



WEB COPY

W.A(MD)No.24 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)No.24 of 2017

and

C.M.P. (MD) .No.322 of 2017

1.The Industries Commissioner and
Director of Industries and Commerce,
Madras.

2.The General Manager,
District Industries Centre,
Madurai.

3.The Assistant Engineer,
Electro Medical Equipment Center,
(Near ITI), K.Pudur,
Madurai.

... Appellants/Respondents

Vs.

Packiam

... Respondent/writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act against the order dated 04.12.2012, passed by this Court in W.P.(MD) No.3193 of 2008.

Prayer in WP(MD). 3193/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Na.Ka.No.6722/PAP/07/2 dated 21.5.2007 on the file of the first respondent herein and to quash the same and to direct the first respondent herein to consider the petitioner s representation dated 26.11.2007 and to make the petitioner s job, a permanent one with all the statutory benefits.

For Appellants	:	Mr.K.P.Krishnadoss Special Government Pleader
For Respondent	:	Ms.A.Rajini



JUDGMENT

(Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**)

The official respondents in the writ petition are the appellants. The respondent/writ petitioner has filed the said writ petition, praying for issuance of writ of Certiorarified Mandamus, to quash the proceedings of the first respondent, dated 21.5.2007 with a consequential direction to the first respondent herein to consider the petitioner's representation dated 26.11.2007 and to give her a permanent job with all attendant benefits.

2. The said writ petition came to be allowed vide impugned order dated 04.12.2012 and aggrieved by the same, the present writ appeal has been filed.

3. It is the case of the respondent/writ petitioner that she was appointed as a Part-time Sweeper cum Scavenger on 24.08.1993 in the Office of the third respondent and her appointment was done in accordance with the procedures by way of sponsoring through Employment Exchange. The petitioner would further state that initially, her monthly salary was Rs.60/- with further relief of Rs.10 per month and though she has put in long years of service in her capacity, she had not been conferred with permanent status. Even as per Section 3(1) of Tamil Nadu Industrial Establishment Conferment of Permanent Status to Workmen Act, 1981, she is entitled to permanent status, a representation submitted in this regard has been rejected vide impugned communication of the first appellant/first official respondent, dated 21.05.2007. Therefore, challenging the same, she filed this writ petition.

4. The second respondent had filed a counter affidavit on behalf of all the respondents and took a stand that the writ petitioner was employed as a Temporary Part-time Sweeper and she has to work for one hour or two hours per day and she was not working for the entire day and hence, it could be termed only as a 'Part Time Employment'. The said respondent further took a stand that G.O.Ms.No.22 P & AR (F) Department, dated 28.02.2006 has no application to the case of the writ petitioner for the reason that it is only applicable to the daily wages, who completed 10 years of service. Hence, he prays for dismissal of the writ petition.

5. The learned Judge has taken into consideration the relevant materials as well as the judgment rendered by a Hon'ble Division Bench of this Court reported in **2011(2) CWC 80 in the case of Commissioner and Director, Animal Husbandary and Veterinary Services, Chennai-2 and two others Vs. V.Karunakaran & Another** and allowed the said writ petition with a consequential direction. The present writ appeal is filed aggrieved by the said order.



6. The learned Special Government Pleader appearing for the appellants would submit that G.O.Ms.No.22, P & AR (F) Department, dated 28.02.2006 has no application to the case of the writ petitioner, while, admittedly, it is the case of the respondent/writ petitioner that she is only a Part time Employee and as such, the said vital aspect has been overlooked, while allowing the writ petition.

7. The learned Special Government Pleader appearing for the appellants has also drawn the attention of this Court to the judgment reported in **(2014) 4 SCC 769, Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and Others** and would submit that the said judgment also laid down a proposition that Part-time employees are not entitled to seek regularisation, even when they put in long service, because they were not working against sanctioned posts. Hence, he prays for interference.

