



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.13782 of 2014

- 1.A.Alagu Perumal
- 2.A.Kaliya Perumal
- 3.A.Krishnasamy
- 4.A.Chinnaiah
- 5.K.Subramanian
- 6.C.Samykkannu
- 7.C.Suresh
- 8.P.Subbaiah
- 9.M.Ramachandiran
- 10.R.Subramanian
- 11.A.Vadivelu
- 12.S.Thirupathy
- 13.P.M.Marudhavanan
- 14.M.Rajendran
- 15.S.Salai Kothaiyammal
- 16.M.Saraswathi
- 17.M.Palanisamy
- 18.V.Chandra Kumar
- 19.V.Senthil Kumar
- 20.A.Aandiyappan
- 21.A.Perumal
- 22.P.Rajendran
- 23.V.Gurusamy
- 24.V.Sivakumar
- 25.C.Palanisamy
- 26.C.Subbaiah
- 27.Karpaga Valli
- 28.N.Sankarkumar
- 29.K.Kamalam
- 30.E.Charchil Kumar
- 31.M.Muthukumar
- 32.R.Karunakaran
- 33.S.Rajesh
- 34.P.Sakthivel
- 35.A.Sampath
- 36.N.Arunachalam
- 37.P.Velmurugan
- 38.N.Rajapathar

... Petitioners

-Vs-



- 1.The State through the
Secretary to the Government of Tami Nadu,
Department of Personal Administrative and Reform,
St. George Fort, Chennai-600 009.
- 2.The State through the
Secretary to the Government of Tamil Nadu,
Department of Finance,
St. George Fort, Chennai-600 009.
- 3.The State through the
Secretary to the Government of Tamil Nadu,
Department of Agriculture,
St. George Fort, Chennai-600 009.
- 4.The Director of Agriculture,
Chepauk, Chennai-600 005.
- 5.The Joint Director of Agriculture,
Pudhukottai District.
- 6.The Joint Director of Agriculture,
Tirunelveli District.
- 7.The Joint Director of Agriculture,
C.V. Raman Street,
Rajajipuram, Thiruvallur.
- 8.The Joint Director of Agriculture,
Cuddalore District.
- 9.The Joint Director of Agriculture,
Namakkal District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration, declaring the Government Order in G.O.Ms.No.74, dated 27.06.2013 issued by the first respondent is ultra vires the constitution as violative of Articles 14, 16, 21 and Directive principles in Articles 38 and 39 and directing the fourth respondent to regularize the service of the petitioners in the time scale of pay with effect from the date of their initial appointment with all monetary attending benefits and service benefits by considering their length of service and in the light of Government Orders passed in G.O.Ms.No.122, dated 11.06.2010, G.O.(3d) No.112, dated 05.06.2013 and G.O.(2d)No.85, dated 15.06.2013.

For Petitioners : Mr.K.Kannan
For Respondents : Mr.S.Dhayalan,
Government Advocate.

**ORDER**

The relief sought for in the present Writ Petition is for declaration to declare that the Government Order passed in G.O.Ms.No.74, dated 27.06.2013 issued by the first respondent is ultra vires to the Constitution and violative of Articles 14, 16 and 21 of the Constitution of India and directive principles in Articles 38 and 39 and to direct the fourth respondent to regularize the service of the writ petitioners in the time scale of pay with effect from the date of their initial appointment.

2.All these writ petitioners are seeking regularization and permanent absorption in the sanctioned post in the regular time scale of pay.

3.The learned counsel appearing on behalf of the writ petitioners states that the writ petitioners were engaged as Class-IV workers under the various wings of the Agriculture Department in various districts on full time daily wage basis. They are working for a considerable length of time as daily wage employees and uninterruptedly, for more than 15 years. The Government issued G.O.Ms.No.22, dated 28.02.2006, granting benefit of regularization in respect of such daily wage employees on completion of 10 years of service as on 01.01.2006.

4.It is stated that the case of the writ petitioners are also to be considered by virtue of G.O.Ms.No.22, dated 28.02.2006. Contrarily, the said Government Order was withdrawn by the Government and modified Government Order was issued in G.O.Ms.No.74, dated 27.06.2013, which is impugned in the present Writ Petition.

5.It is contended that G.O.Ms.No.74, is unconstitutional, because certain conditions are imposed for grant of regularization and permanent absorption. On account of the conditions imposed, the writ petitioners are unable to get the benefit of regularization and permanent absorption. The Government Order issued in G.O.Ms.No.74, states that all the persons engaged must be appointed through employment exchange and other criterias are also fixed. The writ petitioners were engaged on daily wage basis and on account of certain conditions imposed in the Government Order in G.O.Ms.No.74, their cases are not considered for grant of regularization and permanent absorption.

