

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.Nos.9302 to 9304 of 2017 and
W.M.P.Nos.10281 to 10283 of 2017

P.Anandan .. Petitioner in WP.9302/2017
C.Chinnathambi .. Petitioner in WP.9303/2017
M.Krishnamurthy .. Petitioner in WP.9304/2017

Vs

1. The Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 600 009.
2. The Secretary to Government,
Personnel and Administrative Reforms (F) Department,
Fort St. George, Chennai-600 009.
3. The Additional Chief Secretary/
Revenue Administration,
Disaster Management and Mitigation,
Ezhilagam Building,
Chennai - 600 005.
4. The District Collector,
Vellore District, Vellore.

..Respondents
(in all three Wps)

Common Prayer in all WPs:- Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in G.O.(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 with respect to giving retrospective effect from 01.01.2006 alone ending with the order of the first respondent in letter No.43247/Service-8(2)/2012/12, dated 24.01.2017 and quash the same and consequently direct the first respondent to regularize the service of the petitioners as permanent.

For Petitioners :Mr.K. Venkataramani
(in all WPs) Senior Counsel
for Ms.Selvi George

For RR 1 to 4 :Mr.J.Ramesh
(in all WPs) Additional Government Pleader

COMMON ORDER

These writ petitions have been filed by the petitioners seeking to call for the records of the second respondent in G.O. (Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, insofar as it relates to giving retrospective effect from 01.01.2006 alone ending with the order of the first respondent in letter No.43247/Service-8(2)/2012/12, dated 24.01.2017 and quash the same and consequently, direct the first respondent to regularize the service of the petitioners as permanent employees.

2. According to the petitioners, they were appointed as Drivers on full time daily wage basis by the 4th respondent/District Collector, vide proceedings in Na.Ka.No.A330040/1999, dated 09.09.2000. They were recruited through Employment Exchange, Vellore, by following communal rotation. Subsequently, the fourth respondent had recommended them to the third respondent to regularise their service and absorb as permanent employees, by proceedings in Na.Ka.No.34005/2011, dated 30.01.2014. Thereafter, the first respondent rejected the aforesaid recommendation made by the fourth respondent, vide a letter No.43247/Service-8(2)/2012/12, dated 24.01.2017. However, the Government had issued G.O.(Ms).No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, orders have been issued directing to pursue action to regularise the services of the daily wage employees working in all Government departments who have rendered 10 years of service as on 01.01.2006 by appointing them in the time scale of pay of the post in accordance with service conditions prescribed for the post concerned. In pursuant to the said Government Order in G.O.Ms.No.22, the services of several persons were regularized without examining the merits of individual cases. Thereafter, the second respondent had issued G.O.Ms.No.74, dated 27.06.2013 by reversing the orders on regularisation of services on full time daily wages employees working in all Government Departments by giving retrospective effect from 01.01.2006.

3. The first respondent has rejected the recommendation of the fourth respondent by relying upon the abovesaid G.O.Ms.No.74, dated 27.06.2013, in which, it has been referred

that the services of several persons have been regularized in deviation of G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. The petitioners were recruited on full time basis through Employment Exchange and have been working for the past 17 years. Further, G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, was implemented and the services of similarly placed persons and the persons less meritorious than the petitioners, were regularised, even though their services fell short of 10 years. But, however, the petitioners' services were not regularized as they were appointed after 01.01.1996. While the persons similarly placed like the petitioners were given the benefit, the petitioners were discriminated. Even in G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated 27.06.2013 revised orders have been issued, but with retrospective effect from 01.01.2006. The services of the persons who had less than 10 years were regularised, even though they have been working as full time daily wage employees for the last 17 years, but the petitioners have been discriminated and the benefit extended to others had not been given to them. Hence, the present writ petitions have been filed by the petitioners challenging the second respondent in G.O.Ms.No.74, Personnel and Administrative Reforms Department dated 27.06.2013, insofar as it relates to giving retrospective effect from 01.01.2006 alone and also challenging the order of the first respondent dated 24.01.2017 rejecting the recommendation of the fourth respondent to absorb the petitioners in permanent cadre.

4. According to the writ petitioners, they were appointed as temporary daily wage employees basis in the year 2000 and they have been continuously working in the Department concerned, for more than 19 years. Further, according to the learned Senior Counsel appearing for the writ petitioners, the fourth respondent sent a proposal to the third respondent on 30.01.2014, recommending the petitioners to regularise their service and to absorb as permanent employees.

5. The learned counsel appearing for the respondents would submit that the writ petitioners were appointed by the fourth respondent only in the year 2000 vide Na.Ka.No.A3/30040/1999, dated 09.09.2000. Hence, the above writ petitioners could not be considered for regularisation as per G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013. Further, the first respondent in their letter No.43247/Revenue [Ser-8(2)] Department/2012-14, dated 24.01.2017 have rejected the request of the writ petitioners stating that it is not acceptable to continue the daily wage drivers after the lift of ban. Further, there is no rule provision to regularise the services of daily wage drivers in the Tamil Nadu General

Subordinate Service Rules and it is also not a fit case to regularise the services of the daily wage drivers as per the guidelines issued by the Government vide G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, since the said G.O applies only to the persons belonging to the Tamil Nadu Basic Services and those rendered 10 years of service as on 01.01.2006. Hence, the contention raised in the affidavit by the writ petitioners need not be considered.

