



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P (MD) .Nos.22329 and 22330 of 2015

W.P (MD) .No.22329 of 2015:

V.Alagarsamy

...Petitioner

Vs.

- 1.The Government of Tamil Nadu
Rep.by its Principal Secretary,
Department of School Education,
Fort St.George, Chennai - 9.
- 2.The Director of School Education,
(Personnel -II), DPI Compound,
College Road, Chennai - 6.
- 3.The Chief Educational Officer,
Dindigul.
- 4.The District Educational Office,
Pazhani.
- 5.Ayyalur Government Higher Secondary School,
Rep.by its Headmaster, Ayyalur Post,
Dindigul District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 1st respondent in Letter No.23638/NeeVa.3(2)/2014-5A dated 03.07.2015, quash the same and consequently direct the 1st respondent to issue forthwith orders regularizing the services of the petitioner as full-time Sweeper with time-scale of pay from the date from which they other similarly placed part-time Sweepers were given the benefit of regularization as full-time employees with time scale of pay, with all other monetary and other consequential benefits by granting necessary relaxation to the rules, awards costs.

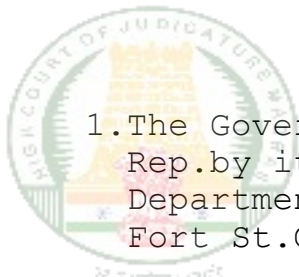
W.P (MD) .No.22330 of 2015:

R.Ammakannu

<https://hcservices.ecourts.gov.in/hcservices/>

... Petitioner

Vs.



1.The Government of TamilNadu
Rep.by its Secretary,
Department of School Education,
Fort St.George, Chennai - 9.

2.The Director of School Education,
(Personnel -II), DPI Compound,
College Road, Chennai - 6.

3.The District Educational Officer,
Thanjavur.

4.Peravurani Government Higher Secondary School,
Rep.by its Headmaster,
Peravurani, Thanjavur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus, directing the 1st Respondent to issue forth with orders regularizing the services of the petitioner as full-time Sweeper with time scale of pay from the date from which the other similarly placed part-time sweepers were given the benefit or regularization as full-time employees with time scale of pay, with all other monetary and other consequential benefits by granting necessary relaxation to the rules, award costs and thus render justice.

For petitioners : Mr.N.Sivakumar
(in both petitions)

For Respondents : Mrs.S.Srimathy,
(in both petitions) Special Government Pleader

COMMON ORDER

In W.P.(MD)No.22329 of 2015, the order of rejection, dated 03.07.2015, rejecting the claim of the writ petitioner for grant of regularization of permanent absorption in the sanctioned post in the time scale of pay, is under challenge in the present writ petition.

2.In W.P.(MD)No.22330 of 2015, the relief sought for in the present writ petition is for a direction to direct the 1st respondent to issue forth with orders regularizing the services of the petitioner as full-time Sweeper with time scale of pay from the date from on which the other similarly placed part-time sweepers were given the benefit of regularization as full-time employees with time scale of pay.

3.The writ petitioners were engaged as part-time Sweepers in the fifth respondent school and was continuously working. Admittedly, the writ petitioners were engaged as a part-time Sweeper

dated 10.1
absorption

5. This Court is of the considered opinion, in respect of the part-time Sweepers in Government Schools in the State of Tamil Nadu, more specifically, in Education Department, the Hon'ble Supreme Court has decided the issue relating to the regularization and permanent absorption, in the case of **Secretary to Government, School Education Department, Chennai Vs. R. Govindaswamy and others** reported in (2014) 4 SCC 769 the relevant paragraph is extracted hereunder:-

"(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 services rendered in those services/ineligible candidates cannot be regularised.

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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. The above judgment of Hon'ble Supreme Court was based on the judgment of 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***. Therefore, this Court is of the considered opinion that the part-time Sweepers, who all are working in Government Schools in Education Department are not entitled for regularisation and permanent absorption and all appointments to the regular post ought to be made strictly in accordance with the recruitment rules in force. This being the legal principles settled by the Hon'ble Apex Court, the benefit of regularization cannot be granted to the present writ petitioners. Accordingly, these Writ Petitions stand dismissed. No costs.

Sd/-

Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Principal Secretary,
Government of Tamil Nadu
<https://hcservices.ecourts.gov.in/hcservices/>
Department of School Education,
Fort St. George, Chennai - 9.



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Peravurani, Thanjavur District.

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12.07.2019

SJI
JM/05.08.2019/5P-8C