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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE R.VIJAYAKUMAR

Writ Appeal No.3954 of 2019
and
Writ Appeal No.553 of 2020

Writ Appeal No.3954 of 2019:

1. The District Collector,
Tuticorin District.
2. The Block Development Officer,
Santhakuman Panchayat Union,
Thoothukudi District.

...Appellants/R8 & R25

vs.

1. P.Sasikala
2. K.Chithalakshmi
3. S.Christy Sudha
4. K.Josephine Chandrakala
5. R.Sasikumar
6. R.Perabu
7. H.Rajamohmed
8. S.Indhirani
9. A.Nanchammal
10. R.Poongodi
11. M.Muthukumar
12. S.Jayathi
13. M.Subramanian
14. M.Shanmugapriya
15. S.Palanivel
16. S.Sangeetha
17. R.Thirumozhi
18. T.M.Kalpana
19. U.Jayachitra



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20. The Government of Tamil Nadu,
rep. by its Principal Secretary,
Rural Development & Panchayat Raj Department
Fort St.George, Chennai - 600 009.
21. The Director/Commissioner,
Rural Development and Panchayat Raj Department
Panagal Maligai, Saidapet,
Chennai - 600 015.
22. The District Collector,
Dharmapuri District.
23. The District Collector,
Trichy District.
24. The District Collector,
Thiruvallur District.
25. The District Collector,
Cuddalore District.
26. The District Collector,
Krishnagiri District.
27. The Block Development Officer,
Dharmapuri Panchayat Union,
Dharmapuri District.
28. The Block Development Officer,
Manikadam Panchayat Union,
Trichy District.
29. The Block Development Officer,
Marukapuri Panchayat Union,
Trichy District.
30. The Block Development Officer,
Upaliapuram Panchayat Union,
Trichy District.
31. The Block Development Officer,
Villivakkam Panchayat Union,
Thiruvallur District.



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32. The Block Development Officer,
Puzla Panchayat Union,
Thiruvallur District.
33. The Block Development Officer,
Thiruvallakadu Panchayat Union,
Thiruvallur District.
34. The Block Development Officer,
Thiruvallur Panchayat Union,
Thiruvallur District.
35. The Block Development Officer,
Dharmapuri Panchayat Union,
Dharmapuri District.
36. The Block Development Officer,
Kumarachi Panchayat Union,
Cuddalore District.
37. The Block Development Officer,
Kerapalayam Panchayat Union,
Cuddalore District.
38. The Block Development Officer,
Melabhavanagiri Panchayat Union,
Cuddalore District.
39. The Block Development Officer,
Kumbapuram Panchayat Union,
Cuddalore District.
40. The Block Development Officer,
Nallur Panchayat Union,
Cuddalore District.
41. The Block Development Officer,
Kurinchipadi Panchayat Union,
Cuddalore District.
42. The Block Development Officer,
Uthagari Panchayat Union,
Krishnagiri District.

...Respondents



Writ Appeal No.553 of 2020:

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1. The District Collector,
Krishnagiri District.
2. The Block Development Officer,
Uthangarai Panchayat Union,
Krishnagiri District.

...Appellants

vs.

1. P.Sasikala
2. K.Chithalakshmi
3. S.Christy Sudha
4. K.Josephine Chandrakala
5. R.Sasikumar
6. R.Perabu
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Cuddalore District.
41. The Block Development Officer,
Kurinchipadi Panchayat Union,
Cuddalore District.
42. The Block Development Officer,
Sathankulam Panchayat Union,
Thothukudi District.

... Respondents

Writ Appeals filed under Clause 15 of Letters Patent against the order dated 28.08.2019 passed by this Court in W.P.No.6595 of 2018.

Prayer in W.P. 6595/2018:

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st Respondent to consider the claims of the Petitioners for regularization of service as Computer Operators from the date of his Original appointment with all attended benefits and pass appropriate orders based on the G.O.Ms. No. 878 Rural Development Department dated 15.05.1981.

For Appellants in both
Writ Appeals :

Mr.K.V.Sajeew Kumar,
Government Advocate



For Respondents in both
Writ Appeals :

Mr.V.Vijay Shankar

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C O M M O N J U D G M E N T
(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Writ Appeals are filed challenging the order dated 28.09.2019 passed in W.P.No.6595 of 2018, whereby, the Writ Petition was allowed with a direction to the Government and the Authorities to initiate further steps to regularize the services of the Writ Petitioners as Computer Operators from the date of their original appointments.

2. As the issue involved in both Writ Appeals is one and the same, they are taken up for disposal by a common judgment.

3. According to the Writ Petitioners, they were working as Computer Operators in various Panchayat Unions of Cuddalore, Dharmapuri and Thoothukudi Districts on daily wage basis, and that, they were appointed on various dates between 1995 and 2008. The grievance of the Writ Petitioners is that, though they have been working continuously without any break, and most of them have completed almost 15 years of service, their services have not been regularized.