6. By considering the aforesaid facts and circumstances of the case, it is worthwhile to notice a decision of the Hon'ble Apex Court in the case of The Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and Others, reported in 2014 (4) SCC 769, wherein the Hon'ble Supreme Court had given a direction for regularization of the service of the temporary employees by citing various decisions. The relevant portion of the orders is extracted hereunder:-

"This Court in State of Rajasthan and Ors. Vs. Daya Lal and Ors., reported in AIR 2011 SC 1193, dated 13.01.2011, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles of law relating to regularization and parity in pay relevant to the context of the issues involved therein. The same are as under:-

8.(i) High Courts, in exercising power under Article 226 of the Constitution of India 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 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 an 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 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.

7. The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgment. Therefore, the appeals are allowed. However, in the light of the facts and circumstances of the case as Shri P.P.Rao, learned senior counsel has submitted that the appellant has already implemented the impugned judgments and does

not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected."

7. According to the writ petitioners, they are working in sanctioned permanent post, therefore, there is no bar to consider the case of the petitioners by the first respondent for regularization of the services of the writ petitioners. In the light of the decisions of the Hon'ble Supreme Court and this Court, cited supra, the impugned order passed in letter No.43247/Service-8(2)/2012/12, dated 24.01.2017 by the first respondent is hereby quashed and these writ petitions are allowed with the following directions:-

(i) The petitioners shall make appropriate representations to the first respondent within a period of two weeks from the date of receipt of a copy of this order.

(ii) On receipt of such representation is being made by the petitioners with the aforesaid period, the first respondent shall consider the same and pass appropriate orders on merits, in accordance with law as expeditiously as possible, within a period of twelve weeks (12) thereafter.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1.The Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 600 009.

2.The Secretary to Government,
Personnel and Administrative Reforms (F) Department,
Fort St. George, Chennai-600 009.

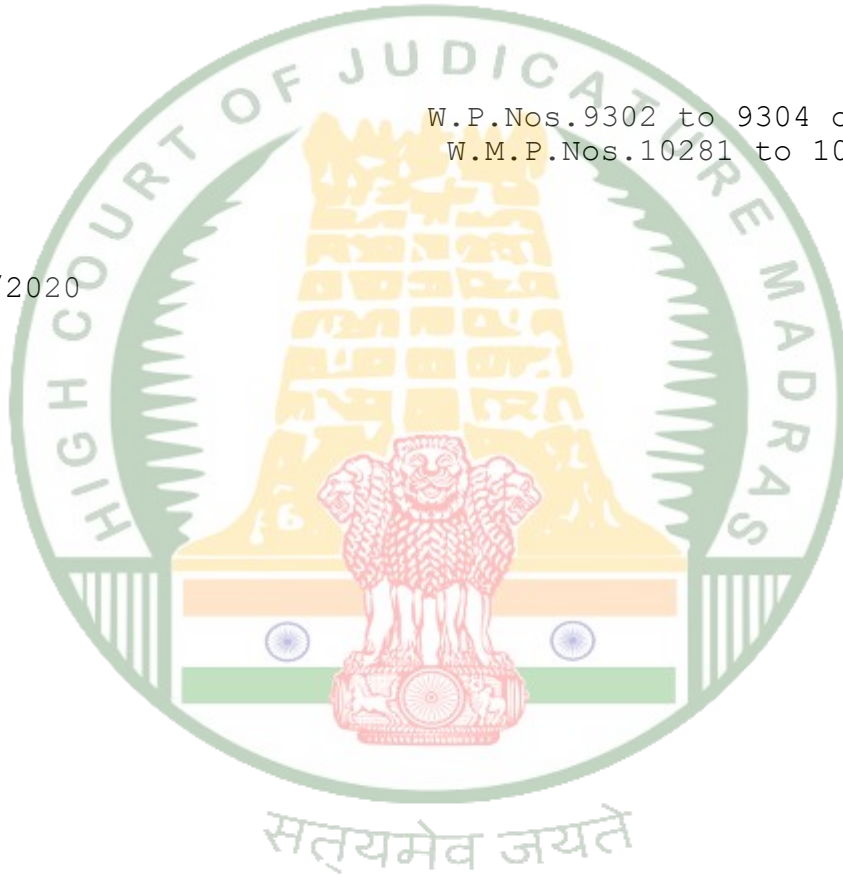
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4.The District Collector,
Vellore District, Vellore.

+3cc to M/s.Selvi George, Advocate Sr.9540, 9539 and 9538
+1cc to the Government pleader Sr.10399

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