

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.14782 and 19961 of 2020
and

W.M.P.Nos18366, 18367, 24641 & 24642 of 2020

W.P.No.14782 of 2020

1. S.Sivakumar
2. S.Suresh
3. S.Gnanasekarapandiyan
4. B.Venkatesh
5. S.P.Senthilraja
6. M.Senthilkumar
7. S.Sriram Karthi
8. P.Saravanan
9. B.Sridar
- 10.D.Sampathkumar
- 11.M.Venketasan
- 12.V.Hydhari Ali
- 13.E.Tamil Selvan
- 14.M.Parasanth
- 15.N.Natarajan
- 16.K.Balamurugan
- 17.D.Thangaprakasam

... Petitioners

-vs-

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

2. The Transport Commissioner,
Chepauk, Chennai-5.

... Respondents

W.P.No.19961 of 2020

1. K.Karthikeyan
2. P.Sivakumar
3. R.Thiravidamani
4. N.Muthuraja

5. K.Saravanan
6. S.Abdul Wahid
7. P.Dinesh
8. L.Kaliswaran
9. K.Saravanan
- 10.G.Muthu Kumaran

... Petitioners

-vs-

1. The Principal Secretary to Government,
Home (Tr) VII Department,
Secretariat, Chennai-9.
2. The Transport Commissioner,
Chepauk, Chennai-5.

... Respondents

Common Prayer: Petitions filed under Article 226 of Constitution of India to issue 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 Petitioners : Mr.V.Vijayashankar
For Respondents : Mr.J.Pothiraj
Spl. Govt. Pleader

C O M M O N O R D E R

The petitioners have come forward with these writ petitions, seeking a direction to 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.

2. The issue involved in these petitions is one and the same and they are taken up together for disposal by this common order. For the sake of brevity, the facts are taken up from W.P.No.14782 of 2020, which read as follows:

i) The petitioners joined various Regional Transport Offices (RTOs) in the State as Programmer / System Analysts, after acquiring qualifications either in B.E.Computer Science / BCA or B.Sc. Computer Science and the process of computerisation was undertaken through agency. Initially, one M/s.Maruti Computer Agency was entrusted to supply manpower and the petitioners were engaged through the said agency in the year 2005 and since then, they have been working continuously;

ii) The 2nd respondent, taking note of the continuous workload in the Transport Department, sent a proposal dated 20.05.2014 to the 1st respondent for absorption of the petitioners on a regular basis as done in the other Departments, such as CTO Offices, Municipal Administration Department, etc. Though the said proposal was received at the Office of the 1st respondent, there was no steps taken to regularize the services of the petitioners on a regular scale of pay, on account of which, the 2nd respondent once again sent yet another proposal dated 18.12.2017 for sanction of regular full time posts of System Analyst Programmer and DEO;

iii) It is submitted that even though certain queries were raised by the 1st respondent on 12.01.2018, which were also suitably replied by the 2nd respondent vide letter dated 01.02.2018, there was no progress thereafter in respect of regularization of the services of the petitioners and the 1st respondent has been sitting over the proposal for the past two years;

iv) It is further submitted that the contract assigned to M/s.Maruti Computers was re-assigned to another Contractor, namely, New Life Placement and the contract awarded to them came to an end in the year 2019 itself and the petitioners, despite having worked for more than 10 to 15 years and having sent numerous representations, have not been regularized and therefore, they are before this Court with the aforesaid directions;

v) The petitioners have been made to work on contract basis for more than 10 to 15 years and the act of the respondents in not regularizing the services of the petitioners, more particularly in the Transport Department, is against the settled proposition of the Hon'ble Supreme Court and the petitioners, after having acquired sufficient qualification in the field, have been working on contract basis with the fond hope of getting their services regularized and the 1st respondent may be directed to act on the proposal as expeditiously as possible.