4. It was contended by the Writ Petitioners that, though G.O.Ms.No.878, Rural Development Department, dated 15.05.1981 provides for regularization of contingent full time staff, in respect of Panchayat Unions, for those who have completed 10 years of service as on 01.04.1981, their services have been utilized only as daily wages without regularization. Learned counsel for the Writ Petitioners has relied on a decision of this Court in the case of G.K.Govindaraj vs. State of Tamil Nadu (decided in W.P.No.23410 of 2010, dated 16.11.2010), wherein, reliance was placed on G.O.Ms.No.22, dated 28.02.2006, which provides for regularization of casual employees who had served continuously for a period of 10 years as on 01.01.2006.

5. Before the learned Single Judge, learned Special Government Pleader drew the attention of this Court to paragraph 43 of the Apex Court decision in the case of Secretary, State of Karnataka vs. Umadevi, (2006) 4 SCC 1, whereby, the Apex Court drew an inception as to who were all regularized in service.

6. In the case on hand, de hors G.O.Ms.No.22, dated 28.02.2006, employees vide S.Nos.1 to 10 have joined the service



even prior to the judgment rendered by the Apex Court in Uma Devi's case (supra) and employees vide S.Nos.11 to 19 joined the service after the decision rendered in Uma Devi's case (supra). The Government did not take any steps to divest the duties of the employees herein after the decision of the Apex Court in Uma Devi's case (supra) and they continued in service. Even according to the Respondents/employees, all other employees except one R.Thirumozhi vide S.No.17 are working. With regard to one A.Nachammal vide S.No.9, there was break in service of four years. She was appointed on 18.10.2004; disengaged from service on 01.05.2010 and rejoined the service on 01.08.2012.

7. When the Government has given a go-by to the decision of the Apex Court in Uma Devi's case (supra), Appellants herein cannot shed crocodile tears to deprive regularisation of 18 employees barring one employee vide S.No.17. Hence, according to the learned counsel for the Writ Petitioners, in terms of G.O.Ms.No.22, dated 28.02.2006, all the employees have to be regularized in service and that, benefits of G.O.Ms.No.181 have to be extended.

8. Learned Government Advocate appearing for the Appellants contended that, the Government has not recruited the Writ Petitioners and they have joined service only through backdoor entry. He pointed out that, there is a categorical observation by the Apex Court in Uma Devi's case (supra) that, recruitment by means of backdoor entry like the present one on hand needs to be curbed. He submitted that, G.O.Ms.No.22, dated 28.02.2006 has been superseded by G.O.Ms.No.74, Personnel & Administrative Reforms Department, dated 27.06.2013, wherein, it has been specifically stated that, the service of full-time daily wage employees who have completed 10 years of service after 01.01.2006, shall not be regularized. That being the case, Writ Petitioners are not entitled to any relief.

9. It is further contended by the learned Government Advocate that, the learned Single Judge has not accepted the plea of granting relief in terms of G.O.Ms.No.161, dated 26.06.2000 and that, he should not have ordered for framing of a Scheme, as it is the policy decision of the Government. According to him, when there is no vacancy and substantive post, both Writ Appeals have to be allowed.

10. Additional Affidavit dated 28.10.2021 has been filed by the 21st Respondent viz. the Director/Commissioner, Rural Development and Panchayat Raj Department, Panagal Maligai, Saidapet, Chennai 600 015 in W.A.No.553 of 2020, wherein, it is stated that, the question of approving back door entry could not be permitted, as the post of Computer Operators is not existing



in any of the Government Offices and it is neither sanctioned nor approved by the Government till date. He has further stated that, Respondents 1 to 19 in the said Writ Appeal have not been recruited following any recruitment procedure either by means of Employment Exchange nor through open recruitment and the question of regularising them is against the Apex Court decision rendered in Uma Devi's case (supra). Hence, according to the 21st Respondent, Respondents 1 to 19 are not entitled to the relief sought in the Writ Petition.

11. Heard the learned counsel on either side and perused the material documents available on record.

12. It is not in dispute that, Writ Petitioners have been irregularly appointed by the Panchayat Unions. Admittedly, there is no violation on the part of the employees and the Government has given a go-by to the decision of the Apex Court in Uma Devi's case (supra) and continued the Writ Petitioners in service. That apart, the Government has passed G.O.Ms.No.161, Rural Development Department, dated 26.06.2000, which was superseded by G.O.Ms.No.74, dated 27.06.2013. Even going by the stand of the Government, employees vide S.Nos.1 to 4 have already completed 10 years of service and the benefits accrued by means of a Government Order cannot be taken away by means of a subsequent Government Order. Hence, we are of the view that, Writ Petitioners vide S.Nos.1 to 4 will have to be regularized.

