



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021

CORAM

THE HONOURABLE Mr.JUSTICE V. PARTHIBAN

W.P.No.7352 of 2021

and

WMP.No.7862 of 2021

1.K.Vigrahaa
2.D.Karthikeyan
3.M.Santhosh Kumar
4.P.Dharmaraju
5.S.Chandrasekaran
6.R.Ayyappan
7.R.Andrew Kingsly
8.D.Varadharajan
9.Boopathy.P
10.S.Suthish
11.D.Venkatesan
12.R.V.Senthil Krithik
13.A.Udhayakumar
14.S.Stalin Ambedkar
15.Pandiarajan.K
16.M.Sasikumar
17.Premkumar.C
18.R.Rajkamal
19.Karthik.M
20.Nadesapandian.A
21.Damodara.M
22.A.Gaspar Raj
23.I.Hariharasuthan
24.S.Hariharan
25.J.Selvaganapathy
26.R.Rajkumar
27.P.Manoj
28.P.Sudharsan
29.Kalaiselvan.K
30.R.Samsudeen
31.Saravanan.P
32.Vengatesh T
33.S.Veeraiyia
34.L.Ravikumar
35.Stanley Jeba Singh A.P. ...Petitioners

Versus

1.The Principal Secretary to Government
Home (Tr) VII Department,
Secretariat, Chennai - 9.



2.The Transport Commissioner, Chepauk
Chennai-5

...Respondents

Prayers: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the respondents to regularise the services of the petitioners in the light of the proposals forwarded by the 2nd respondent in its letter No.08075/R2/2014 dated 20.05.2014 and letter R.No.37816/54/2017, dated 18/12/2017 with all attendant benefits.

For Petitioner : Mr. V.Vijay Shankar

For Respondent : Mr.L.S.M.Hasan Fizal
Additional Government Pleader
For R1 & R2

O R D E R

The case of the petitioners herein is that they joined as Programmers/System Analysts in various Regional Transport Offices (RTO) across the State. All the petitioners are either qualified with the B.E. Computer Science/ BCA (or) B.Sc Computer Science, as the case may be. These petitioners herein were engaged initially through one agency called M/s Maruti Computer Agency from the year 2005 - 2009 and their services were continued without any interruption.

2. The Transport Department, in consideration of the continuous work that is required to be carried out by these petitioners as Programmers/System Analysts, had submitted a detailed proposal on 20.05.2014 for sanctioning sufficient posts on a regular basis as in the case of other departments. A detailed statement was also submitted explaining the requirement of full time employees and the need for regular staff for maintenance, operations and support.

3. As there was no response for the earlier proposal, another detailed proposal was also forwarded on 18.12.2017 emphasizing the need for System Analysts, Programmers and Data Entry Operators. The 1st respondent in response to the proposal, raised certain queries as to the viability of sanctioning of posts vide their letter dated 12.01.2018. The 2nd respondent vide letter dated 01.12.2018 furnished answer to the queries that have been sought for sanctioning of regular posts in a time scale of pay.

4. In the meanwhile, the contractor Maruthi Computers was changed and another agency by name New Life Placement was chosen and all the petitioners were continued under the new agency. Even the new agency through which the petitioners



were employed had been discontinued from 2019, however, the services of these petitioners have been continued with uncertain service conditions. According to the petitioners, the proposals which have been mooted and forwarded by the authorities concerned have not been acted upon for several years despite the fact that these petitioners were continuing their services for a long time without any interruption. The petitioners have also submitted periodical representations seeking to regularize their services, but no action was forthcoming from the respondents.

5. While matters stood thus, a similarly placed employees have approached this Court in W.P.Nos.14782 and 19961 of 2020 for regularising their services. This Court vide its order dated 03.02.2021 has allowed the Writ Petitions and a direction was issued to the 1st respondent/Government, to consider the case of the petitioners positively. The learned Judge has passed a detailed order by taking note of several facts which were in favour of the petitioners therein and finally directed the Government to consider the claim of those petitioners for regularising their services.

6. The learned counsel appearing for the petitioners, apart from reiterating the above facts, would submit that the issue in this writ petitioner, is squarely covered by the directions of learned Judge in the aforesaid Writ Petitions. These petitioners are identically placed as that of the petitioners therein and therefore, learned counsel would request this Court to follow the directions of learned Judge in the aforementioned writ petitions.

7. Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appeared on behalf of the respondents and a counter affidavit has also been filed resisting the claim of the petitioners herein.

8. According to the counter affidavit, these writ petitioners herein are not entitled to the relief of regularisation as their proposal sent by the Transport Commissioner in the year 2014 was rejected by the Government. According to the counter affidavit, these petitioners have been employed through a private manpower agency and therefore, they cannot claim any regularisation in Government Service.

