

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.01.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.34524 of 2013

1. K.Kuppamma
 2. V.alamelu
 3. A.Saraswathi
 4. P.Subramanian
 5. S.Gnanaprakasam
 6. S.Sankar
 7. S.Rajeswari
 8. e.Packirisamy
 9. R.Vijaya
- ... Petitioners

Vs.

1. The Secretary,
Govt. of Tamilnadu,
Adi Dravidar Welfare Department,
Fort Saint George, Chennai-9.
 2. The Commissioner,
Adi Dravidar Welfare Department,
Chepauk, Chennai -5.
 3. The District Adi-Dravidar Welfare Officer,
Nagapattinam.
- ... Respondents

Prayer : This Writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus or any other appropriate writ order or direction in the nature of such writ directing the respondents to include the service of the petitioners from their respective dates of initial appointment as shown in enclosure for the purpose of regularization and consequently grant all monetary and service benefits.

For Petitioners
For Respondents

: Ms.T.Aananthi
: Mr.J.Ramesh, Addl.Gov. Pleader,
for R1 to R3.

O R D E R

This writ petition has been filed for direction to the respondents to include the service of the petitioners from their respective dates of initial appointment as shown in enclosure for the purpose of regularization and consequently grant all monetary and service benefits.

2. The case of the petitioners in nutshell is as follows

The petitioners are appointed as cook at the Adi Dravidar Welfare Students Hostel during 2000 to 2007 on various dates and they are regularised on various dates from 2000 to 2008. Hence, they have put to loss of service for nearly 1 to 6 years and consequently loss of regular scale of pay, increment and service benefits. Though the petitioners have made several representations to the 2nd and 3rd respondents on various dates to regularise their service from the date of their respective original appointment date, no favorable action taken till date. Finally they made a representation dated 24.10.2013 to the first respondent and the same is still pending for consideration. Hence, this writ petition.

3. The learned Additional Government Pleader submitted that originally, the petitioners were appointed on consolidated pay and thereafter, their services were regularized on various dates and their salary has been fixed at Time Scale of pay as per G.O.116 (Adi Dravidar Welfare Department) dated 14.09.2006. Regularisation of service of pay can be done only as and when the vacancy arises. As such, the claim of the petitioners is against the Tamil Nadu government Servants Subordinates Rules. He further submitted that since the initial appointment of the petitioners was only on consolidated pay basis, it does not confer any legal right upon him to regularise their service from the date of their initial appointment and therefore, this writ petition has no merit and the same is liable to be dismissed.

4. At this juncture, it is useful to extract the relevant portion of the decision rendered by the Honourable Supreme Court in Secretary to Government, School Education Department, Chennai Vs. R.Goindaswamy and others in Civil Appeal Nos.2726 to 2729 of 2014 (arising out of SLP (C) No.681 to 5684 of 2014) @ C.C.No.19326 to 19329 of 2013)

7. This court in State of Rajasthan and others V.Daya Lal and others. AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part time appointment 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.

8(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 containing 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 adhoc 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, adhoc 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."

5. Therefore, as per the aforesaid decision rendered by the Honourable Supreme Court, if a person is not working against a sanctioned post, his service cannot be regularised, and sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

6. As far as the present case is concerned, there is no material placed before this court to show that the petitioners were appointed in the sanctioned post. In the counter affidavit also the respondents have not stated whether the appointment of the petitioners was made against sanctioned post or not. Therefore, considering the limited scope of relief sought for by the petitioners, without expressing any opinion on merits, this court is inclined to direct the respondents to

consider the representation dated 24.10.2013 made by the petitioners, within a period of 12 weeks from the date of receipt of the copy of this order.

7. With the above direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

mst

To

1. The Secretary,
Govt. of Tamilnadu,
Adi Dravidar Welfare Department,
Fort Saint George, Chennai-9.
2. The Commissioner,
Adi Dravidar Welfare Department,
Chepauk, Chennai -5.
3. The District Adi-Dravidar Welfare Officer,
Nagapattinam.

+1cc to Ms.T.Ananthi, Advocate, SR.No.5473.
+1cc to Government Pleader, SR.No.6205.

BS (CO)
CSR: 25.02.2020

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