



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.10.2020

CORAM:

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY
W.A.(MD)No.1454 of 2011

and

M.P.(MD)No.1 of 2011
Against W.P(MD)No.1419 of 2010

K.Konnamuthu : Appellant/Petitioner

Vs.

1. State of Tamil Nadu,
Represented by its Secretary to Government,
Minsitry of Health and Family Welfare,
Fort Saint George, Chennai-600 009.

2. The Director,
General Health and Preventive Medicine,
Teynampet, Chennai-600 006.

3. The Deputy Director,
Health Services,
Ramanathapuram.

: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order passed in W.P.(MD)No.1419 of 2010 dated 15.11.2010.

Prayer in WP(MD). 1419/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS direct the respondents to issue appointment orders to the petitioner as "Temporary Seasonal Mazdoors" taking into consideration of the service rendered as "Temporary Seasonal Mazdoors" with the time scale of pay and other benefits by issuing G.O. by the 1st respondent.

For Appellant : Mr.Ibrahim Ali
for Mr.S.A.S.Mujibur Rahman
For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by the **Chief Justice**)

The appellant, temporary seasonal Mazdoor, came up before this Court along with seven others in writ petitions that were clubbed together seeking a relief that they should be given regular



appointment as Mazdoors. The learned Single Judge, by a common order, dated 15.11.2010 dismissed the writ petitions. Hence his appeal.

2. The learned Single Judge held that the writ petitioners were in service only upto 1999 and there is no whisper about their subsequent engagement and therefore, they do not have any right to seek any further appointment or absorption, as their appointments were only under a scheme namely, National Malaria Eradication Plan (NMEP). The nature of appointment was only for a limited period being temporary and practically seasonal. Applying the law laid down by the Hon'ble Apex Court, in the case of **Secretary, State of Karnataka and others vs. Umadevi** reported in 2006 (4) SCC 1, the learned Single Judge refused to exercise discretion.

3. Learned counsel for the appellant urged that the persons, who were similarly situate, approached the Tami Nadu State Administrative Tribunal, where they were favoured with directions and the State Government issued Government Order, dated 30.09.2009 extending them the benefit of regular appointment in the same Department. The order, dated 30.09.2009 is extracted hereunder:-

"In the Government Order cited under reference, it is ordered that the 23 former Seasonal Mazdoors, who did temporary medicine spraying job under Malaria Eradication Programme in the Health Regions of Tiruvannamalai and Ramanathapuram Districts and obtained orders from the Tribunal by filing case in Tamilnadu State Administrative Tribunal, are appointed temporarily in the post of Mazdoors, under regular administration. As per the Government Order, in the post mentioned below against the individual, he is appointed as Mazdoor, in the existing vacancy, under Section 10(a) (1) of the Tamil Nadu Subordinate Service Rules:-

Previous Period Mazdoor's Name	Date of Birth	Original Application No.	Vacant Post for field Worker, which is appointed (Under Regular Administration)	Date of vacancy
Thiru.J.Ganesan S/o. Jeyaraman	15.03.60	6388/99	Primary Health Centre, Ramanathapuram Health Zone	31.05.2009

For the individual, permission is accorded for getting Rs.4,800 - 10,000/- (Revised pay band) (and) Rs.1300/- (Revised Grady Pay) based on the regular Scale of Pay, Rs.4,800/- and other allowances from the date of his joining service.

The individual, shall join duty before the concerned Deputy Director of concerned Health Region within one week from the date of receipt of this order. Failing which, the



appointment order shall stand cancelled. The individual shall submit Fitness Certificate obtained from the qualified Medical Officer, Age Certificate and Educational Qualification Certificates at the time of joining the duty.

4. Learned counsel, therefore, contends that this aspect of the matter, which had been pleaded before the learned Single Judge was not construed in correct perspective and was brushed aside on the ground, if some benefits have been extended to others, the same not been supported in law, cannot be extended to the appellant. It is urged that the said observation is erroneous, inasmuch as in matters of public employment, the appellant who was similarly situate could not be discriminated as that would violate Articles 14 and 16 of the Constitution of India.

