

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 18.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P.(MD)No.6246 of 2014****WEB COPY**

C.Rajammal

... Petitioner

-Vs-

1. The Secretary to Government,
School Education,
Chennai.
2. The Director of School Education,
Chennai-600 006.
3. The Chief Educational Officer,
Nagercoil.
4. The District Education Officer,
Kuzhithurai, Marthandam,
Kanyakumari District.
5. The Headmaster,
Government P.V.Primary School,
Maruthencode, Kanyakumari District.
6. The Headmaster,
Government Higher Secondary School,
Vilavancode, Kanyakumari District.

... Respondents

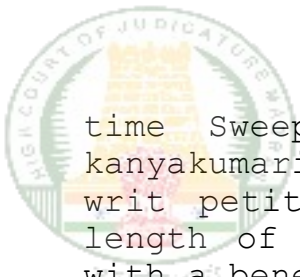
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to regularise the services of the petitioner in the permanent post with effect from the petitioner's initial date of appointment on 02.09.1988 in the regular time scale of pay with all attendant monetary and other service benefits.

For Petitioner	: Mr.D.Anbarasu
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 regularise the services of the writ petitioner in the promotion post with effect from the petitioner's initial date of appointment on 02.09.1988 in the regular time scale of pay with all attendant monetary and other service benefits.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was appointed as part



time Sweeper in Government P.V. Primary School, Maruthencode, kanyakumari District on 02.09.1988 by the fourth respondent. The writ petitioner contends that she has worked for a considerable length of time about 26 years and therefore, she must be granted with a benefit of regularisation and permanent absorption.

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3.The learned counsel appearing on behalf of the writ petitioner states that the Government issued G.O.Ms.No.22, Personnel and Administration Department, dated 28.02.2006, granting benefit of regularisation in respect of the temporary employees, who have completed 10 years of service as on 01.01.2006. Therefore, the benefit of regularisation is to be extended to the writ petitioner.

4.The learned Special Government Pleader appearing on behalf of the respondents states that the writ petitioner was engaged as part time Sweeper on daily wage basis. Therefore, she is not entitled to get benefit of regularisation even with reference to the Government Orders. Part time Sweeper, who is employed in Government School on daily wage basis, cannot be considered for grant of permanent absorption with reference to the rules and even as per the policy of the Government. This apart, the Government Order issued in G.O.Ms.No.22, had already been withdrawn by the Government.

5.This Court is of the considered opinion that in respect of the part time Sweeper employees in Government Schools, Library etc., the Hon'ble Supreme Court of India considered the issues and passed an order 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 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) "

6. In view of the judgment of the Hon'ble Supreme Court of India, the benefit of regularisation cannot be granted in favour of the writ petitioner and accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (AE)

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+1 CC to SPL GP (SR-76358[F] dated 19/07/2019)

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18.07.2019

MYR

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