6.The learned Government Advocate appearing on behalf of the respondents states that all these writ petitioners were appointed as daily wage employees. At no point of time, they were engaged in a sanctioned post in the time scale of pay. Accepting the terms and conditions, they continued as daily wage employees. As per the Government Order issued in G.O.Ms.No.74, these writ petitioners are not eligible for permanent absorption or regularization. The



factual details in this regard are enumerated in paragraph No.6 of the counter affidavit filed by the respondents, which is extracted hereunder:-

"6.It is submitted that all the petitioners are not appointed through employment exchange as contemplated in the rules as they are not worked in the sanctioned post as stated by the petitioner. They were engaged for the work as when the need arises. As such the matter of date of joining does not arise as stated by the petitioners. For example, the 13th and 14th were not attended duty for a couple of years. As yet another example the 8th petitioner are not attending duty for a long period as on date. It is evident that the petitioners are engaged as and when work is available by the respondents herein. The petitioners also attending as and when they are not having any other work. No respondents are expected to attend the work by the petitioner compulsorily and vice versa. It is further submitted that in a year some of the petitioners had not worked even an single day and as such they were engaged and worked for 15 years as stated by the petitioners does not arise. It is also submitted that the petitioners cannot claim the prayer for regularization of their services as per the orders issued in G.O.Ms.No.122, dated 11.06.2010 petitioners herein have not completed 10 years as daily wages as on 01.01.2006 as per the norms issued in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. It is also submitted that the petitioners cannot claim the prayer of regularization of their services as per the orders had been issued G.O. (2D) No.85, Agriculture (AA-4) Department dated 15.06.2013 as per the observations of the Hon'ble Supreme Court in Col.B.J.Akkara (Retd) Vs. Government of India reported in (2006) 11 SCC 709. It is submitted that the petitioners herein stating that 33 similarly placed employees were regularized in the time scale of pay and all are juniors to the petitioners are not correct. In the instant case, all the petitioners have not completed 10 years, and not engaged through employment exchange and also they were not engaged in the sanctioned post as ordered by the Government in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006. As such the question of citing the Government Orders passed in G.O.Ms.No.122, dated 11.06.2010, G.O.(3d) NO.112, dated 05.06.2013 and G.O.(2d)No.85, dated 15.06.2013."

7.This Court is of the considered opinion that in respect of the Government Orders issued in G.O.Ms.No.22 as well as G.O.Ms.No.74, the Constitution Bench of the Hon'ble Supreme Court of



India settled the legal principles to be followed for the purpose of granting regularization and permanent absorption. Even the Government Orders if any run counter to the legal principles settled by the Apex Court, the Government Order cannot be given effect to. Thus, all such Government Orders issued in violation of the legal principles settled by the Hon'ble Supreme Court of India becomes null and void and even in Paragraph No.54 of the judgment in the case of in Uma Devi, it is unambiguously narrated that all the judgments and orders running counter to the legal principles settled by the Constitution Bench are denuded of their status as precedent. Thus, any orders passed by the Courts or Government if run counter to the principles settled by the Constitution Bench, the same cannot be relied upon. Therefore, even the Government Order issued in G.O.Ms.No.74, is to be decided with reference to the legal principles settled by the Hon'ble Supreme Court of India. If at all any of the conditions for grant of regularization found to be violative of the principles settled, then all such conditions cannot be implemented nor be relied upon for the purpose of grant of regularization and permanent absorption.

8.As far as the case of the writ petitioners are concerned, admittedly, they were engaged as daily wage employees. At no point of time, they were allowed in sanctioned post in the regular time scale of pay. In view of the fact that the writ petitioners are working on daily wage basis in Government Agricultural Firms as well as in Fertilizers and in other wings of the Agricultural Department, the benefit of regularization or permanent absorption cannot be granted. Only in the event of selection by following the procedures contemplated in the recruitment rules, the service of the writ petitioners can be regularized and not otherwise. The writ petitioners were initially appointed not in accordance with the rules in force. Thus, the engagements were irregular. Under these circumstances, it is relevant to cite the judgment 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.

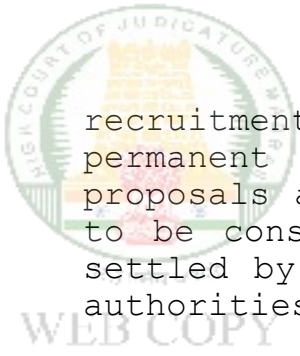
(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long 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. In view of the facts and circumstances that the initial appointment of the writ petitioners were irregular and they were engaged as daily wage employees and not in accordance with the



recruitment rules in force, the benefit of regularization and permanent absorption cannot be granted. Even in cases, where the proposals are submitted with reference to G.O.Ms.No.74, the same is to be considered strictly in accordance with the legal principles settled by the Hon'ble Supreme Court of India and by the competent authorities.

10.This being the legal principles to be followed, the benefit of regularization or permanent absorption as such sought for in the present Writ Petition cannot be granted.

11.Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Secretary to the Government of Tami Nadu,
Department of Personal Administrative and Reform,
St. George Fort, Chennai-600 009.
- 2.The Secretary to the Government of Tamil Nadu,
Department of Finance,
St. George Fort, Chennai-600 009.
- 3.The Secretary to the Government of Tamil Nadu,
Department of Agriculture,
St. George Fort, Chennai-600 009.
- 4.The Director of Agriculture,
Chepauk, Chennai-600 005.
- 5.The Joint Director of Agriculture,
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- 6.The Joint Director of Agriculture,
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- 7.The Joint Director of Agriculture,
C.V. Raman Street,
Rajajipuram, Thiruvallur.



8.The Joint Director of Agriculture,
Cuddalore District.

9.The Joint Director of Agriculture,
Namakkal District.

+1 CC to M/s.K.K.KANNAN, Advocate (SR-79556[F] dated 02/08/2019)

+1 CC to M/s.SPL GP (SR-79734[F] dated 05/08/2019)

W.P. (MD) No.13782 of 2014
02.08.2019

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