



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.18598 of 2014

S.Tamilmani

... Petitioner

-Vs-

1. The Secretary to Government,
Department of School Education,
Secretariat, Fort. St. George,
Chennai.
2. The Director of School Education,
Chennai.
3. The District Educational Officer,
Aranthangi, Pudukkottai District.
4. The Headmaster,
Government Higher Secondary School,
Kulamangalam North,
Alangudi Taluk,
Pudukkottai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to regularize the services of the petitioner as per G.O.Ms.No.22, personnel and Administrative Reforms (F) Department, dated 28.02.2006, from date of appointment of the petitioner based upon the representation dated 10.07.2014 with all monetary and service benefit.

For Petitioner : Mr.M.Suresh

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 regularize the services of the petitioner as per G.O.Ms.No.22, personnel and Administrative Reforms (F) Department, dated 28.02.2006, from the date of



appointment of the writ petitioner based upon the representation dated 10.07.2014.

2. Even as per the affidavit filed in support of the writ petition, the writ petitioner states that he was appointed as part-time Sweeper through Employment Exchange in the fourth respondent / Government Higher Secondary School. The writ petitioner joined duty on 10.03.1995 and was working for a considerable length of time. The writ petitioner states that the Government issued G.O.Ms.No.22, personnel and Administrative Reforms (F) Department, dated 28.02.2006, granting the benefit of regularisation in respect of the temporary employees who have completed ten years of service as on 01.01.2006. Thus, the writ petitioner is also entitled for regularisation with reference to the Government Order issued in G.O.Ms.No.22.

3. The learned Special Government Pleader appearing on behalf of the respondents opposed the contentions by stating that the writ petitioner is not entitled to avail the benefit of G.O.Ms.No.22, as the writ petitioner was engaged as part-time Sweeper and the part-time Sweeper are not covered under the said Government Order. This apart, G.O.Ms.No.22 had already been withdrawn and modified Government Order G.O.Ms.No.74 was issued imposing certain conditions. Even as per the said G.O.Ms.No.74, the petitioner is not entitled for the benefit of regularisation and permanent absorption.

4. This Court is of the opinion that initial appointment of the writ petitioner was not in accordance with the recruitment rules in force. The writ petitioner was engaged as part-time Sweeper on temporary basis. Thus, the benefit of regularisation or permanent absorption cannot be granted in violation of the recruitment rules in force. Equal opportunity in public employment is a constitutional mandate. All appointments are to be made strictly in accordance with the recruitment rules in force. This Court is of the considered opinion that in the matter of grant of regularisation or permanent absorption, the legal principles are now settled by the Constitution Bench of the Hon'ble Supreme Court of India, in the case of the **Secretary, State of Karnataka and others Vs. Umadevi (3) and others** reported in (2006) 4 Supreme Court Cases 1.

5. This apart in respect of part-time Sweepers in Education Department, the Hon'ble Supreme Court has settled the principles in the case of **Secretary to Government, School Education Department, Chennai .vs. R.Govindasamy** reported in (2014) 4 SCC 769 is extracted hereunder:



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: (SCC P.435, para 12)

"(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 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 supplied)

6.As per the Judgment of the Hon'ble Apex Court cited *supra*, the part-time Sweepers employed in the public department are not entitled for the benefit of regularisation and permanent absorption, in view of the fact that the initial engagement was not in accordance with the recruitment rules in force and further, the part-time Sweepers cannot be appointed in a sanctioned post in the regular time scale of pay in violation of the rules in force.

7.Accordingly, the Writ Petition is devoid of merits and stands dismissed. No costs.

Sd/-

Assistant Registrar

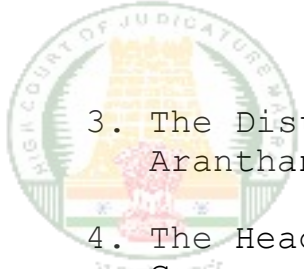
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Sub Assistant Registrar(CS)

To

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

2. The Director of School Education,
Chennai.



3. The District Educational Officer,
Aranthangi, Pudukkottai District.

4. The Headmaster,
Government Higher Secondary School,
Kulamangalam North,
Alangudi Taluk,
Pudukkottai District.

+1 CC to SPECIAL GOVERNMENT PLEADER (SR-77761[F] dated
25/07/2019)

+1 CC to Mr.M.SURESH, Advocate (SR-78055[F] dated 26/07/2019)

W.P. (MD) .No.18598 of 2014
24.07.2019

sjj
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