9. The counter affidavit filed on behalf of the respondent is dated 18.11.2020. Obviously, the counter affidavit has not taken into consideration the detailed order passed by the learned Judge of this Court on 03.02.2021 in the aforementioned writ petitions.

10. As regards the order passed by the learned Judge of this Court in the two writ petitions aforementioned, the advocate representing the respondents would have no dispute and in fact, he fairly would accept that the directions passed



by the learned Judge would cover the present claim of these petitioners as well.

11. In view of the admitted legal position that the present claim of the petitioners herein is also covered under the directions of the learned Judge of this Court, it is useful to refer to the detailed order and the directions of the learned Judge and the same is extracted hereunder:

'7. Heard the learned counsel on either side and perused the material documents available on records.

8. Admittedly, the petitioners were employed as Programmers / System Analysts on contract basis in various Regional Transport Offices and they have rendered more than 10 to 15 years of services on temporary basis, expecting that the Government, on one day or the other, will regularize their services on a regular basis. This reminds me of the story of a parrot, in other words called as "ilavu katha kili" and the story goes thus,

"There was once a parrot which sat on a tree and watched its blossoms turn into shining green fruits. The parrot waited and waited for them to ripen to take its first bite from the fruits. Alas, the fruits never turned yellow or red, but dried into brown crisp pods, finally bursting and revealing inside - white inedible cotton."

The expectation of the petitioners for absorption on regular scale by the Government can be compared to that of the Parrot and in that story, at least the fruits turned into brown, but in the case on hand, there was no change in the day to-day life of the petitioners and their hope of permanency has not ripened so far.

9. It is brought to the notice of this Court that several Departments / Organizations, including this Court absorbed contract employees on a full time basis, realizing the fact that their services are indispensable. When such benefits have been extended to the similarly placed persons, it is not known as to why the Government is so reluctant to absorb not only these petitioners, but also the employees (including Class-IV) working in various Departments.

10. The contention of the respondents that after introduction of Vahan Sarathi portal, there is



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no requirement for these petitioners in RTOs, is unacceptable, on the reasoning that a look at the Portal in the website through Google unfolds the fact that it is only a server, storing various data of vehicles, furnishing information regarding the application status, etc. and a server without data or programme is illogical and certainly, there needs a person for data entry and also for decoding of programmes and the Government, instead of hiring persons through agency, can absorb them permanently on a time scale of pay, since there exists continuous and inexorable work in the Transport Department.

11. The next contention put forth by the respondents is that there were several malpractices committed by the petitioners in collusion with the Private Internet Centres. However, the respondents have not adduced any piece of evidence in the pleadings to that effect and therefore, this Court cannot go into that aspect right now. Moreover, it cannot be generally said that because of the Data Entry Operators / Programmers / System Analysts, employed on temporary basis, there were many malpractices taken place. Even permanent employees are trapped now-a-days for the receipt of bribe and confined into judicial custody, as corruption and bribery has become a part of our system in Tamil Nadu ever since 1967. Mere averments in the counter affidavit regarding malpractices will not suffice, unless such allegations are substantiated by material evidence.

12. In this case, it was not the case of the respondents that these petitioners were not hired at all as Programmers / System Analysts and those posts are in vogue for more than a decade. It is specifically averred by the petitioners in Paragraph No.5 of the Reply Affidavit that the Government is going to engage some other persons in the present place for the purpose of feeding data in the system, as intention to install Vahan Sarathi portal will not serve its purpose without any data or programming. It is further averred that ever after discontinuation of outsourcing employees, these petitioners are on the job continuously and their services are still utilized.

13. It is pertinent to state here that the appointment of these petitioners is not by way of any illegal mode and in other words, it can be said that their appointment can be construed, at the most, as irregular. The Government has engaged them, of course not directly, but through contractors, for



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the purpose of getting works done and it is highly unfair on the part of the Government to keep them on temporary basis till completion of their work and to oust them from their services in one fine morning after sucking their blood for 10 to 15 years without granting any monetary benefits, thereby leaving them at lurch and abetting to commit suicide. In case their services are not needed, it is not known as to why the Government permitted them to work all along and if they were disengaged from services before their age-barring, at least they may have a chance to sit for competitive examinations and get placement in Government and the Government has neither let them live nor die. The Government and its Officials are in a better position to analyze the vacancies that arise every year on account of retirement, death, etc., and they can very well recruit candidates against the sanctioned posts, instead of hiring through manpower agencies, which, instead of solving unemployment problems, aggregates it to the maximum extent and the award of contract for hiring persons always results in monopoly, slavery, etc. In case the Government feels that their services are required only for a limited period, they should have been disengaged within a short period of not less than 1 to 2 years and not after 10 to 15 years.