3. The respondents have filed a counter affidavit, wherein, it has been, inter alia stated as under:

i) These writ petitions are not maintainable at the first instance, as the Writ Petitioners are not direct employees of the 2nd respondent and they have not been recruited either through employment exchange or TNPSC and their works are purely contract in nature and the petitioners themselves admitted that they were engaged through a manpower called M/s.Maruti Computers Agency from the year 2005 and worked upto 31.12.2018;

ii) In the counter, it is stated that the proposal sent by the Transport Commissioner to the Government on 20.05.2014, was rejected by the Government on 14.08.2015, stating that if the request of the petitioners is considered, it will lead to similar such requests from various Departments in future, causing financial burden to Government;

iii) Even though the Government have remitted the salary of these petitioners to the Contracting Agency, M/s.Maruthi Computers Pvt. Ltd., monies were not paid to the petitioners, which resulted in registration of an FIR against the said Agency. Moreover, there were several malpractices found in the execution of works, as the petitioners were colluded with the private Internet centres and caused misappropriation to the Government revenue. Since the Central Government project of Vahan Sarathi is found to be more user-friendly, there is absolutely no necessity for the Transport Department to regularize the services of the petitioners in the light of proposal sent to the Government and the manpower agencies were also directed to withdraw its employees;

iv) In the counter affidavit, it is also stated that the 2nd respondent Department was fully computerized and it is web based, the question of absorption on permanent basis does not arise, as the petitioners worked purely under contract basis and therefore, the 2nd respondent has not infringed their livelihood. Thus, it is prayed that the Writ Petitions are liable to be dismissed.

4. The petitioners have filed a re-joinder to the counter affidavit, reiterating the averments made in the affidavit, except stating that though they were disengaged from the services of RTO offices, still they have been continuing to work in RTO Offices unofficially across the State and when several other Departments, such as Education, PWD, Commercial Taxes, High Court of Madras, have appointed System Analysts / Programmers on a regular basis, the act of the Government in singling out the petitioners is highly violative of Article 14 and 16 of the Constitution of India. The petitioners also denied the allegations of malpractices levelled by the respondents in the counter affidavit.

5. Mr.V.Vijayashankar, learned counsel for the petitioners submitted that the petitioners were appointed as System Analysts in various Transport Departments in the State through Contractors and though their contractors were changed, they have been working continuously. There was a proposal sent by the Transport Department as early as in 2014 to regularize the services of these petitioners / similarly placed persons and

subsequently, another proposal was forwarded in the year 2017 and both the proposals did not yield any results in favour of the petitioners, inspite of the fact that a detailed reply was sent by the 2nd respondent for the queries raised by the 1st respondent. He further submitted that these petitioners have been working for more than 15 years without getting the benefit of regular employment in the Transport Department and they are always having a sense of fear of removal from employment at any time. Unless their services are regularized and they are absorbed into regular services, the services put in by them for all these years would become meaningless and therefore, they are at the mercy of this Court to seek for the aforesaid direction.

6. Per contra, Mr.J.Pothiraj, learned Special Government Pleader contended that the Government had already instructed the 2nd respondent to withdraw the employees engaged by them to work on contract basis, in view of the fact that there is no need to absorb them on a regular time scale of pay, more particularly, after introduction of Vahan Sarathi project by the Central Government. He further contended that the temporarily engaged workers caused huge revenue loss to the Government in connivance with private Internet centres and therefore, the Government did not consider their case / proposal sent in the year 2017 for absorption. Moreover, the contract awarded to M/s.New Life Placements Pvt. Ltd., for supply of manpower came to an end as early as on 31.12.2018 and from that date onwards, there was no relationship between the Writ Petitioners and the 2nd respondent Department. Hence, it was strenuously argued that the Writ Petitions are to be dismissed in limine.

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 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 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 monocracy, 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. 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Secretary to Government,
Home (Tr) VII Department,
Secretariat, Chennai-9.
2. The Transport Commissioner,
Chepauk, Chennai-5.

+1cc to Mr.Vijay Shankar, Advocate, sr no.6431

+1cc to The Government Pleader, sr no.5933

W.P.Nos.14782 and 19961 of 2020

MG (CO)
RMP (24/02/2021)



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