



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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W.P. (MD) No.4085 of 2015

and

M.P. (MD) Nos.2 & 3 of 2015

- 1.B.Raja
- 2.M.Bakrudeen Ali Ahamed
- 3.R.Eswari Anitha
- 4.S.Vinothkumar
- 5.K.Thirumalai Ragavan
- 6.M.Selva Lakshmi
- 7.A.Senthilkumar
- 8.M.Taj Mohamed
- 9.M.B.Jegara Begum
- 10.R.Tamilarasan
- 11.B.Vasanth

... Petitioners

vs.

- 1.The State rep.by its
Principal Secretary to Government
Municipal Administration and
Water Supply Department
Secretariat, Chennai-9
- 2.The Commissioner of Municipal Administration
Chepauk, Chennai-600 005.
- 3.The Commissioner
Madurai Corporation, Madurai

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus forbearing the 3rd Respondent filling up the posts of Un-skilled workers in the Madurai Corporation from open market till the final order to be passed by the 1st respondent on the proposal submitted by the 3rd Respondent in Ma.Ni.1/08167/2012 dated 08.09.2014 and consequently direct the respondents to absorb the petitioners in regular time scale either in their respective cadre or any other equivalent cadre as per their qualification and regularize the services of the petitioners with all attendant and monetary benefits from the date of their initial appointment.



For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.K.Mu.Muthu

Additional Government Pleader for R1 & R2
Mr.R.Murali for R3

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ORDER

The relief sought for in the present writ petition is to forbear the third respondent from filling-up the post of Unskilled Workers in Madurai Corporation from open market till the final order is passed by the first respondent, on the proposal submitted by the third respondent in Ma.Ni.1/08167/2012, dated 08.09.2014 and to direct the respondents to absorb the writ petitioners in regular time scale of pay either in their respective cadres or in any other equivalent cadres, as per their qualifications and regularize their services.

2. All the writ petitioners were selected and appointed as Overhead Tank Operator, Bill Collector, Record Clerk, Conservancy Supervisor and Computer Operator, in Melamadai, Thiruppalai, Kannanendal and Vandiyur Village Panchayats, Madurai District, on consolidated pay.

3. The learned counsel appearing for the writ petitioners states that all these writ petitioners were initially appointed on consolidated pay and they were continuously working as such for number of years. On account of the merger of these Village Panchayats with Madurai Corporation, the writ petitioners were made to work under the control of Madurai Corporation. However, the benefits of regularization and permanent absorption were not granted to them. Thus, they are constrained to file the present writ petition.

4. The case of the writ petitioners was recommended by the third respondent for grant of regularization, vide proposal dated 08.09.2014. Though the proposal was made in the year 2014 by third respondent to the first respondent, the proposal is kept pending till date without passing any final orders.

5. The learned counsel appearing for the third respondent opposed the contentions of the writ petitioners by stating that admittedly, the employees of these Panchayats were brought under the establishment of Madurai Corporation. While merging the Village Panchayats along with Madurai Corporation, the regular employees appointed in accordance with the recruitment rules in force, were permanently absorbed in Madurai Corporation. However, the temporary employees, consolidated pay employees and daily wage employees, who were not appointed in accordance with the recruitment rules, were not absorbed as Madurai Corporation employees. In respect of those employees, the third respondent also submitted a proposal to the Government to consider their case for regularization. However, the proposal is kept pending.



6. The learned counsel for the third respondent states that the interim order granted in this writ petition is operating against Madurai Corporation and in view of that, the Corporation is unable to recruit candidates for Unskilled Posts for the past 5 ½ years. The Corporation is unable to run the establishment smoothly. The interim order granted is causing great prejudice for running of the effective administration. Thus, the vacate stay petition was also filed, which was not taken up for hearing during the appropriate time.

