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IN THE HIGH COURT OF JUDICATURE AT MADRAS

***Reserved on : 05.10.2021**

Pronounced on : 02.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19576 and 19579 of 2021

and

W.M.P.No. 20864 and 20866 of 2021

(Through Video Conferencing)

1. V.Selvakumar

... Petitioner in

***W.P.No.19576 of 2021**

2. ***N.Elango**

... Petitioner in

****W.P.No.19579 of 2021**

Vs

1. The Government of Tamil Nadu,
Represented by its Secretary
Agriculture Department,
Fort St.George,
Chennai.

2. The Commissioner cum Director of Agriculture
Chepauk,
Chennai.

3. The Joint Director of Agriculture,
Thiruvavarur.

4. The Assistant Director of Agriculture,
Thiruthuraipoondi,
Thiruvavarur District.

...Respondents

Common Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the third in connection with Letter No.E3/1520/2021 dated 28.07.2021 and quash the same and consequently direct the respondent to regularize the service of the petitioner from the date of completion of 10 years of service i.e., 21.04.2003, with all monetary benefits and service benefits on par with similarly placed in the light of the Government Orders and the Judgement dated 28.07.2021 in



W.P.No:5040 / 2013.

For Petitioners
For Respondents

: M/s.T.Aananthi
: Mr.L.S.M.Hasan Fizal
Government Advocate

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COMMON ORDER

By this common order both the writ petitions are being allowed.

2. These writ petitions have been filed by the petitioners for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the third in connection with Letter No.E3/1520/2021 dated 28.07.2021 and quash the same and consequently direct the respondent to regularize the service of the petitioner from the date of completion of 10 years of service i.e., 21.04.2003, with all monetary benefits and service benefits on par with similarly placed in the light of the Government Orders and the Judgement dated 28.07.2021 in W.P.No:5040 / 2013.

3. It is the case of the petitioners that they were appointed on daily wage basis in various capacity as Farm Worker cum Watchman by the respondent on 21.04.1993. However their services were not regularized by extending the benefit of G.O.Ms.No.22 Personnel and Administrative (Reforms), dated 28.02.2006. It is submitted that since the petitioners had completed 10 years of service their services ought to have been regularized in terms of G.O.Ms.No.22 Personnel and Administrative (Reforms) dated 28.02.2006. Though, a proposal was sent by the 3rd respondent. It is further submitted to extend the benefit of G.O.Ms.No.22 Personnel and Administrative (Reforms), dated 28.06.2003 to the petitioner the cut off date given was 01.01.2006. It is submitted that the petitioners services were not regularized though all the petitioners have completed 10 years. It is the further case of the petitioner that one of the petitioner's Junior namely Mr.S.Srinivasan service was regularized in terms of G.O.Ms.No.22 Personnel and Administrative (Reforms) department, dated 28.02.2006, even though the said person was appointed the services only on 24.04.1995. Earlier W.P.No.5033 of 2014 was filed Vide Order dated 21.02.2014, the ordered as under:-

6.Considering the fact that the petitioner has been working for more than 20 years and services of similarly placed persons have been regularised by relaxing the age and sponsorship through employment exchange, the petitioner is directed to submit a representation the respondents 1 and 2, within a period of two



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weeks from the date of receipt of a copy of this order and on receipt of the same, respondents 1 and 2 are directed to consider the representation of the petitioner, in the light of G.O(P)No.187, Agriculture Department, dated 19.05.2008; G.O.(P).No.122, Agriculture Department, dated 11.06.2010; G.O.(P).112, Agriculture Department, dated 05.06.2013; G.O (2T).No.85 Agriculture Department, dated 15.06.2013 and (5) G.O.(P).No.243, Agriculture Department, dated 10.12.2013 and pass appropriate orders, within a period of six weeks thereafter.

4. The learned counsel for the petitioners submits that the issue is also covered by a decision of this Court rendered on 28.07.2021 in W.P.No.5040 of 2015 in the case of M.Suresh Vs. The Principal Secretary and Commissioner of Agriculture Development and others. The relevant portion of the said order reads as under:-

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



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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.

5. The learned Government Advocate submits that G.O.Ms.No.22 Personnel and Administrative (Reforms) department, dated 28.02.2006 has to be read along with G.O.Ms.No.274 dated 27.06.2013. He submits that not only person should have completed 10 years of continuous service without any break, such person should have been sponsored with the Employment Exchange Board, and only those persons are eligible for the benefit of G.O.Ms.No.22 Personnel and Administrative (Reforms) department, dated 28.02.2006. It is submitted that the petitioner was not employed with any of the following institutions:

- i. Live fertilizer manufacturing or;
- ii. Soil Testing or;
- iii. Fertilizer Controlling Laboratory.

