



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) No.10818 of 2014

and

M.P. (MD) Nos.2 to 4 of 2014

1.S.Kumaresan
2.Sundaram
3.P.Jeevanandham
4.S.Selvaraj
5.D.Pandiarajan
6.S.Muthulakshmi
7.A.Veerammal
8.R.Lakshmi
9.K.Pancha Varnam

... Petitioners

-Vs-

1.State Represented by its Secretary,
Department of Education,
St. George Fort, Chennai-600 009.

2.The Director of School Education,
O/o. The Director of School Education,
Nungambakkam, Chennai.

3.The Chief Educational Officer,
O/o. Chief Educational Officer,
Near Clock Tower, Madurai Road,
Tiruchirappalli District.

4.The District Educational Officer,
O/o. The District Educational Officer,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the respondent No.4 in Mu.Mu.No.6931/A1/2013 dated 02.09.2013 and quash the same as unconstitutional and direct the respondents to regularize the services of the petitioners from the date of their appointment.

For Petitioners : Mr.A.Rajini

For Respondents : Mrs.S.Srimathy,
Special Government Pleader.



O R D E R

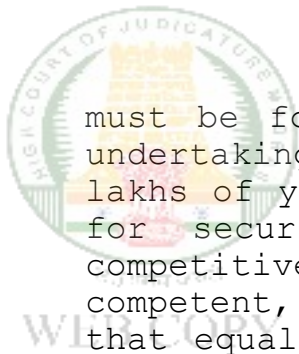
The order of rejection dated 02.09.2013, rejecting the claim of the writ petitioners for regularization and permanent absorption, is under challenge in the present Writ Petition.

2.The writ petitioners 1, 2, 4 & 5 were appointed as Night Watchman in the Government Higher Secondary School, Chokkalingapuram, Melur Taluk, Madurai, Government Kallar Higher Secondary School, Thadayampatti, Peraiyur Taluk, Madurai, Government Girls Highers Secondary School, Thirumangalam, Madurai and Government Boys Higher Secondary School, Thirumangalam, Madurai, respectively. The third writ petitioner was appointed as Office Assistant in the Government Boys Higher Secondary School, Elumalai, Madurai District. The writ petitioners 6 to 9 were appointed as Sweeper in Government Girls Higher Secondary School, Thirumangalam, Madurai, Government Kallar Higher Secondary School, Thadayampatti, Peraiyur Taluk, Madurai, Government Higher Secondary School, Paravai, Madurai and Government Higher Secondary School, T.Kallupatti, Madurai District, respectively.

3.All these writ petitioners were appointed by the Parent Teacher Association and the Head Master of the said school. Initial appointment of the writ petitioners were not made through recruitment process. Contrarily, the writ petitioners were engaged by Parent Teacher Association and the salary was also paid through the funds maintained by the Parent Teacher Association of the respective schools. Thus, the appointments of the writ petitioners were not made by the competent authorities of the Education Department. Appointments made by the Parent Teacher Association cannot be considered as a valid Government appointment made in accordance with the recruitment rules in force.

4.Even the proceedings of the Chief Educational Officer of the year 2010 reveals that the writ petitioners were appointed as Sweepers by Parent Teacher Association. The writ petitioners set out a claim for grant of regularization and permanent absorption. The claim of the writ petitioners were considered by the District Educational Officer and an order was passed in proceeding dated 02.09.2018, which is impugned in the present Writ Petition, stating that the writ petitioners were appointed by Parent Teacher Association and therefore, they cannot be considered for appointment on permanent basis.

5.Regularization or permanent absorption cannot be granted in violation of the recruitment rules in force. All appointments are to be made strictly in accordance with the recruitment rules in force. Equal opportunity in public employment is the constitutional mandate. Equality clause enunciated in the Constitution of India



must be followed scrupulously by the authorities competent, while undertaking the process of selection to the public posts. Lakhs and lakhs of youth of this great nation are burning their midnight life for securing public employment by participating in the open competitive process. This being the situation, the authorities competent, while undertaking the process of selection must ensure that equal opportunity in public employment is provided to all the eligible persons. Thus, the back door appointments can never be allowed nor be appreciated. All such employees, who were appointed through back door in violation of the recruitment rules in force, must be sent out from the back door through which they entered into the public services.

6.This being the principles settled by the Hon'ble Apex Court, this Court is of the considered opinion that the writ petitioners, who were appointed by the Parent Teacher Association, cannot be considered for regular appointment in the sanctioned post in the regular time scale of pay in the Education Department. Regular appointments are to be made strictly by following the procedures contemplated under the recruitment rules. However, in the present case on hand, the writ petitioners were admittedly, appointed through Parent Teacher Association.

7.In this regard, the Constitutional Bench of the Hon'ble Supreme Court of India has settled the legal principles in the case of ***State of Karnataka vs. Umadevi***, reported in **(2006) 4 SCC 1**.

8.The legal principles are once again reiterated by the Hon'ble Supreme Court of India in the case of ***Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others [(2014) 4 SCC 769]***. In paragraph No.(8), the Hon'ble Supreme Court has observed as follows:

"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 5 Page 6 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." (Emphasis added) "

9. The Hon'ble Supreme Court of India held that the High Court cannot issue any direction granting benefit of regularization, if the initial appointment of the employees were not in accordance with the recruitment rules in force. The Hon'ble Supreme Court of India in unequivocal terms held that the High Court cannot issue any direction under Article 226 of the Constitution of India to grant regularization in violation of the recruitment rules in force.



10.This Court is of an opinion that the relief as such sought for in the present Writ Petition to regularize the services of the writ petitioners in the sanctioned post in the regular time scale of pay cannot be granted, as their initial appointment was not made in accordance with the rules and in fact, this illegal appointments were not made even by the competent authorities of the Education Department.

11.This being the factum, the writ petitioners have not established any acceptable legal grounds for considering the relief as such sought for in the present Writ Petition. Thus, the impugned order stands confirmed. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

MR

To

- 1.The Secretary,
Department of Education,
St. George Fort, Chennai-600 009.
- 2.The Director of School Education,
O/o. The Director of School Education,
Nungambakkam, Chennai.
- 3.The Chief Educational Officer,
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JM/18.10.2019/5P/5C