7. This Court is of the considered opinion that whenever an interim order of stay is granted in a writ petition, the Registry of the High Court should ensure that the vacate stay petitions numbered are listed before the appropriate Courts for hearing within a period of two weeks from the date of its numbering. If such procedure is not followed, the litigant public will be put to great loss and in such cases, the public administration will also suffer. In this regard, this Court has considered and earlier issued directions to the Registry and based on the directions of this Court, the Registrar General, High Court of Madras, also issued a Circular in R.O.C.No.66574-A/2018/F1, dated 01.10.2018, to the Registry stating that whenever vacate stay petitions are filed and numbered, the same are to be listed within a period of two weeks from the date of its numbering, before the appropriate Courts for hearing. Such a direction / circular has not been followed by the Madurai Bench of Madras High Court.

8. The circular was issued during the year 2018 pursuant to the judicial orders passed by this Court. However, even thereafter, the vacate stay petitions pending before the Madurai Bench of Madras High Court are not listed for hearing before the appropriate Courts. Thus, the Registrar (Judicial), Madurai Bench of Madras High Court, Madurai, is directed to implement the above said Circular scrupulously by issuing suitable instructions to the Registry officials. Hereafter, the vacate stay petitions numbered should be listed for hearing before the appropriate Courts for hearing within a period of two weeks from the date of its numbering.

9. As far as the present writ petition is concerned, admittedly, the writ petitioners were appointed on consolidated pay or daily wage basis. Admittedly, the third respondent sent a proposal to the first respondent to consider the case of the writ petitioners for grant of regularization. However, it is left open to the first respondent to consider the proposal and take a decision with reference to the rules in force.

10. However, the High Courts cannot issue a direction to the authority concerned to regularize the services of the employees, like, the writ petitioners in view of the directions issued by the Honourable Supreme Court of India, in the case of **Secretary to Government, School Education Department, Chennai vs. R.Govindasamy**,



reported in (2014) 4 SCC 769 and the relevant paragraphs of the said Judgment are extracted hereunder:

"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: (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



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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)"

11. Following the Judgment of the Apex Court in the case of **State of Rajasthan vs. Daya Lal and Others**, reported in (2011) 2 SCC 429, the Honourable Supreme Court issued a direction in unambiguous terms that "the High Courts in exercising power under Article 226 of the Constitution of India will not issue directions for regularization, permanent absorption or permanent continuance, unless the employees claiming regularization 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. 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 regularized, back door entries, appointments contrary to the constitutional scheme and / or appointment of ineligible candidates cannot be regularized." Thus, the High Courts cannot issue a direction to the authority concerned to regularize the services of the employees, who were not appointed in accordance with the recruitment rules. This being the directives of the Honourable Supreme Court, this Court cannot issue any such direction for regularizing the services of the writ petitioners.

12. For grant of regularization and permanent absorption, the service particulars of the individuals are to be verified and accordingly, a decision is to be taken by the competent authority. However, with reference to the proposal sent by the third respondent, it is for the first respondent to verify the service



particulars of the writ petitioners and take a decision. It is made clear that while taking a decision, all the rules as well as the legal principles settled by the Honourable Supreme Court of India for grant of regularization and permanent absorption in the case of ***the Secretary, State of Karnataka and others vs. Umadevi and others***, reported in **(2006) 4 SCC 1**, are also to be followed by the first respondent. The Judgment of the Constitution Bench of the Honourable Supreme Court of India became the law of the land under Article 141 of the Constitution of India and therefore, all such legal principles settled by the Honourable Supreme Court of India, more specifically, by the Constitution Bench must be followed scrupulously by the authority concerned in order to uphold the constitutional principles and directives in the matter of providing equal opportunity in public employment. This being the principles to be followed, the direction as such sought for in the present writ petition cannot be granted. However, the first respondent is at liberty to take a decision as early as possible, in respect of the proposal submitted by the third respondent as far as the writ petitioners are concerned.

13. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /

Sub Assistant Registrar(CS-)

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To:

1.The Principal Secretary to Government,
Municipal Administration and
Water Supply Department, Secretariat, Chennai-9.

2.The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.

3.The Commissioner
Madurai Corporation, Madurai

+1 CC to M/s.SPL GP (SR-74543[F] dated 10/07/2019)

+1 CC to M/s.R.MURALI, Advocate(SR-74345[F] dated 10/07/2019)

+2 CC to M/s.M.SARAVANA KUMAR,Advocate(SR-74657[F]dated 11/07/2019)

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