



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.8792 of 2015

and

M.P.[MD]No.1 of 2015

WEB COPY

1.M.Venkatachalam
2.I.Subramanian
3.N.Kandasamy : Petitioners

Vs.

1.The Secretary to Government of Tamil Nadu,
Education Department,
Secretariat,
Chennai - 600 009.

2.The Director of School Education,
D.P.I. Campus,
College Road,
Chennai - 6.

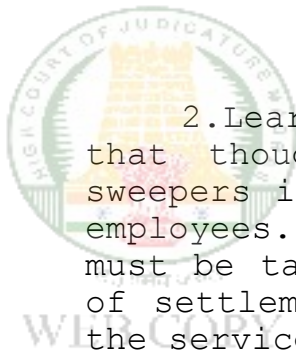
3.The District Educational Officer,
Sivaganga,
Sivaganga District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the third respondent in O.Mu.No.4753/A1/2014 dated 29.12.2014 and consequently direct the respondents to regularise the service of the petitioner fro the date of appointment and to pay all monetary and other attendant benefits.

For Petitioner : R.Rengaramanujam
For Respondents : Mrs.S.Srimathy
Special Government Pleader

O R D E R

The order of rejection, rejecting the claim of the writ petitioners in proceedings dated 29.12.2014, on account of the part time service rendered by the writ petitioner for the purpose of counting of pension is under challenge in the present writ petition.



2.Learned Counsel for the writ petitioner vehemently contended that though the writ petitioners were appointed as part time sweepers in Government schools, they were made to work as full time employees. Therefore, the services rendered by the writ petitioners must be taken from the date of initial appointment for the purpose of settlement of pensionary and terminal benefits, by regularising the services from the initial date of appointment.

3.The writ petitioners were initially appointed as part-time sweepers / Watchman and joined on 29.10.1994, 30.10.1994 & 10.02.1995 respectively. Thereafter, during the year 2006, the writ petitioners were appointed as full time sweepers in the existing vacancy in terms of G.O.Ms.No.528 P & AR dated 10.10.1988. Subsequently, the writ petitioners filed W.P.No.23241/2006 for a direction to regularise their services from the date of their initial appointment. The High Court passed an order on 01.02.2006, to consider the case of the writ petitioners. Consequently, the services of the writ petitioners were brought under the regular establishment and the petitioners were appointed as regular employees in the time scale of pay by the order of the third respondent dated 04.12.2006. Thereafter, the writ petitioners are working as regular employees in the regular time scale of pay.

4.Learned Counsel for the writ petitioners states that the case of the similarly placed persons were considered by this Court for counting of the part time services rendered by the temporary employees and the said judgment was also taken by way of an appeal before the Apex Court and the Apex Court also dismissed the claim of the department. Therefore, the same benefit of regularisation from the date of appointment from which the petitioners were appointed as part time sweepers to be granted to the writ petitioners. Learned Counsel at the outset states that the similar benefits were granted to other persons and therefore, the same is to be extended to the writ petitioners also.

5.The question arises, whether the writ petitioners are entitled to get regularisation from their initial date of appointment as part time sweepers / Watchman. This Court is of an opinion that the order of appointment enclosed in page 3 and 4 of the typed set of papers filed along with the writ petition categorically states that the writ petitioners were appointed as part time employees on consolidated salary. Though the appointments were made through employment exchange, the order of appointment categorically states that the writ petitioners were appointed on part time bases on a consolidated pay and the appointment is purely temporary and they can be terminated at any point of time.

6.In spite of part time employment, the writ petitioners cannot claim that they should be treated as full time employee. The learned Counsel for the petitioners states that the nature of works



therefore, they are entitled to be regularised from the date of initial appointment. Learned Counsel for the writ petitioner further agrees that the first writ petition was filed by the writ petitioners to regularise their services from the date on which they were regularly appointed in the sanctioned post in regular time scale of pay. However, the regularisation was granted from the year 2006. When the relief of regularisation was not granted from the initial date of appointment as part time employee, for the very same relief another writ petition cannot be filed. However, the respondents also considered the case of the writ petitioner and rejected the claim in the impugned proceedings dated 29.12.2014.

7.The respondents also relied upon a judgment by stating that part time employees are not entitled to get regularisation as they were not working in a sanctioned post.

8.The claim of the writ petitioners for regularisation from the initial date of appointment for getting pensionary benefits are found in Article 11 of the Pension Rules. The amended Rule 11(4) stipulates certain terms and conditions for counting of 50% of the services rendered. Even in the amended provisions, the part time employment is not covered. Therefore, the part time employees are not extended the benefit of counting of the services for the purpose of getting pensionary benefits.

9.The regularisation and permanent absorption cannot be granted with retrospective effect. In view of the fact that the initial appointment of the writ petitioners were as part time sweepers / Watchman and not a sanctioned post. When the terms and conditions of the appointment are unambiguous and the writ petitioners admitted the terms and conditions and worked as part time employees, now they cannot turn around and claimed retrospective regularisation. In respect of the grant of regularisation or permanent absorption, the Supreme Court 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."

WEB COPY

10.As per the above judgment, the High Court cannot issue any direction to regularise the services of the part time employees in view of the fact that their initial appointments were not made in accordance with the recruitment rules in force.

11.The judgment cited by the learned Counsel for the writ petitioner may not be of any avail in view of the judgment of the Constitution Bench of the Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others** reported in **(2006) 4 Supreme Court Cases 1** and it was followed by the Supreme Court in the subsequent judgment in R.Govindasamy case.

12.As far as the present writ petitioners are concerned, admittedly the writ petitioners were appointed as part time Sweepers and subsequently, the benefit of regularisation was granted to these writ petitioner from the year 2006. The regularisation itself was a concession to these writ petitioners. Therefore, the part time services rendered by him for the purpose of reckoning the qualifying service with reference to Rule 11(4) of the Pension Rules cannot be granted. The terms and conditions stipulated in Rule 11(4) must be followed scrupulously by the authorities competent and under these circumstances, the writ petitioners are not entitled for retrospective regularisation from the date of their initial appointment. They have already been granted the benefit of regularisation from the year 2006 and the benefits are to be settled with reference to the date of regularisation and in accordance with the Tamil Nadu Pension Rules.

13.With these observations, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

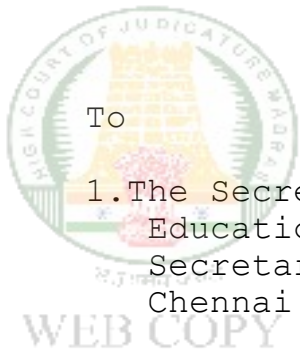
Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

MR



To

1.The Secretary to Government of Tamil Nadu,
Education Department,
Secretariat,
Chennai - 600 009.

2.The Director of School Education,
D.P.I. Campus,
College Road,
Chennai - 6.

3.The District Educational Officer,
Sivaganga,
Sivaganga District.

+1 CC to Mr.R.RENGARAMANUJAM, Advocate SR-75255.
+1 CC to SPL GP SR-75459.

W.P[MD]No.8792 of 2015
15.07.2019

CS(18.10.2019) 5P 6C