8. Per contra, the learned counsel appearing for the respondent/writ petitioner would submit that admittedly, the respondent/writ petitioner had put in continuous service for over a decade and odd with a meagre salary and taking into consideration the sufferings and plight being undergone by her and other facts and circumstances, the learned Judge, has rightly granted the very relief and prays for dismissal of the writ appeal with costs.

9. This Court has carefully considered the rival submissions and also perused the materials available on record.

10. Personnel and Administrative Reforms (F) Department, Department has passed the order in G.O.Ms.No.22, dated 28.02.2006, in respect of regularization of services of daily wages employees, who have completed more than 10 years of service as on 01.01.2006.

11. It is the stand of the appellants/official respondents that the respondent/writ petitioner is only a Part-time Worker, working for one hour or two hours per day. Further, she is not working on daily wages and no provident fund was also deducted from her wages.

12. The Hon'ble Supreme Court of India in the above cited decision, had considered the regularisation of Part Time Sweepers in the services of the Appellant Bank and also referred to its earlier decision reported in **(2011) 2 SCC 429: (2011) 1 SCC (L & S) 340 in the case of State of Rajasthan Vs. Daya Lal** and held that the said decision is squarely applicable to the facts of the case and therefore, allowed the appeal filed by the State Government and in respect of the conferment of regularisation of irregular and part-time appointments in all possible eventualities, the Hon'ble Supreme Court has held as follows:-



"8.This Court in **State of Rajasthan Vs. Daya Lal** has considered the scope of regularisation of irregular or part-time appointments 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 **(SCC p.435, para 12)**

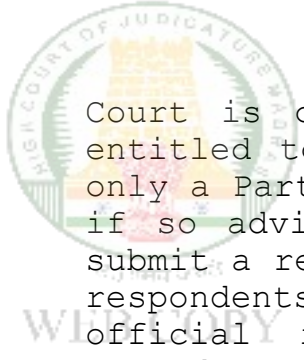
"(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause 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 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.

13. In the considered opinion of this Court, in the light of the facts and circumstances of the case, the above cited decision is fully applicable to the facts of the case, for the reason that the petitioner was in occupation of the post only as a Part-time Employee and as such, the period of Part-time Employment cannot be taken into consideration for conferment of the benefit of regularisation, which is available to the Full-time Employees on Daily Wages.

14. At this juncture, the learned counsel appearing respondent/writ petitioner would submit that at least for the services rendered by her as that of the Full-time Employee, in the light of equal pay for equal work, she may be permitted to submit a representation with a consequential direction to the respondent to consider and dispose of the said representation.

15. This Court has considered the submission of the learned counsel appearing the respondent/writ petitioner.

16. In the light of the settled legal position of law as enunciated by the Hon'ble Supreme Court as well as the above cited decision and also the facts and circumstances of the case, this



Court is of the view that the respondent/writ petitioner is not entitled to a positive order of regularisation, as her status was only a Part-time Employee. However, the respondent/writ petitioner, if so advised, if it is available to her under the law, she may submit a representation for claiming equal pay for equal work to the respondents and as and when, such representation is received, the official respondents are directed to consider the same, in accordance with law, by also taking into consideration the decision rendered by the Hon'ble Supreme Court reported in **(2017) 3 SCC 436** in the case of **Ram Naresh Rawat Vs. Ashwini Roy** and give a disposal as expeditiously as possible, not later than ten (10) weeks from the date of receipt of a copy of this order and communicate the decision taken to the respondent/writ petitioner.

17. In the result, the writ appeal is allowed. There shall be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

VS

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Industries Commissioner and
Director of Industries and Commerce,
Madras.
- 2.The General Manager,
District Industries Centre,
Madurai.
- 3.The Assistant Engineer,
Electro Medical Equipment Center,
(Near ITI), K.Pudur, Madurai.

W.A(MD)No.24 of 2017 and
C.M.P. (MD) .No.322 of 2017
09.09.2020

AP(22/09/2020) 5P 4C

<https://hcservices.ecourts.gov.in/hcservices/>