



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.7836 of 2010

Mrs.Saraswathy

...Petitioner

vs.

1. State of Tamil Nadu,
Rep. By its Secretary to Government,
Home (Transport) Department,
Fort St.George,
Chennai-600 009.
2. The Principal Secretary and Transport Commissioner,
Chepauk, Chennai-600 005.
3. The Deputy Transport Commissioner,
Coimbatore-18.
4. The Regional Transport Officer,
Office of the RTO,
Coimbatore (South).

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the issue of proceedings bearing Letter No.81200/Transport 4/2000-13 dated 06.01.2005 on the file of the 1st respondent and the proceedings bearing No.48841/R4/2004 dated 21.03.2005 on the file of the 2nd respondent and quash the same as far as the petitioner is concerned and direct the respondents herein to regularize the service of the petitioner in the post of Sweeper w.e.f. the date of her appointment i.e., 10.12.1984 in terms of G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department dated 28.02.2006 and grant all consequential benefits.

For Petitioner : Mr.K.Sridhar

For Respondents : Mr.T.Arunkumar,
Additional Government Pleader



O R D E R

The petitioner, challenging the impugned orders dated 06.01.2005 and 21.03.2005 passed by the respondents 1 and 2 respectively, in and by which, her request for regularising her services came to be rejected, has filed the present writ petition.

2. The case of the petitioner is that she was selected through Tamil Nadu Public Service Commission to the post of Sweeper / Sanitary Worker at the office of the Regional Transport Office, Coimbatore by the fourth respondent, vide proceedings dated 05.12.1984. The petitioner was appointed on temporary basis and joined duty with effect from 10.12.1984 and she is working in the said post without any break on temporary basis till date. It is further averred by the petitioner that the Government of Tamil Nadu vide G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department dated 28.02.2006 have directed that the services of the employees working in various Government Departments on daily wages basis and who have completed more than 10 years of service as on 01.01.2006, be regularized by appointing them in the Time Scale of Pay of the post in accordance with the service conditions prescribed for the post and following the said Government Order, similarly placed persons got regularized and therefore, by relying on the said Government Order, the petitioner had submitted various representations dated 23.09.1995, 22.08.2002, 12.09.2002, 23.09.2003 and 06.10.2008 requesting the respondents to consider the petitioner's case for regularization of service. However, the respondents 1 and 2 rejected the petitioner's request, vide impugned orders dated 06.01.2005 and 21.03.2005 respectively and challenging the same, the present writ petition has been filed.

3. Mr.T.Arunkumar, learned Additional Government Pleader for the respondents would submit that the petitioner was working only as Part Time Sweeper and in the light of subsequent modified Government Orders, the petitioner is not entitled for regularization and therefore, the respondents had rightly rejected the claim of the petitioner, vide the impugned orders and therefore, prays for dismissal of this writ petition.

4. This Court has considered the submissions made and also perused the materials placed before it.

5. The issue involved in the present writ petition is whether the services of the petitioner, who is working as Part Time Sweeper, is entitled for regularization ?

6. The issue has already been decided by the Hon'ble Apex Court in the decision in Secretary to Government, School



Education Department, Chennai v. Govindaswamy and Others [(2014) 4 SCC 769], wherein the Hon'ble Apex Court has held as follows:

"6. In State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806, this Court held as under:

"48. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

7. In Union of India & Ors. v. A.S. Pillai & Ors., (2010) 13 SCC 448, this Court dealt with the issue of regularisation of part-time employees and the court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

8. This Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, 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:

"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



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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.

(ii) Mere continuation of service by a 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."



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7. Following the decision of the Hon'ble Supreme Court in Govindaswamy case (cited supra), this Court also had an occasion to deal with a similar matter in the case of Saraswathy v. State of Tamil Nadu [W.P.No.5529 of 2015 dated 18.12.2019] wherein this Court held as follows:

"5. In the case of Secretary to Government, School Education Department, Chennai, v. R. Govindaswamy and Others, reported in (2014) 4 SCC 769, the Hon'ble Apex Court has allowed the appeal filed by the Government.

6. In yet another decision rendered by the Hon'ble Apex Court in Secretary to Government, Commercial Taxes and Registration Department, Secretariat and Another v. A. Singamuthu, reported in CDJ 2017 SCC 239, it has been held in paragraph Nos.16, 17 and 18 are extracted hereunder:

"16. The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said G.O.Ms.No.22 dated 28.02.2006 and directed the appellants to grant regularization of respondent's service from the date of completion of ten years of service with salary and other benefits. The learned Judge failed to take note of the fact that as per G.O.Ms.No.22, dated 28.02.2006, the services of employees working in various government departments on full time daily wage basis, who have completed more than ten years of continuous service as on 01.01.2006 will be regularized and not part time Masalchis like the respondent herein. In G.O.Ms.No.84, dated 18.06.2012, the Government made it clear that G.O.Ms.No.22, dated 28.02.2006 is applicable only to full time daily wagers and not to part time daily wagers. Respondent was temporarily appointed part time worker as per Tamil Nadu Finance Code Volume (2) Appendix (5) and his appointment was completely temporary. The respondent being appointed as part time Masalchi, cannot compare himself to full time daily wagers and seek benefit of G.O.Ms.No.22 dated 28.02.2006. The Single Judge also failed to consider that the Government did not grant regularization of services of any part time employee on completion of ten years of his service as envisaged under the G.O.Ms.No.22, dated 28.02.2006.

17. The learned Single Judge erred in extending the benefit of G.O.Ms.No.22, dated 28.02.2006 to the



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respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned Senior Counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is from 01.04.1999 till the date of his regularization that is 18.06.2012, the financial commitment to the State would be around Rs.10,85,113/-(approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned Senior Counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularized under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularization of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

18. It is pertinent to note that even the regularization of services of part time employees vide G.O.(Rt.) No.505 Finance (AA-2) Department dated 14.10.2009 and G.O.(2D) No.32 Finance (T.A. 2) Department dated 26.03.2010 was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of Government Orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that G.O.Ms.No.22 P & AR Department, dated 28.02.2006 is applicable only to full time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part time employees. As per G.O.(Rt.) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside".

7. In the light of the decision cited supra, there is no merit in the writ petition. Hence, the writ



petition is liable to be dismissed and accordingly it is dismissed. No order as to costs in this writ petition."

8. Admittedly, in the case on hand, the petitioner is working as Part Time Sweeper on daily wage basis in a non-sanctioned post and following the subsequent modified Government Orders, the respondents have rejected the claim of the petitioner for regularization. In view of the settled legal position as laid down in the decisions cited supra, this Court does not find any merit in the writ petition.

9. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Home (Transport) Department,
Fort St.George, Chennai-600 009.
2. The Principal Secretary and Transport Commissioner,
Chepauk, Chennai-600 005.
3. The Deputy Transport Commissioner,
Coimbatore-18.
4. The Regional Transport Officer,
Office of the RTO, Coimbatore (South).

+1cc to the Government Pleader, S.R.No.63479

W.P.No.7836 of 2010

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NSK 10/12/2021