13. It is not in dispute that, the Writ Petitioner viz. R.Thirumozhi vide S.No.17 is not in service. Insofar as Writ Petitioners vide S.Nos.5 to 19 except S.No.17 are concerned, as they are employed as Computer Operators, and that, manual Typewriters have been dispensed with as on date, we are of the view that, these persons will have to be regularized in service, provided there is an Advertisement for the purpose of recruitment and they participate in the selection process. In such an event, these persons will have to be given preference over others in respect of age, caste, etc. for regularization of their service and if they are found fit, their services will have to be regularized on and from the date of their completion of ten years of service.

14. With regard to the submission of framing of a Scheme, this Court is of the view that, no prejudice is going to be caused to the Government, if a Scheme is framed for the purpose of selection of Computer Operators. Though, it is stated that, there is no post for Computer Operators, when the services of the Writ Petitioners are utilized, it is the need of the hour that, the said post has to be created. Of course, creation of post is the realm of affairs of the Government. Once a Scheme



is framed and an open Advertisement is issued, there will be no bar for Writ Petitioners 5 to 19 barring 17, to compete with others and get preference in the matter of appointment, and once they are appointed, their services will be deemed to be confirmed on and from the date of completion of ten years of service.

15. Learned Single Judge in a decision rendered by this Court in the case of M.Irudhayanathan vs, State of Tamil Nadu (1997 (3) LLN 544) has dealt with the issue of regularization and the relevant portion is extracted hereunder:

"12. ... The object with which the Conferment of Permanent Status Act enacted is that the Government found that many workers in industrial establishments are kept under temporary rolls and they were denied various statutory benefits which are given to the permanent employees. In order to curb the serious unfair labour practice and in view of the recommendation of the 25th Meeting of the State Labour Advisory Board, the Government of Tamil Nadu enacted the Act conferring permanent status to workmen in various industrial establishments in the State of Tamil Nadu who have put in service for a period of 480 days in a period of 24 calendar months in such industrial establishments. It is beneficial legislation enacted in favour of the workmen and the Act should be construed to achieve the object of the provisions of the Act. Section 3 of the Act confers the benefits of permanent status to workmen and once the statutory conditions prescribed under S.3 of the Act are satisfied or complied with, the workmen concerned acquire, an indefeasible right to become a permanent employee in that particular industrial establishment. The conferment of permanent status to the particular employee does not depend upon the want of vacancy or want of cadre strength. The only question that has to be asked for the conferment of permanent status is, whether the workman was in continuous service for a period of 480 days in a period



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of 24 calendar months in that particular establishment and if that answer to the question is in the affirmative, the workman concerned acquires a statutory right to become a permanent employee under the provisions of S.3 of the said Act. He need not wait for the next vacancy that might arise and his permanent status does not depend upon the want of cadre strength. The Act provides sufficient safeguards, for the protection of rights of the employees and the Government is empowered to appoint Inspectors to inspect, to enter the industrial establishment, to make examination of the records and registers of the industrial establishment to find out whether there has been a compliance with the provisions of the Act. The Act also provides that, if there is any contravention of the provisions of the Act, the concerned employer shall be punishable with fine and also for the continuous offence a further fine is also imposed. A fair reading of the provisions of the Conferment of Permanent Status Act clearly shows that S.3 of the Act is mandatory in nature and once the statutory conditions prescribed under S.3 are fulfilled, the workman concerned acquires an automatic right of being conferred the permanent status. Further, the third respondent is a Government organisation and it has been repeatedly held that the Government organisations should be model employers for other private organisations to follow. The contention raised on behalf of the learned Additional Government Pleader that the question of granting permanent status will be considered as and when the vacancy or the cadre strength is increased does not deserve acceptance. Though the anxiety of the Government Pleader that there should be a curb on the spending by the Government or Government expenditure is appreciated, but, the remedy for such a curb on such a spending or for adopting an austerity measure lies elsewhere, but not in not



granting the statutory benefits due to the employees."

16. From the above, it is very clear that, permanent status will have to be given to employees and it does not depend upon want of vacancy or want of cadre strength. Though the above judgment is rendered under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, the fact that, the Government requires hands is not in dispute. Employees cannot be allowed to work for decades together without getting permanent status. Government shall act as a model employer and the need of the hour is recruitment. If there is unemployment and that, everyone is not going to have a square meal per day, it will be a very dangerous situation to the Society. Hence, the Government shall think of recruiting hands and fill the existing vacancies on merits and in accordance with the reservations that may be applicable, i.e. either by applying horizontal or vertical reservation that may be applicable.

17. Hence, we find that, there are no reasons to interfere with the order of the learned Single Judge, except modifying the same with regard to S.Nos.1 to 4.

18. Writ Appeals are disposed of accordingly. No costs. Consequently, connected C.M.P.No.24798 of 2019 in W.A.No.3954 of 2019 and C.M.P.No.7893 of 2020 in W.A.No.553 of 2020 are closed.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

(aeb)

To:

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Government of Tamil Nadu,
Rural Development & Panchayat Raj Department
Fort St.George, Chennai - 600 009.
2. The Director/Commissioner,
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W.A.Nos.3954 of 2019 & 553 of 2020

RP(CO)
SP(15/12/2021)