



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) Nos. 4911 to 4913 of 2014

and

M.P. (MD) Nos. 2, 2 and 2 of 2014

WEB COPY

1. Muthu
2. N. Kanagabai
3. D. Ramalakshmi ... Petitioners in W.P. (MD) No. 4911 of 2014

1. S. Chelliah
2. R. Ragavan
3. A. Paulpandi
4. J. Sundari
5. R. Pillaiyar
6. C. Vijaya ... Petitioners in W.P. (MD) No. 4912 of 2014

1. K. Muniyaeswari
2. M. Servai
3. S. Pattathi
4. Thiruvenkadam
5. J. Utthami
6. S. Velliammal
7. P. Muniammal
8. K. Esakkiammal
9. C. Mariappan
10. A. Parvathi
11. R. Lakshmi
12. Shamugavel
13. S. Pushpam ... Petitioners in W.P. (MD) No. 4913 of 2014
-Vs-

1. The Principal Secretary to Government,
Home (Police XV) Department,
Secretariat, Chennai-9.
2. The Director General of Police,
Office of the Director General of Police,
Police Head Quarters, Chennai. ... Respondents 1 and 2
in all Writ Petitions
3. The Superintendent of Police,
Kanyakumari District, Nagercoil. ... 3rd Respondent
in W.P. (MD) No. 4911 of 2014
3. The Superintendent of Police,
Virudhunagar District, Virudhunagar. ... 3rd Respondent
in W.P. (MD) No. 4912 of 2014



3. The Commissioner of Police,
Tirunelveli City, Tirunelveli.

4. The Superintendent of Police,
Tirunelveli District, Tirunelveli.

... Respondents 3 and 4
in W.P. (MD) No. 4913 of 2014

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COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings in G.O.Ms.No.653, Home (Police XV) Department, dated 07.08.2009 and quash the same as illegal, violation of Principles of law and Article 14 of the Constitution of India and further direct the respondents to regularize the employment of the writ petitioners from the period of three years from the date of appointment within the stipulated period.

For Petitioner : Mr.G.Marimuthu
(in all Writ Petitions)
For Respondent : Mr.M.Jeyakumar,
(in all Writ Petitions) Additional Government Pleader.

COMMON ORDER

The Government Order issued in G.O.Ms.No.653, Home (Police XV) Department, dated 07.08.2009 is sought to be quashed in the present Writ Petitions.

2. The Government Order states that the sweepers working more than 10 years in the Police Department under the non-standard time scale of pay, shall be brought under the regular establishment and their services may be regularized. Pursuant to the Government Order, 1149 part time sweepers working in the Police Department were considered. However, the said order is sought to be quashed in the present Writ Petitions.

3. In W.P. (MD) No. 4911 of 2014, the first writ petitioner was working as part time Sweeper in Pudhukadai Police Station from 01.01.1980. The second writ petitioner was working as part time Sweeper in the DSP Camp Office, Nagercoil from 27.09.1985 and the third writ petitioner was working as part time Sweeper in the Kanyakumari Police Station from 18.03.1980.

4. The learned counsel appearing on behalf of the writ petitioners states that all these writ petitioners are working as part time Sweepers for a considerable length of time and therefore, their services are to be regularised. Though they are working for number of years, their names were not included by the Government in G.O.Ms.No.653, Home (Police XV) Department, dated 07.08.2009. Thus, the writ petitioners have chosen to challenge the Government Orders.



5.This Court is of the considered opinion that even the Government Order, granting regularization in respect of the illegal and irregular appointments, is unconstitutional, the benefit of regularization and permanent absorption can be granted only in respect of the appointments made in accordance with the recruitment rules in force. Thus, the Government Orders running counter to the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India cannot be executed for the purpose of granting relief in the present Writ Petitions. Once the Constitution Bench of the Hon'ble Supreme Court of India settled the legal principles, it becomes law under Article 141 of the Constitution of India and the Courts are bound by such judgments. Thus, any Government Order running counter to the legal principles settled by the Hon'ble Apex Court cannot be adopted or followed for the purpose of granting relief on the similar lines.

6.Admittedly, the writ petitioners were appointed as part time Sweepers in police stations and they were not appointed in accordance with the recruitment rules in force. The initial engagement of the writ petitioners as part time Sweepers was irregular and furthermore, the engagement itself was on part time basis. Thus, the benefit of regularization or permanent absorption cannot be granted, in view of the fact that the writ petitioners were not appointed by following the procedures contemplated under the Rules.

7.Equal opportunity in public employment is the Constitutional mandate. Equality clause enunciated in the Constitution of India must be followed, at the time of undertaking the process of selection for appointment to the public posts. Equal opportunity must be provided without any violation. The competent authorities at the time of undertaking the process of selection must ensure that equal opportunity is provided to all the eligible candidates, who are all aspiring to secure public employment through open competitive process. Thus, the back door entrants into the public service cannot claim the benefit of regularization or permanent absorption, the persons engaged through back door entrance must be allowed to go from which they are entered into.

8.This being the principles to be followed, the writ petitioners, who were engaged as part time Sweepers, cannot seek benefit of regularization and permanent absorption. The legal principles are already settled by the Constitution Bench in the case of **Secretary, State of Karnataka and others Vs. Umadevi and others** reported in (2006) 4 SCC (1).



9. 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 contract or under a statute." (Emphasis added) "

10.This being the factum, this Court cannot issue any direction granting benefit of regularization or permanent absorption in violation of the legal principles settled. Accordingly, the writ petitioners have not established any acceptable legal ground for the purpose of granting the relief as such sought for in the present Writ Petitions.

11.Accordingly, these Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The Principal Secretary to Government,
Home (Police XV) Department,
Secretariat, Chennai-9.

2.The Director General of Police,
Office of the Director General of Police,
Police Head Quarters, Chennai.

3.The Superintendent of Police,
Kanyakumari District, Nagercoil.



4. The Superintendent of Police,
Virudhunagar District, Virudhunagar.

5. The Commissioner of Police,
Tirunelveli City, Tirunelveli.

6. The Superintendent of Police,
Tirunelveli District, Tirunelveli.

+3CC TO MR.G.M.LAW OFFICE, Advocate Sr. No.79593, 79592 & 79590
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 79705

W.P. (MD) Nos. 4911 to 4913 of 2014

SCR(CO)

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