6. It is further submitted that the appointment/regularization can be made only, if persons were absorbed on temporary basis in the post borne by the cadre in the Tamil Nadu Basic Service Rules as per the G.O.Ms.No.225 dated 28.04.2016 and G.O.Ms.No.74 P & AR department, dated 27.06.2013.

7. Appearing on behalf of the respondents, the learned Government Advocate further submits that the Petitioners cannot be appointed in terms of G.O.Ms.22, P & AR department, dated 28.02.2006 in as much as G.O.Ms.No.22 P & AR department, dated 28.02.2006 has been modified subsequently by G.O.Ms.No.74 P & AR department, dated 27.06.2013. The learned counsel for the respondents further submits that on the date of consideration of the request of the petitioner, G.O.Ms.No.74, P & AR department, dated 27.06.2013 was in force and therefore the respondents are bound by the aforesaid Government order only. The learned counsel for the respondents further submits that the regularisation of the petitioners it would be in violation of the following decision of the Hon'ble Supreme Court in:-

(i) State of Karnataka and others vs. Uma



Devi and others, AIR 2006 SC 1806;

(ii) The Secretary to Government and others vs. R. Govindasamy reported in 2014 (4) SCC 769;

(iii) State of Rajasthan vs. Dayalal reported in 2011 (2) SCC 429 and;

(iv) Union of India and others vs. A.S. Pillai and others reported in 2010 (13) SCC 448.

8. The learned Government Advocate further submits that the petitioner has suppressed the fact that the earlier petition filed by the petitioner and therefore he prays for dismissal of this writ petition.

9. Heard the learned counsel for the petitioners and the respondents. The respondents are not justified in not regularising the services of the petitioner in time. The respondents ought to have suo motto included the names of the petitioner for regularising their services in terms of G.O.Ms.No.22, Personnel & Administrative Reforms (F) department, dated 28.02.2006. The respondents ought to have been proactive in protecting the rights of persons like petitioners who represent marginalised section of workforce who out of economic and social condition compulsion get employed on daily wage basis. It is precisely for this reason, a benevolent scheme was announced by the Government in G.O.Ms.No.22, Personnel & Administrative Reforms (F) department, dated 28.02.2006. Selective regularisation of few persons leaving few others would amount to unfair discrimination by the State under Article 14 & 16 read with Article 19 and 21. The Hon'ble Supreme Court in Sheo Narain Nagar and Others Vs. State of Uttar Pradesh and Others, (2018) 13 SCC 432, the decision of the Honourable Supreme Court in Secretary, State of Karnataka and Others Vs. Uma Devi and Others, (2006) 4 SCC was distinguished with the following observations:-

7. When we consider the prevailing scenario, it is painful to note that the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] 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



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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 Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . 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 Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the observation that Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been 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 regularising the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Articles 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 [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : 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 downtrodden 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 Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. Thus, the time has come to stop the situation where Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] can be permitted to be flouted, whereas, this Court has interdicted such employment way



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back in the year 2006. The employment cannot be on exploitative terms, whereas Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] 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 Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] .

10. The above observation of the Hon'ble Supreme Court squarely applies to the facts and circumstances of the case. There are therefore compelling reasons for allowing these writ petitions in the light of the facts of this case and in the light of the decision of the Hon'ble Supreme court referred to supra by directing the respondents to regularise the services of the petitioners on par with their juniors.

11. Accordingly, these Writ Petitions are allowed with consequential directions to the respondents to extend the benefit of G.O.Ms.No.22, Personnel & Administrative Reforms (F) department, dated 28.02.2006 on par with the petitioner's juniors whose services were regularised in terms of G.O.Ms.No.109, Personnel & Administrative Reforms (F) department, dated 04.03.2016. This exercise shall be carried out by the respondents within a period of 16 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

***(Corrected order to issue
dated 17/06/2022)**

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rgm/jas



To

1. The Secretary Agriculture Department,
The Government of Tamil Nadu,
Fort St.George,
Chennai.

2. The Commissioner cum Director
of Agriculture
Chepauk,
Chennai.

3. The Joint Director of Agriculture,
Thiruvavur.

4. The Assistant Director of Agriculture,
Thiruthuraiipoondi,
Thiruvavuru District.

+1cc to the Government Pleader, S.R.No.57698

***To be substituted
the order already
despatch
on 06/01/2022**

W.P.No.19576 and 19579 of 2021 and
W.M.P.No. 20864 and 20866 of 2021

KSM(CO)

CT 22/12/2021

CT 23/06/2022