



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.23233 OF 2021

(THROUGH VIDEO CONFERENCING)

A.Perumal

... Petitioner

Vs

1. The Government of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Fort St.George, Chennai - 600 009.
 2. The Director of School Education,
College Road, Chennai - 600 006.
 3. The District Educational Officer,
Erode District, Erode.
 4. The Head Master,
Government Boy's Higher Secondary School,
Sivagiri, Erode District - 638 109.
- ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondents and more particularly the third respondent pursuant to his proceedings made in Na.Ka.No.7760/Aa1/2014 dated 19.02.2021 and quash the same as null and void, illegal and invalid and consequently directing the respondents to regularize the services of the petitioner as "Sweeper" fixing time-scale of pay with effect from 01.06.1996 the date of petitioners appointment in the approved vacancy through Employment Exchange besides disbursing the arrears of back-wages with all allowances increments etc with effect from 01.06.1996, the date of the petitioner's appointment.

For Petitioner : Mr.A.Amal Raj

For Respondents :

For R1 to R3 : Mr.L.S.M.Hasan Fizal
Government Advocate



ORDER

Mr.L.S.M.Hasan Fizal, learned Government takes notice on behalf of the first to third respondents.

2. This is a pathetic case of a Sanitary Worker (Sweeper) appointed in the fourth respondent School who was sponsored by the Employment Exchange Board way back in 1996 and called for an interview in terms of a Letter dated 24.04.1996.

3. The petitioner has been in continuance of service from 01.06.1996. It is the case of the petitioner that though the petitioner has rendered service for a continuous period of 26 years, the third respondent has passed the impugned order stating that the petitioner has not rendered 10 years of continuous service. The ostensible reason given in the impugned order is that the petitioner has not satisfied the requirements of G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006 and the subsequent amendment vide G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013.

4. Appearing on behalf of the petitioner, the learned counsel for the petitioner submits that pursuant to the orders passed by this court, the respondents have been passing Government Orders regularizing the services of persons like the petitioner who were originally appointed on Daily Wage Basis on consolidated pay. In this connection, a reference is made to Government Orders in G.O.Ms.No.385, Finance (Pay Cell) Department dated 01.10.2010 and G.O.Ms.No.111, School Education (R1) Department dated 09.05.2012.

5. The Learned counsel for the petitioner further submits that in the Government decided to regularize the services of similarly placed persons in Government Offices and various Local Bodies who were employed on Part Time Basis, Daily Wage Basis in School Education Department who have completed ten years of services.

6. The learned counsel for the petitioner further submits that several writ petitions have been filed in the past also and the orders of this court have been implemented by the respondents. He drew attention to the order passed in W.P.No.17663 of 2014 which was implemented vide G.O.Ms.No.50, School Education [S.E.4(1)] Department dated 08.03.2019.

7. The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in



Narendra Kumar Tiwari and others Vs State of Jharkhand and others, (2018) 8 SCC 238 wherein, it was held as under:-

“11. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.

12. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four months from today on regularisation of the status of the appellants.

13. The appeals are accordingly disposed of.

14. We may add that that it would be worthwhile for the State of Jharkhand to henceforth consider making regular appointments only and dropping the idea of making irregular appointments so as to short circuit the process of regular appointments.”

8. Appearing on behalf of the first to third respondents, the learned Government Advocate submits that impugned order cannot be interfered as the petitioner has not rendered more than ten years of continuous services. He submits that the regularization of services of the petitioner cannot be made contrary to G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006 as superseded by G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013. He therefore submits that the writ petition is liable to be dismissed. It is further submitted that the petitioner was only a Part-Time Worker in the capacity of the Sanitary Worker (Sweeper) and since the petitioner had not discharged from function through out the day during normal working hours as in the case of other Part Time Workers/Daily Wage Workers, the petitioner cannot claim any parity with those whose services were regularized pursuant to the orders of this Court and the Government Orders implementing the same.

9. Heard the learned counsel for the petitioner and the learned Government Advocate for the first to third respondents.



I have perused the impugned orders and the various Government Orders rendered by the learned counsel for the petitioner implementing the orders of this Court pursuant to which services of various Part Time Worker/Daily Wage Workers services were regularized.

10. The Hon'ble Supreme Court in Sheo Narain Nagar Vs State of Uttar Pradesh, (2018) 13 SCC 432, held as follows:-

"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 continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new device 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

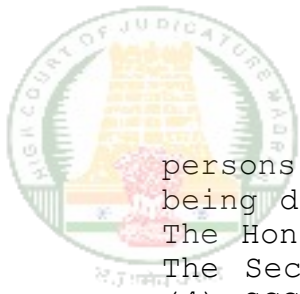


WEB COPY

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 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] .

8. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularisation of the appellants. However, regularisation 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 the 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".

11. The Hon'ble Supreme Court has taken the plight of



persons like the petitioner who are forced to work and were being denied the right of regularization in Government servants. The Hon'ble Supreme Court has also distinguished the decision in The Secretary, State of Karnataka and others Vs Uma Devi, 2006 (4) SCC 1 and also in Secretary to Government, School Education Department, Chennai and others Vs Thiru.R.Govindaswamy and others, (2014) 4 SCC 769.

12. Considering the fact that the petitioner has been in service of the fourth respondent School for more than ten years and since the petitioner was sponsored by the Employment Exchange Board, it is not open for the respondents to state that the petitioner was not entitled to regularisation particularly in the light of the fact that services of the similarly placed persons have been regularized in the past.

13. Considering the same, this writ petition is allowed and the respondents are directed to pass appropriate orders within a period of four months from the date of receipt of a copy of this order by regularizing the services of the petitioner with consequential relief to the petitioner on par with those who have been regularized earlier in terms of G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006, G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013 and G.O.Ms.No.50, School Education [S.E.4(1)] Department dated 08.03.2019. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rgm/arb

To

1. The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The District Educational Officer,
Erode District, Erode.



4. The Head Master,
Government Boy's Higher Secondary School,
Sivagiri, Erode District - 638 109.

WEB COPY

+1cc to Mr.A.Amal Raj, Advocate, S.R.No.56056
+1cc to the Government Pleader, S.R.No.57153

W.P.No.23233 of 2021

PA (CO)
PM/30/11/2021