



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) No.18674 of 2013

and

M.P. (MD) Nos.2 & 3 of 2013

M.Gopalakrishnan

... Petitioner

vs.

1. The State of Tamilnadu rep.by
Additional Chief Secretary
to the Government
Environment and Forest Department
Secretariat, Chennai

2. The Chief Project Director
Bio Diversity Conservation and Greening Project
Jen Centre, Velachery Main Road
Chennai-32

3. The Conservator of Forests
Office of the Conservator of Forests
Dindigul Circle, Dindigul

4. The Divisional Forest Officer
Karur Divisional Management Unit
Karur

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records on the file of the first respondent herein G.O.Ms.No.276, Environment and Forests (FR.6) Department, dated 13.12.2012 and proceedings of the 2nd respondent herein in Endt.No.TBGP6/15/2012 dated 28.12.2012 and quash the same in so far as the posts of "Data Entry Operators" alone is concerned and to direct the respondents herein to continue the services of the petitioner as Data Entry Operators in Tamil Nadu Biodiversity Conservation and Greening Project, on the basis of their service and performance until their regular absorption in the Forest Department.

For Petitioner : Mr.M.Gomathi Sankar
For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

The relief sought for in the present writ petition is to
cancel G.O.Ms.No.276, Environment and Forests (FR.6) Department,
dated 13.12.2012, issued by the first respondent and the proceedings
of the second respondent herein in Endt.No.TBGP6/15/2012 dated



28.12.2012 in so far as the post of "Data Entry Operator" is concerned and to direct the respondents herein to permit the writ petitioner to continue as Data Entry Operator in Tamil Nadu Biodiversity Conservation and Greening Project, on the basis of his service and performance until his regular absorption in the Forest Department.

2. The writ petitioner was appointed as a Data Entry Operator in the project, namely, Tamil Nadu Biodiversity Conservation and Greening Project. He was appointed on consolidated pay. The issue in relation to the appointment of these Data Entry Operators on contract basis in consolidated pay was dealt with by this Court, with reference to the very same Department, in W.P.(MD) No.4871 of 2013 and on 11.06.2019, this Court has passed the following orders:

"The present writ petition is filed to quash the G.O.Ms.No.276, Environment & Forest (FR-6) Department, dated 13.12.2012 and the proceedings of the second respondent herein in Endt.No.TBGP6/15/2012 dated 28.12.2012 and to direct the respondents to continue the services of the petitioners as Data Entry Operators in Tamil Nadu Biodiversity Conservation and Greening Project, on the basis of their service and performance until their regular absorption in the Forest Department.

2.The learned counsel for the petitioners states that the petitioners were initially engaged as Computer Operator on daily wages basis during the year 2001 and they are working continuously for more than 11 years. The petitioners state that they are fully qualified for appointment to the post of Computer Operator and therefore they are entitled to be regularised and permanently absorbed in the sanctioned posts. The Government issued G.O.Ms.No.276, Environment & Forest (FR-6) Department, dated 13.12.2012 issuing Operation manual for the Project management unit of "Tamil Nadu Biodiversity Conservation and Greening Project". Accordingly, the staffs are engaged on contractual basis as well as the employment of contractual staff through outsourcing. The contractual staff of the Project Management Unit / Divisional Management Unit shall be recruited from two sources namely by engaging the retired staff from the Tamil Nadu Forest Department or through open market through outsourcing. The said amendment made in the operation manual of Project management Unit of Tamil Nadu Biodiversity Conservation and Greening Project is under challenge in the present writ petition.

3.The writ petitioners were engaged on daily wage basis. Their initial appointment was not in accordance with the recruitment Rules in force. The



writ petitioners were engaged on daily wages basis to work under the project namely Tamil Nadu Biodiversity Conservation and Greening Project. Thus, the very claim set out in the writ petition is untenable. The writ petitioners were not appointed in accordance with the recruitment Rules in force nor they were appointed by the competent authority by following the selection process. In fact, these writ petitioners were engaged in a project to perform the duties of a Computer Operator and therefore, the petitioners cannot claim the benefit of regularization or permanent absorption nor they are entitled to challenge the mode of selection amendment in the impugned G.O.Ms.No.276, Environment & Forest (FR-6) Department, dated 13.12.2012.

4.The counter affidavit filed by the respondents also reveals that the Tamilnadu Biodiversity Conservation and Greening Project is assisted with the funds of Japan International Co-operation Agency for the duration of 8 years from the year 2011-2012 to the year 2018-2019. In the formulation and approval of project itself, policy decision was taken to implement the project with a implications and objective and implementation of the project. The petitioners, who are appointed by the respective Divisional Management Unit of the project, cannot challenge the Government authority in the mode of contractual appointment. Admittedly, the petitioner's are not governed by any service rules and there is no post of Technical Assistant/ Data Entry Operator governed by any rules in the Forest Department. The engagement of Technical Assistants / Data Entry Operator was decided purely on casual contract basis to utilize the service and knowledge as required from time to time. The petitioners who were engaged on contractual basis cannot have right of continuance, which is not provided and such continuance which is not provided and such continuance will defeat the object of the project. The factual basis in respect of the project are also enumerated by the respondents.

5.Admittedly, the writ petitioners were not appointed as per the Rules in force. The benefit of regularization and permanent absorption or continuance of service cannot be granted in violation of the legal principles that are settled by the Hon'ble Supreme Court in the case of **the Secretary, State of Karnataka and others .vs. Umadevi(3) and others reported in (2006) 4 Supreme Court Cases 1**. In respect of such contractual appointments / daily wage engagements in a project, the employees who accepted the terms and



conditions of such engagement cannot go back and claim permanency or regularization contrary to the terms of appointment.

6.Thus, this Court is of the opinion that the very amendment made in G.O.Ms.No.276, Environment & Forest (FR-6) Department, dated 13.12.2012, is a policy decision of the Government to engage the employees on contractual basis and through outsourcing and such a policy decision taken to complete a special project cannot be set to be irregular nor the petitioners can claim continuous engagement in a project which is temporary in nature.

7.Thus, the writ petitioners have not established any acceptable legal grounds for the purpose of granting the relief sought for in the present writ petition and consequently this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

3. In view of the above, the relief sought for in the present writ petition cannot be granted and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

sd/
Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS)

To

- 1.The Additional Chief Secretary
to the Government,
Environment and Forest Department,
Secretariat, Chennai.
- 2.The Chief Project Director,
Bio Diversity Conservation and Greening Project,
Jen Centre, Velachery Main Road,
Chennai-32.
- 3.The Conservator of Forests,
Office of the Conservator of Forests,
Dindigul Circle, Dindigul.
- 4.The Divisional Forest Officer,
Karur Divisional Management Unit,
Karur.



+1 CC to SPL GP (SR-68823[F] dated 14/06/2019)
+1 CC to MR.G.GOMATHI SANKAR, Advocate (SR-68926[F] dated
14/06/2019)

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W.P. (MD) No.18674 of 2013

and

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