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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2021

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU
W.P.No.25270 of 2021

1. V.Xavier
2. B.Gokulakannan
3. T.Rajaram Mohan Rai
4. M.Gnanavel

.. Petitioners

Vs

1. The Secretary to Government,
Government of Tamil Nadu,
Home Courts (CTS),
Fort St. George,
Chennai - 600 009.
2. The Registrar General,
High Court of Madras,
Chennai - 600 104.
3. The Chief Judicial Magistrate,
Villupuram District,
Villupuram.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to regularize/permanent the services of the petitioners in the post of Night Watchman with the second and third respondents immediately.

For the Petitioners : Mr.R.Ramesh

For the Respondents : Mr.P.Muthukumar
State Government Pleader
for respondent No.1



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: Mr.V.Vijay Shankar
Standing Counsel
for respondent Nos.2 and 3

ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

The writ petition has been filed seeking a direction for regularisation of the services of the petitioners on the post of Night Watchman.

2. The facts stated in the writ petition show that the petitioners were called for interview vide a letter dated 10.02.2020 for their appointment on the post of Night Watchman on temporary basis. After attending the interview, the petitioners were given appointment on the post of Night Watchman on temporary basis for a period of six months in the month of March, 2020. The tenure of the petitioners was thereafter extended from time to time and, in the meanwhile, an advertisement was issued in the month of April, 2021 to fill up all the posts on regular basis. The petitioners, apart from others, applied for the post and, accordingly, were called for selection. The petitioners submit that their tenure is going to expire on 30.11.2021. Thus, the writ petition has been filed to seek regularisation of their services or to accommodate them on any other alternative post available in the department.

3. It is submitted that the petitioners have already worked for more than two years by now and there is a legitimate expectation from the respondents to continue the petitioners on the said post or on any other vacant post available with the respondents or other department. The prayer is to restrain the respondents from discontinuing the services of the petitioners as they were not appointed through back door, but only after interview pursuant to the names sent by the employment exchange.

4. Learned counsel for the petitioners has cited two judgments of this court to support his argument. The first judgment is in the case of Judicial Temporary Employees Welfare Association v. The State of Tamil Nadu [W.P.No.9710 of 2009, decided on 10.6.2009]. The other judgment is in the case of M.Selvaraj v. The State of Tamil Nadu [Review Application No.3 of 2010, decided on 28.2.2011]. It is submitted that appropriate direction for continuance of temporary employees was given in paragraph 21 in the case of Judicial Temporary Employees Welfare Association (supra). The prayer is to issue a similar direction in the present case also.



5. The writ petition has been contested by the respondent Nos.2 and 3. It is stated that the petitioners were given appointment on temporary basis after calling their names from the employment exchange. It was given initially for a period of six months, followed by extension for the reason that the process of selection was started in the month of April, 2021 and was not completed before the expiry of the term of the appointment of the petitioners. It is further stated that now the process of selection has been completed and the respondents are expected to issue appointment orders to the selected candidates within a period two weeks from today.

6. In view of the above, the prayer made by the respondent Nos.2 and 3 is not to issue any direction in favour of the petitioners for their continuance in service. The petitioners are only temporary appointees and, thus, have to make room for selected candidates. It is more so when the petitioners had also applied for their regular selection. Thus, subject to the result of the selection, appropriate directions may be given. However, it may be made clear that if the petitioners are not selected, then they would have no right to continue in service.

7. We have considered the rival submissions and perused the records.

8. The facts on record show that the petitioners were appointed on the post of Night Watchman on temporary basis for a period of six months in the month of March, 2020. The period of temporary appointment was extended from time to time and as per the last order in favour of the petitioners, their tenure is going to expire on 30.11.2021.

9. Learned counsel for the respondent Nos.2 and 3 stated that the process of selection was initiated in the month of April, 2021 and has been completed and the orders of appointment are likely to be issued within a period of two weeks. That being the position, the direction of the nature sought by the petitioners for regularisation or continuance cannot be given on the post of Night Watchman, unless selected. They have to otherwise make room for the regular selected candidates.

10. It may be true that the petitioners were not appointed through back door, but being temporary employees, they cannot seek a direction for continuance even if they are not selected on regular basis. Since their names were recommended by the employment exchange, in case of non selection of the petitioners, a direction can be given to the employment exchange to maintain their names in the same seniority so that in case of requirement of temporary employees in any other department, their names may be recommended suitably.



11. A reference to the judgment in the case of Judicial Temporary Employees Welfare Association (supra) has been given. We have gone through the judgment and find that in paragraph 21 certain directions have been given. The legal position in regard to the rights of temporary employees has been crystallized by the Supreme Court judgment in the case of State of Karnataka v. Umadevi (3), (2006) 4 SCC 1. In view of the judgment of the Apex Court, the direction for continuance of the services of the temporary employees cannot be given as the process of regular selection has already been completed, though we would protect the rights of the petitioners to the extent it is permissible. The directions in the case of Judicial Temporary Employees Welfare Association (supra) were on its own facts which are not similar to the facts of this case. In the instance case, the petitioners have not even worked for two years and there are a series of judgments of the Apex Court that deprecate the practice of continuance of the temporary employees for indefinite period and direction for regularisation.

12. In view of the above, we are not inclined to direct the respondents to continue the services of the petitioners if they are not selected in the regular selection process.

13. In the result, the writ petition is disposed of with the following directions:

(i) If the petitioners are selected in the regular mode, they would be given regular appointment; and

(ii) If the petitioners are not selected pursuant to the selection process undertaken by the respondents, their names would be referred to the employment exchange to maintain it on the same seniority position so that if any requisition is sent by any other department, the names of the petitioners may be recommended appropriately for their employment.

There will be no order as to costs. Consequently, W.M.P.Nos.26647, 26651 and 26654 of 2021 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government,
Government of Tamil Nadu,
Home Courts (CTS),
Fort St. George,
Chennai - 600 009.
2. The Registrar General,
High Court of Madras,
Chennai - 600 104.
3. The Chief Judicial Magistrate,
Villupuram District,
Villupuram.

+1cc to Mr.R.Ramesh, Advocate, S.R.No.61748

+1cc to Government Pleader, in SR.No.62664

[08/04/2022]

W.P.No.25270 of 2021

SSI (CO)
CT 03/12/2021