



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.2690 of 2015

G.Vasantharadevi

... Petitioner

Vs.

1.The Secretary to Government,
Department of Adi Dravidar and Tribal Welfare,
Secretariat, St.George Fort,
Chennai.

2.The Commissioner / Director,
Adi Dravidar Welfare,
Chepauk,
Chennai - 5.

3.District Adi Dravidar and Tribal Welfare Officer,
Collectorate Campus, Trichy,
Tiruchirappalli District.

4.The Head Master,
Government Adi Dravidar Welfare
Higher Secondary School,
Thuraiyur Taluk,
Tiruchirappalli District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent vide Na.Ka.No.01(3)/9627/2014-I, dated 07.04.2014 and quash the same and consequently directing the 1st respondent to regularize the petitioner's service with effect from the date on completion of 10 years of service with all monetary attendant benefits, on the basis of the proposal sent by the second respondent vide Na.Ka.03/19418/05, dated 19.05.2010 in pursuant of G.O.Ms.22, Personnel and Administrative Reforms Department, dated 28.06.2006.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Ms.S.Srimathy
Spl.Govt.Pleader



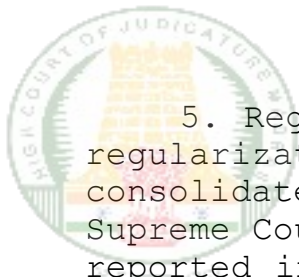
O R D E R

The order dated 07.04.2014, passed by the 2nd respondent stating that action will be initiated on receipt of the revised proposal, is under challenge in the present Writ Petition. Further direction is sought for to regularize the services of the Writ Petitioner, on completion of 10 years of service, as per G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006.

2. The petitioner was working as Sweeper-cum-Water Carrier in Government Adi Dravidar Welfare Higher Secondary School, Thuraiyur. The petitioner states that she was appointed as full time Sweeper-cum-Water Carrier, in the 4th respondent School, on 07.10.1983, on temporary basis, against the regular vacancy. The petitioner was paid a consolidated salary. The monthly consolidated pay was periodically increased. The petitioner had completed 10 years of service in the year 1994. Thus, she made a representation to regularize her service, in view of the Government Order issued in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. The proposal submitted was returned, on account of certain defects. The impugned order says that the case of the Writ Petitioner would be considered on receipt of the revised proposal.

3. The contention of the petitioner is that, as per G.O.Ms.No.22, dated 28.02.2006, and as per the subsequent Government Orders issued in G.O(Ms).No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, the petitioner is eligible for grant of regularization. However, her case was not considered and therefore, she constrained to approach this Court.

4. The learned Special Government Pleader appearing on behalf of the respondents made a submission that the post in which the petitioner was working was not sanctioned and she was allowed to continue only as a consolidated pay employee. The petitioner was not appointed through selection process and her initial appointment was irregular and therefore, the question of grant of regularization does not arise at all. The learned Special Government Pleader would further submit that the Government Order in G.O.Ms.Ns.22, dated 28.02.2006 had been withdrawn by the Government and a revised Government Order in G.O.Ms.No.74, dated 27.06.2013, was issued. As per the revised Government Order in G.O.Ms.No.74, the appointment of the petitioner was not in consultation with the Employment Exchange and she was appointed directly without adhering to the Recruitment Rules in force. Thus, the initial appointment of the writ petitioner was irregular.



5. Regarding the irregular and illegal appointment and grant of regularization and permanent absorption to the daily wages or consolidated pay employees, the Constitution Bench of the Hon'ble Supreme Court of India in the case of **Umadevi Vs. State of Karnataka** reported in (2006 (4) SCC 1) settled the principles. Accordingly, regularization or permanent absorption cannot be granted in violation of the Service Rules in force. The writ petitioner was not appointed in accordance with Service Rules and she was directly appointed on consolidated pay. This apart, the petitioner reached the age of superannuation even at the time of filing of the Writ Petition. Now, she is around 65 years of age.

6. The Hon'ble Supreme Court held that irregularity in appointment cannot be cured by granting the benefit of regularization. Equal opportunity in public employment is constitutional mandate. All appointments are to be made through open competitive process and in accordance with Rules in force. Thus, the appointment made through back door cannot be regularized in violation of the Rules. Persons, who secured appointment through back door must be sent out through the door from which, they entered into the public services. This being the principles to be considered and the Apex Court also settled such principles, there is no reason whatsoever to consider the case of the writ petitioner and accordingly, the writ petition is devoid of merits and stands dismissed. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

To

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+1 CC to SGP (SR-23503[F] dated 01/12/2020)

W.P. (MD)No.2690 of 2015

27.11.2020

KMV(CO)

NR (08/12/2020) 4P : 6C