



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NOS.5039 OF 2015

&

M.P.NOS.1 AND 2 OF 2015

R.Babu

....Petitioner

Vs.

1.The Principal Secretary and Commissioner
of Agriculture Development
Government of Tamilnadu
Agricultural Department
Fort St.George, Chennai-600 009

2.The Commissioner cum Director of Agricultural
Chepauk, Chennai-600 005

3.The joint Director of Agriculture
Kancheepuram

4.The Seed Testing Officer
Seed Testing Laboratory
Panji Pettai
Kancheepuram District

... 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 the records of the 1st respondent in connection with the impugned impugned letter No.2572/Ve.Ni 4(1)/2014-6 dated 13.10.2014 and quash the same



and consequently direct the respondents to absorb the petitioner in the regular vacancy sanctioned as per G.O.(P) 243 Agriculture (Vni4) Department dated 10.12.2013 in regular time scale of pay on relaxing the relevant rules for appointment as done in similar cases in various departments.

For Petitioner : Ms.T.Aananthi

For Respondents : Mr.C.Selvaraj, Govt.Advocate

O R D E R

The petitioner was appointed as a casual labourer on daily wage basis on 27.03.1997 under the respondent. He was attending all types of works. However, he was not regularized in service. The Government has issued orders to regularize the services of numerous casual labourers employed by Government department. As per the various Government orders those who have completed 10 years of service were directed to be regularized and finally by G.O.Ms.No.74, P & AR Department dated 27.06.2013 has issued certain restriction with regard to age, appointment through Employment office, part time working etc., Since the petitioner was not sponsored by Employment Exchange his case was not considered. Therefore, he approached this Court in W.P.No.31348 of 2013. wherein by order dated 21.11.2013, this Court directed the respondent to consider the case of the petitioner for regularization in the light of the Government Orders directed the respondent to pass appropriate orders within a period of twelve weeks. The 1st respondent by Government Letter No.2570/AA4(1)/2014-6 dated 13.10.2014 rejected the request of the petitioner in view of G.O.Ms.74 P & AR Department, dated 27.06.2013. Aggrieved over the same, the petitioner is before this Court.

2. Heard the submission of both the sides.

3. From the perusal of the materials, it is seen that in identical circumstances, several casual labourers working in very same Agricultural Department have approached this Court by way of W.P.No.23147 and 23148 of 2004. This Court has given a direction to regularize those casual labourers by its order



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dated 26.02.2010. Government preferred an appeal vide W.A.No.2617 and 2105 of 2010 and the same was dismissed on 08.06.2011. Again, an SLP was preferred against the Division Bench order in SLP No.9110 and 9111 of 2013 which were also dismissed on 29.04.2013. Thereafter, the casual labourers were regularized vide G.O.2(D) No.85, Agricultural Department dated 15.06.2013. Like wise in the case of one Anbazhagan, the Government relaxed the conditions imposed in G.O.Ms.No.74 P& AR Department dated 27.06.2013 and implemented the order of the Court by regularizing him in G.O.Ms.No.205 Town Development Department dated 18.12.2014. In yet another case, in G.O.Ms.No.71, Rural Development Department dated 12.02.2014, the conditions specified in G.O.Ms.No.74 were relaxed apart from giving age relaxation and non sponsoring through Employment Exchange. Thus, in quite a number of cases, the Government has relaxed the rules and regularized the employee from the date of completion of 10 years. In the instant case, the petitioner has also completed more than 10 years of service.

4. Government has taken a consistent stand before this Court that the order of regularization is contrary to the judgment of the Hon'ble Supreme Court in State of Karnataka vs Uma Devi and Ors , AIR 2006 SC 1806 as well as Civil Appeal Nos.2730 and 2731 of 2014 in the case of Secretary to Government, School Education Department, Chennai.

5. But it is to be noted that the judgment of the Hon'ble Supreme Court in Uma Devi's case has been distinguished in the case of Sheo Narain Nagar Vs. The State of Uttar Pradesh in Civil Appeal No.18510 of 2017 dated 13.11.2017, wherein it has been observed as under:

"8..... 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/adhoc basis or otherwise. This kind



of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra).

9. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.

10. The High Court dismissed the writ application relying on the decision in Uma Devi (supra). But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of Uma Devi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today."



6. Therefore, it is very clear that the judgment of UmaDevi can be applied only in cases where illegal appointments are made denying the opportunity of the people who are waiting before the Employment Exchange. Such back door appointments shall be considered as illegal cannot be regularized at any cost. But, when Government has adopted the procedure of engaging casual labourers indiscriminately and has taken a policy decision to regularize them on completion of 10 years of service, they cannot turn around and state such engagements are illegal. Non sponsoring through Employment Exchange may be an irregular method, the Government in an unavoidable circumstances have engaged casual labourers for getting their work done. Those casual labourers have continued for more than ten years. It is also relevant to state that those last grade servants does not require any educational qualification to do those menial works. In such circumstances, selection or engagement of casual labourers may not undergo regular selection method of getting sponsor from Employment Exchange or adherence to rules. Once a decision is taken to regularize the casual labourers it shall be uniformly applied.

7. In the instant case, it is noted that by way of several Government Orders, the restriction imposed in G.O.Ms.No.274 dated 27.06.2013 as well as the rules with regard to age, educational qualification and reference through Employment Exchange were relaxed and their service were regularized. When a particular treatment was given to a person in the very same department, it shall be extended to the similarly placed persons of the very same department. The respondent department cannot take different stands with regard to its own employees. Once a decision is taken in implementing the orders of regularization, it shall be extended to all the people who are similarly placed. Therefore, if it is not extended inspite of the direction given by the Court it amounts to discrimination. Such discriminatory treatment is violative of principles of natural justice, doctrine of equality and it will amount to arbitrary exercise of power.

8. In such a view, this Court is of the considered opinion that the judgment of the Hon'ble Supreme Court in Sheo Narain Nagar's case, will squarely apply to this case. Following the judgment of the Hon'ble Supreme Court in the above



judgment as well as the orders passed in S.L.P.No.9110 and 9111 of 2013 dated 29.04.2013 against the very same respondents, this Court is inclined to grant relief as prayed for. The respondents are directed to pass orders regularizing the petitioner in the light of the above Government Orders within a period of three months from the date of receipt of a copy of this order.

Writ petition is order with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

1. The Principal Secretary and Commissioner
of Agriculture Development,
Government of Tamilnadu,
Agricultural Department,
Fort St.George, Chennai-600 009.
 2. The Commissioner cum Director of Agricultural,
Chepauk, Chennai-600 005.
 3. The joint Director of Agriculture,
Kancheepuram.
 4. The Seed Testing Officer,
Seed Testing Laboratory,
Panji Pettai,
Kancheepuram District.
- +1cc to the Government Pleader, S.R.No.36926

W.P.Nos.5039 of 2015
&
M.P.Nos.1 and 2 of 2015

GPL(CO)
RLP(16/09/2021)