the writ petitioners were irregular and in accordance with the recruitment rules in force. The Government granted the benefit of regularization and permanent absorption as a concession, considering the length of service rendered by all these writ petitioners who were engaged as daily wage employees. Thus, such a concession cannot be granted with retrospective effect when the initial appointment of the writ petitioners were irregular and not in accordance with the recruitment rules in force. The grant of regularization itself was a concession granted by the Government. Under these circumstances, the writ petitioners would claim retrospective regularization with monetary benefit from the date on which, they were engaged as daily wage employees.

4.The Constitution Bench of the Hon'ble Supreme Court of India in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others** reported in (2006) 4 Supreme Court Cases 1, held that irregular and illegal appointments cannot be saved. Mere continuance as a daily wage employee would not confer any right to claim regularisation or permanent absorption, if it is in violation



of the recruitment rules in force. All appointments are to be made strictly in accordance with the rules in force. This being the legal principles to be followed, the one time measure taken by the Government to regularise the service of all these daily wage employees cannot be a ground to claim retrospective regularisation from the date on which, the employees were engaged as daily wage employees. In the present case on hand, it is an admitted fact that the writ petitioners were engaged as daily wage employees. However, the benefit of regularisation and permanent absorption was already granted to the petitioners with effect from 01.03.2006, in the proceeding, dated 28.02.2006. This being the factum, the claim of the writ petitioners for retrospective regularisation with monetary benefits cannot be considered by this Court and the benefit of regularisation already granted to the petitioners in the time scale of pay itself is a one time measure granted by the Government as a concession.

5. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Secretary to Government,
Municipal Administration and Water Supplies Department,
Fort St. George, Chennai-600 009.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.

3. The Commissioner,
Pattukkottai Municipality,
Thanjavur District.

+1 CC to Mr. J. GUNASEELANMUTHIAH, Advocate (SR-84413[F] dated 30/08/2019)

+1 CC to SPL GP (SR-84503[F] dated 30/08/2019)

+1 CC to Mr. A. R. SURESH, Advocate (SR-84730[F] dated 30/08/2019)

W.P. (MD). No. 18351 of 2013
29.08.2019

sjj

MK (17.09.2019) 3P 7C