5. We have considered the aforesaid submissions and so far as the status of the engagement of the appellant is concerned, the respondents in their counter affidavit in Paragraph No.2 have stated as under:-

"2.It is submitted that, the applicant has been appointed temporarily as Seasonal Mazdoor under National Malaria Eradication Programme through the District Employment Exchange, Ramanathapuram by the 3rd Respondent and the work of the Seasonal Mazdoors like the petitioner is only a seasonal one. They are ousted on the last day of each round and again appointed afresh for the subsequent rounds without resorting to employment exchange, if the break is within 90 days. In order to observe the effectiveness of the insecticide sprayed, there should be sufficient break and thus their work is not a continuous one. Hence the Mazdoors were ousted after completion of spray work. Therefore, there is no regular work for the Seasonal Mazdoors who have to be kept idle and it is not possible for the Government to pay the individuals without any work. The Seasonal Mazdoors have been paid as per Government norms for the period they actually worked and soon after the completion of such seasonal work, they will be ousted since there will not be any further work other than the work for which they were employed and thus there is no need to retain them without work. As such, no seniority list is maintained for them. The seasonal mazdoor is appointed for seasonal spray work. After the season is over, the mazdoor will be ousted and as such there has been no necessary to maintain seniority for such temporary mazdoors. Even the scheme of appointment shows that the appointments made only for a scheme namely National Malaria Eradication Programme (NMEP) and the appointment order itself indicated that it is temporary. The service certificate produced by them also shows that it is only for limited period. Under these circumstances, the petitioner seeking for a direction to the respondents to issue Government order for absorption is neither based upon legal



ground nor on any services rules. The Supreme Court vide judgment in *Secretary, State of Karnataka and others Vs Umadevi* (3) and others reported in 2006(4) SCC 1 has held that any recruitment must be made only in accordance with recruitment rules and no recruitment can be made through backdoor and that too by Court orders. In the absence of the petitioners setting out any legal enforceable right, the relief claimed by the petitions are misconceived and countenanced by this Court."

6. While explaining the stand taken on the strength of some other persons, who are similarly situate, the counter affidavit in Paragraph No.3 states as under:-

"3) It is submitted that no such general orders directing the respondents to appoint the employees as temporary Seasonal Mazdoors have been received from then Hon'ble Tamilnadu Administrative Tribunal as contended by the petitioner. But certain applicants were ordered to be considered for regular appointment as Mazdoors by the then Hon'ble Tamilnadu Administrative Tribunal, had been absorbed in the existing regular vacancies, based on the orders of Government during 2009. The applicants in O.A's before the Tamilnadu Administrative Tribunal joined duty on the Fore Noon of 05.05.1989 in the time scale of pay Rs.750-12-870-15-945 with usual allowances attached to the post from time to time."

7. Learned Special Government Pleader has supported the stand taken in the counter affidavit and urged that the appellant has absolutely no right and his case is distinguishable from that of the other exemplars cited by them as here, the appellant had not been engaged after 1999 and had straightaway approached the Court after 10 years, which came to be dismissed.

8. Having considered the submissions at the bar, the status of engagement of the appellant being absolutely seasonal and temporary, there was no continuity of service and there is nothing on record to indicate that the appellant was engaged after 1999. The Constitution Bench judgment of the Hon'ble Apex Court in the case of *Umadevi* (supra), therefore squarely governs the field.

9. The parity which is sought to be claimed by the appellant on the strength of the Government Order referred to herein above in the case of 23 other employees suffice it to say that factually, the status of engagement of the appellant is different from the persons, who were extended with benefit of employment therein and even otherwise, after the judgment in the case of *Umadevi* (supra), it is no longer possible for this Court to extend any such benefit. It is not necessary to extend the same relief on the basis of a precedent.

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We had the occasion to consider such a situation in a recent decision in W.A.No.82 of 2020 decided on 23.09.2020 **[The Director of School Education and others Vs. A.Inpavalli and another]**, where we

discussed the law as follows:-

"9. To understand the law in this regard, it would be appropriate to refer to the judgment in the case of **Chandigarh Administration and another Vs. Jagit Singh and another, (1995) 1 SCC 745**, where the Apex Court in paragraph (8) held as follows:-

"8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of



the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course –barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)”

The next decision that would throw light on the said principle is in the case of **Basaaraj and another v. Special Land Acquisition Officer, (2013) 14 SCC 81**, where in paragraph (8), the Apex Court held as under:

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on



the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745 : AIR 1995 SC 705], Anand Buttons Ltd. v. State of Haryana [(2005) 9 SCC 164 : AIR 2005 SC 565], K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898] and Fuljit Kaur v. State of Punjab [(2010) 11 SCC 455 : AIR 2010 SC 1937].)"

10. We therefore, do not find any merit in this writ appeal, which is hereby dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
Ministry of Health and Family Welfare,
Fort Saint George, Chennai-600 009.
2. The Director,
General Health and Preventive Medicine,
Teynampet, Chennai-600 006.
3. The Deputy Director,
Health Services, Ramanathapuram.

+1 CC to Mr.A.S.MUJIBUR RAHMAN, Advocate SR-20283.

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and
M.P. (MD) No.1 of 2011
16.10.2020**