14. It was stated by the petitioners that there were regularizations in other Departments, including Madras High Court. It is poignant to mention here that though their statement with regard to regularization of services of similarly placed persons in other Department, may be true, insofar as Class-IV employees working in Public Works Department are concerned, they were not regularized in service, except granting decent / fixed, wages of approximately Rs.18,000/- as per the orders of this Court. Article 41 of the Constitution of India insists upon the need for securing the right to work and the State is not justified in giving employment through Contractors and to the extent possible, the contract system should be abolished. For the sake of convenience, Article 41 of the Constitution of India is extracted hereunder:

"The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want."

15. A Hon'ble Division Bench of this Court in the case of T.Kingsly Thaya Singh and Others vs.



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The Chief Engineer General, Highways & Rural Works Department and Others [W.A.(MD)Nos.786 to 788 of 2019] decided on 17.09.2019, interfered with the order of the learned Single Judge and directed the Government to regularize the services of the petitioners therein, by holding as under:

"8. Be that as it may, we do not find any ground to take a different stand between the persons who were already granted the benefit and the appellants, as we are fully convinced that the directions issued in the earlier writ petitions and affirmed by the Division Bench would govern the present cases as well. However, we find that the order and direction issued in W.P. (MD) No. 8512 of 2014 dated 10.07.2015 in the case of V. Meenakshi Sundaram and others v. Secretary to Government, Highways Department and another would be a reasonable order as it takes care of the interest of the appellant employees as well as that of the respondent Government. This decision has been confirmed in W.A. (MD) No. 913 of 2015 dated 21.02.2017. The relevant portion of the judgment reads as follows:

"5. The learned Single Judge by order dated 10.07.2015, has allowed the Writ Petition, directing the appellants to regularize the services of the respondents from the date of the respondents approaching this Court in the earlier Writ Petition and affect monetary benefits with effect from 01.06.2015. In the said order, the learned Single Judge has also observed that the respondents are not entitled to backwages and that the period that the period of service during which they were actually working, which are mentioned in the counter and the said period alone shall be taken into account for the purpose of pensionary benefits and that period or any other period will not be taken into account for gratuity and other benefits. Aggrieved over the same, the present Writ Appeal has been filed."

9. Thus, following the above, these Writ Appeals are allowed and the respondents are directed to regularize the services of the appellants from the date on which they approached this Court by filing the writ petitions i.e., from 01.02.2010. However, the appellants are not entitled to backwages and the period of service, which they were actually worked alone shall be taken into



account for the purpose of pensionary benefits and that period and any other period will not be taken for gratuity and other benefits. No costs."

16. In this case, a proposal (positive recommendation) was sent by the 2nd respondent for absorption of the services of the petitioners and the respondents have not produced any iota of evidence to prove the malpractices committed by the petitioners. Therefore, this Court is of the view that the petitioners are entitled to the relief sought for in these writ petitions.

17. Accordingly, these Writ Petitions are allowed and a direction is issued to the 1st respondent / Government to consider the case of the petitioners positively, by taking note of the proposal sent by the 2nd respondent in the year 2017 so that the petitioners shall eke out their livelihood peacefully. The 1st respondent is further directed to take a decision and pass order for regularization of the services of the petitioners within a period of two months from the date of receipt of a copy of this order, without causing further hardship to these petitioners.

18. Last but not the least, the Government shall also regularize the services of the Contract Labourers on par with these petitioners, who have been working in Public Works Department and also those, who have been deputed by PWD to Madras High Court and Madurai Bench of Madras High Court both Civil and Electrical, other Departments, etc., for more than 10 years and consider to bring them on regular employment under Class-IV, as their condition is worse than the petitioners herein and their future is more bleak. The Government must ensure that there is no economic death due to unemployment and a sword of Damocles, viz., disengagement cannot be allowed to be hung on these petitioners / similarly placed persons. Where a work is perennial in nature, the employees should be engaged directly. In view of that, when the Contractor is changing and the work is also perennial in nature in this case, it can be inferred that the contract itself is sham and nominal. No costs. Consequently, connected miscellaneous petitions are closed."

12. The above orders passed by the learned Judge would have to be applied to the factual matrix of the present case as well. The directions as contained therein would also cover the present claim of these petitioners on all forces.



13. In the above circumstances, this Writ petition is also allowed and the first respondent is directed to pass appropriate orders regularising the services of the petitioners in the light of the proposals forwarded to the Government by the second respondent. The first respondent is directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gpa/mdl

To

1.The Principal Secretary to Government
Home (Tr) VII Department,
Secretariat, Chennai - 9.

2.The Transport Commissioner, Chepauk
Chennai-5.

+3ccs to Mr.V.Vijay Shankar, Advocate SR. No.65038

+lcc to Government Pleader SR. No.64839

W.P.No.7352 of 2021

and

WMP.No.7862 of 2021

KG (CO)

PR (27/12/2021)