



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.2501 of 2014

S.Ramasamy

... Petitioner

Vs.

1.The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai-600 009.

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

3.The District Educational Officer,
Karur,
Karur District.

4.The Headmaster,
Government High School,
Kattalai,
Karur District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein in his proceedings in அ.து.மு.எண் .5270/அ1/2012, dated 20.06.2013 and quash the same and consequently direct the respondents herein to regularize the service of the petitioner in time scale of pay as per G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006 with all monetary benefits.

For Petitioner : Mr.M.Gururaj

For Respondents : Mr.VR.Shanmuganathan,
Special Government Pleader

ORDER

The order of rejection, dated 20.06.2013 rejecting the claim of the writ petitioner for grant of regularisation and permanent absorption is under challenge in the present writ petition.



2. The writ petitioner was appointed as part time sweeper in the fourth respondent school on 21.04.1984 and working for a considerable length of time. Based on the length of services rendered, the learned counsel for the petitioner states that the Government Order issued in G.O.Ms.22, Personnel and Administrative Reforms, dated 28.02.2006 is to be extended for the purpose of grant of regularisation to the writ petitioner. The Government issued orders in G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006 stating that the temporary employees who have served for more than 10 years as on 1.1.2006 shall be brought under the regular establishment. The said Government Order was withdrawn and modified Government Order was issued in G.O.Ms.No.74 imposing certain conditions. However, the fact remains that the writ petitioner was engaged as a part time employee. When the initial appointment of the writ petitioner was as part time sweeper and he was not appointed in accordance with the recruitment rules in force, the benefit of regularisation cannot be granted. This apart, the benefit of G.O.Ms.No.22 cannot be extended in view of the fact that the writ petitioner was serving as part time sweeper and in respect of such part time sweeper, the Hon'ble Supreme Court of India settled the legal principles in the case of **Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others** reported in (2014) 4 Supreme Court Cases 769, held that:

'8. This Court in State of Rajasthan .vs. Daya lal has considered the scope of regularization 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 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 regularization of services of an employee which would be violative of the constitutional scheme.'

3. This apart, the grant of regularisation or permanent absorption cannot be granted in violation of the recruitment rules in force. The High Court also cannot issue any direction to regularise the services of the part time employees who were not appointed in accordance with the recruitment rules in force, in view of the fact that the legal principles are settled in the case of

Secretary, State of Karnataka and others Vs. Umadevi (3) and others



reported in (2006) 4 Supreme Court Cases 1 and the above case of **Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others** reported in (2014) 4 Supreme Court Cases 769 also similar to the facts and circumstances narrated in the present writ petition. The relief as such sought to grant regularisation cannot be considered.

4. Thus, there is no infirmity in the impugned order and consequently, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Secretary to Government,
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