



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]Nos.14820 & 14821 of 2014

and

M.P.[MD]Nos.1 & 1 of 2014

T.Vijaya : Petitioner in W.P.[MD]No.14820/14
D.Karpagam : Petitioner in W.P.[MD]No.14821/14

Vs.

1.The Director of Backward Class and
Tribal Welfare,
Chennai - 600 005.

2.The District Backward Class and
Tribal Welfare Officer,
Karur.

: Respondents in both Writ Petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writs of Certiorarified Mandamus, calling for the records relating to the second respondent relating to the order of O.Mu.No.M3/15185/2012 dated 31.08.2012, to quash the same and to issue consequential directions to the respondents to regularize the services of the petitioners and place them in regular time scale of pay of Rs.2,550-3,200 with effect from 01.07.1998 and disburse consequential monetary benefits with 18% interest per annum.

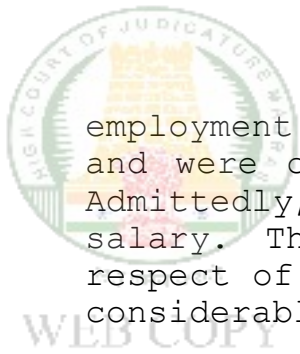
For Petitioners : Mr.M.Ravi

For Respondents : Mr.K.Mu.Muthu
Additional Government Pleader
[In both Writ Petitions]

COMMON ORDER

The order dated 31.08.2012, granting regularisation to the writ petitioners with effect from 2007, is under challenge in the present writ petitions. Further direction is sought for to regularise the services of the writ petitioners in the regular time scale of pay with effect from 01.07.1998 and disburse all consequential benefits with 18% interest.

2.Learned Counsel for the writ petitioners states that the writ petitioners were appointed as Assistant Cook and Cook, through



employment exchange during the years 1997 and 1994, respectively, and were continuing in service for a considerable length of time. Admittedly, the writ petitioners were appointed on consolidated pay salary. The Government granted the benefit of regularisation in respect of these temporary consolidated employees on completion of a considerable length of service.

3. During the relevant point of time, many number of such regular appointees were brought under the regular establishment by way of policy decisions taken by the Government. Subsequently, the Courts were of the opinion that in the event of granting the benefit of regularisation and permanent absorption in respect of these irregular appointees, the equity clause enunciated in the Constitution is violated. The principles in this regard are settled by the Constitution Bench of the Hon'ble Supreme Court of India in the Secretary, State of Karnataka and others Vs. Umadevi (3) and others reported in (2006) 4 Supreme Court Cases 1. Thereafter, the practice of granting such retrospective regularisation as well as the benefit of regularisation or permanent absorption were directed to be stopped by the State as well as by the Union mainly on the ground that the State being an employer must provide equal opportunity of employment to all the eligible candidates who are all aspiring to secure public employment through open competition basis.

4. In the event of granting regularisation to these irregular appointees, the opportunity of all the eligible candidates are denied and the same amounts to violation of Article 14 and 16 of the Constitution of India. The Courts also solely stopped the practice of granting the relief of regularisation by issuing a direction under Article 226 of the Constitution of India. The Supreme Court in the case of Secretary to Government, School Education Department, Chennai Vs. R. Govindaswamy and others reported in (2014) 4 Supreme Court Cases 769, directed that '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.'

5. The Supreme Court held that the High Courts cannot issue any direction to regularise the service of these irregular appointees. This being the developments made by the Constitutional Courts across the country, the earlier precedence now placed before this Court by



the learned Counsel for the writ petitioners is of no avail for the purpose of grant of the relief of retrospective regularisation with monetary benefits with interest at the rate of 18% p.a.

6. Undoubtedly, the relief sought for in the present writ petition is excessive and this Court has to follow the precedence laid down by the Supreme Court recently. Even a wrong precedence cannot be followed for the purpose of granting the relief. The Constitutional Courts are bound to apply the legal principles which are all currently in force. Thus, the principles which were followed earlier cannot be taken as a ground for the purpose of granting the relief of retrospective regularisation with monetary benefits. Admittedly, the writ petitioners were appointed as a consolidated pay employees on temporary basis. Though the appointments were through the employment exchange, it was a consolidated pay appointment and the writ petitioners also accepting the terms and conditions of consolidated pay appointment joined the services. After joining into the service, these petitioners are turning around and claiming all such benefits which are all impermissible under the service rules in force.

7. Thus, a trend has been created that by way of favouritisms and nepotism, one can secure appointment by influential higher officials. After entering into service on temporary basis, they put number of services and thereafter slowly send proposals in an illegal manner for grant of regularisation and permanent absorption. This exactly was described as back-door entry by the Hon'ble Supreme Court. Thus, such a practice, at one point on time was strictly stopped by the Supreme Court mainly on the ground that it is an unconstitutionality and further it is a fraud on the Constitution. Thus, equal opportunity in public employment which is a constitutional mandate must be strictly followed by the competent authorities while undertaking the process of selection and appointment. In such cases, the earlier precedence or a wrong precedence cannot be a ground to allow the writ petitions. In the event of considering such a wrong precedence, the legal principles settled by the Apex Court is not only violated but not followed.

8. The very claim of the writ petitioners for retrospective regularisation is in violation of the settled legal principles in the recent judgment of the High Courts and Supreme Court. Undoubtedly, already the writ petitioners have enjoyed the benefit of regularisation and permanent absorption with effect from the year 2007. The concession already granted itself is in violation of the recruitment rules in force. Thus, the writ petitioners should be satisfied with the concession and lead their life happily. Contrarily, they cannot expect some more concession from the tax payers money from and out of their greediness. This Court is of the considered opinion that the writ petitioners have already enjoyed the concession by getting regularisation with effect from the year 2007 and no further concession is permissible and accordingly, the writ petitions are devoid of merits.



9. Accordingly, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Director of Backward Class and
Tribal Welfare,
Chennai - 600 005.

2. The District Backward Class and
Tribal Welfare Officer,
Karur.

+2 CC to M/s.M.RAVI, Advocate (SR-71840 & 71841 dated 27/06/2019)

+1 CC to M/s.SPL GP (SR-72162[F] dated 28/06/2019)

COMMON ORDER MADE IN
W.P[MD]Nos.14820 & 14821 of 2014
27.06.2019

MR

JMN(09.08.2019) 4P : 6C