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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.33454 of 2015

&

M.P.Nos.2 & 3 of 2015

1. M.Kamalanathan

2.K.Ramesh Kumar

3.S.Ashok Kumar

4.K.Elumalai

5.M.Pichandi

... Petitioners

Vs.

1.The Secretary to Government
Education Department
St.Fort George, Chennai-9

2.The Commissioner/Director
Director of Technical Education
Chennai-25

3.The Principal
Thanthai Periyar Government Institute of Technology
Vellore-6320002

4.The District Employment Officer
District Employment Office
Vellore District, Vellore

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for records from the 3rd respondent in impugned notification dated 02.09.2015 and quash the same and direct the 1st and 2nd respondents to regularize the service of the petitioners in their respective existing vacancy.

For Petitioner : Ms.R.T.Sundari

For Respondents : Mr.C.Selvaraj Govt. Advocate



O R D E R

The petitioners were employed as casual labourers from the year 1999 onwards. The 1st petitioner was sponsored through employment exchange on 11.01.1999 on daily wage basis as sweeper. The 2nd petitioner was appointed on 01.01.2001 as cleaner and then he was appointed as lab assistant and now working as an office assistant on daily wage basis. The 3rd petitioner was appointed on 16.10.2002 as a cleaner in ECE department now working as office assistant in the 3rd respondent college. The 4th petitioner was initially appointed on compassionate ground in the PWD department and absorbed by the 3rd respondent college as gardener. The 5th petitioner was appointed in the PWD department subsequently absorbed in the 3rd respondent college as gardener. Thus all these petitioners were appointed as daily wages either in 3rd respondent college or absorbed from PWD. They have put more than 10 years of service and expecting regularization. However, the 3rd respondent without regularizing their services issued a notification calling for application for the post of Skilled Assistant, Skilled Assistant trade, ITI special Mechanic. Infact, one of the petitioner is holding ITI trade certificate also. By virtue of long experience they are entitled to hold the post. Without regularizing them the notification issued for filling up of appointment is bad and therefore the petitioners have challenged the notification as well as sought for regularization of their services consequentially.

2. Learned Government Advocate appearing for the respondents would submit that as per G.O.Ms.No.74, P & AR Department dated 27.06.2013, Government has issued regulation for regularizing the services. As per which, those who have completed 10 years of service as on 01.01.2006 alone can be regularized and those who have not completed 10 years of service as on 01.01.2006 are not entitled to regularization. Relying on the judgment of State of Karnataka & Ors. Vs. Umadevi & Ors, 2006 4 SCC 1, he would submit that regularization cannot be granted to the petitioners.

3. I have considered the rival submissions.

4. It is an admitted fact that the petitioners are selected and appointed by the 3rd respondent for carrying out works for more than 10 years. Infact the 1st petitioner was sponsored through employment exchange and appointed on daily wage basis. Two petitioners were appointed by PWD and absorbed by 3rd respondent college. Even though they were appointed as cleaners and sweepers, they got absorbed in higher posts as Lab Assistant, Office Assistant and Gardener. The conduct of the 3rd respondent in retaining their services for more than a decade shows that the services of the petitioners were indispensable.



Further for filling up these posts, all that the 3rd respondent has to do was to get candidates from the employment exchange. There is no specific educational qualification for appointment to the post of Cleaners and Sweepers or Office Assistant. Therefore, retention of the petitioners on temporary basis for long number of years of service without resorting to regular appointment amounts to exploitation of the workers. In a similar circumstance, this Court in W.P.No.32811 of 2004 dated 10.11.2004, directed regularization of the casual labourers and the said judgment is followed in various judgments of this Court wherein the casual labourers who were engaged to work continuously are directed to be regularized.

5. The respondents cannot take shelter under the judgment of the Hon'ble Supreme Court in Umadevi's case. Infact the Hon'ble Supreme Court in Sheo Narain Nagar & Ors vs. State of Uttar Pradesh & Ors, 2018 13 SCC 432, has distinguished the back door appointments and employment process by fair means. In para 8 of the judgment the Hon'ble Supreme Court has observed as under:

" 8. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per Rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not envisaged by Uma Devi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Uma Devi (supra) has been ignored and conveniently over looked by various State Governments/authorities. We regretfully make the observation that Uma Devi (supra) has not be implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due



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salary for which they are entitled on the basis of Article 14, 16 read with Article 34 (1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India, MANU/SC/0237/1982 : AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc. There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Uma Devi (supra). Thus, the time has come to stop the situation where Uma Devi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Uma Devi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra)."

6. In the instant case also 1st petitioner was sponsored by the employment exchange and one of the petitioner was appointed on compassionate ground and absorbed in service. The other petitioners were also engaged on daily wage basis and were discharging their duties continuously. Their appointment may either be regular or irregular and by no means was illegal. The 3rd respondent has engaged utilized the services of the petitioners for their requirement continuously over a period of 10 years. Therefore, the benefit G.O.Ms.No.22 P & AR Department dated 28.02.2006 as well as the other Government Orders, where the Government has taken a conscientious decision to regularize the casual labourers shall apply to the petitioners also. Therefore, there is no doubt the petitioners are entitled for regularization pursuant to the continuous employment for more than ten years.



7. Considering the above facts and circumstances, this Court is inclined to grant the relief as prayed for by the petitioners. A direction is given to the 3rd respondent to regularize the services of the petitioner with effect from their initial appointment and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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Education Department
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2.The Commissioner/Director
Director of Technical Education
Chennai-25

3.The Principal
Thanthai Periyar Government Institute of Technology
Vellore-6320002

4.The District Employment Officer
District Employment Office
Vellore District, Vellore

+1cc to Mr.R.Margabandhu, Advocate, S.R.No.36515
+1cc to the Government Pleader, S.R.No.36568

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UM(CO)
CT 31/01/2022