



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.17175 of 2014

G.Rajammal

... Petitioner

-Vs-

1.The Secretary to Government,
Education Department,
Secretariat, St. George Fort,
Chennai.

2.The Director of School Education,
College Road, Nungambakkam,
Chennai-600 006.

3.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

4.The District Educational Officer,
Kuzhithurai at Marthandam,
Kanniyakumari District.

5.The Assistant Educational Officer,
Munchirai Circle,
Kanyakumari District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 22.09.2014 and to regularise the service of the petitioner as full time sweeper on completion of 10 years of service from 14.05.1963 and to pay time scale of pay and other benefits payable from 14.05.1973 and consider in the light of G.O.Ms.No.247, dated 03.10.2012.

For Petitioner

: Mr.C.G.Ganesh Kumar

For Respondents

: Mrs.S.Srimathy,
Special Government Pleader.

ORDER

The relief sought for in the present Writ Petition is for a direction to direct the respondents to consider the representation submitted by the writ petitioner, dated 22.09.2014 and to regularise the service of the writ petitioner as full time sweeper on completion of 10 years of service from 14.05.1963 and to pay time scale of pay and other benefits payable from 14.05.1973 and consider in the light of G.O.Ms.No.247, dated 03.10.2012.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was appointed as part time Sweeper in Government Middle School, Vengachi, Kuzhithurai, Kanyakumari District, on 14.05.1963 through employment exchange. Even at the time of filing of the Writ Petition, the writ petitioner was aged about 68 years and now, she would be around 73 years. The benefit of regularisation is sought for by the writ petitioner at the age of 68 years and after attaining the age of superannuation.

3.Admittedly, the writ petitioner was serving as part time Sweeper in Government Middle School, Vengachi, Kuzhithurai, Kanyakumari District and the Government Order issued in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, is not applicable in respect of the part time Sweeper.

4.This apart, the said Government Order had already been withdrawn and the benefit of regularisation and permanent absorption now cannot be granted in violation of the recruitment rules in force. In respect of part time Sweepers in Government Departments, the Hon'ble Supreme Court of India has settled the principles 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



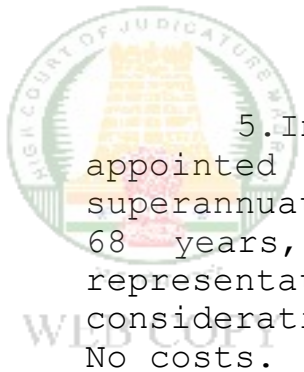
clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the 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 statute or under a statute." (Emphasis added) "



5. In view of the fact that the writ petitioner was appointed as part time Sweeper and attained the age of superannuation and the Writ Petition itself is filed at the age of 68 years, the relief as such sought for to consider the representation for grant of regularisation, deserves no merit consideration. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (A.S)

// True Copy //

Sub Assistant Registrar (CS)

To

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