



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

W.P. (MD) No.14295 of 2021

Tmt.T.Annammal

... Petitioner

**vs.**

1.The Secretary of Government School,  
Education Department,  
Fort St George,  
Chennai-9

2.The Director of School Education,  
College Road,  
Chennai-6.

3.The District Educational Officer,  
Kuzhithurai,  
Kanyakumari District.

... Respondents

**PRAYER:** Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent nos.2 & 3 to regularize the petitioner's service from the date of the petitioner's appointment i.e., on 27.07.1989 and thereby grant service and monitory benefits to the petitioner.

For Petitioner : Mr.S.J.Chakkaravarthy

For Respondents : Mr.A.K.Manickam, Government  
counsel

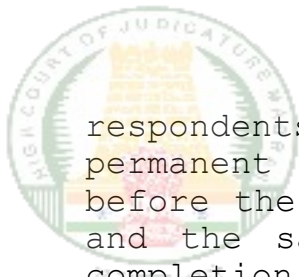
### **O R D E R**

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, directing the respondent nos.2 & 3 to regularize the petitioner's service from the date of the petitioner's appointment i.e., on 27.07.1989 and thereby grant service and monitory benefits to the petitioner.

2. Heard the learned counsel appearing for the petitioner and the learned Government Counsel appearing for the respondents.

3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4. The petitioner was appointed as a part time Sweeper in Government L.M.Elementary School, Mathicode, Kanyakumari District through Employment Exchange. The third respondent, who was the appointing authority has appointed the petitioner as a sanitary worker. The petitioner made several representations to the



respondents seeking appointment in regular time scale of pay on permanent basis. The petitioner has filed original application before the Tamil Nadu Administrative Tribunal in O.A.No.732 of 2002 and the said O.A. was allowed. Thereafter, on 25.08.2006, on completion of 10 years as a Sanitary worker in the Department, the Assistant Elementary Educational Officer, Karungal was appointed the petitioner as temporary full time Sweeper at Government Higher Secondary School, Karungal. Now, the writ petitioner seeks for regularization of his services from the date of his appointment by relying upon G.O.M.S.No.22, P.B.A.R(F) Department dated 28.02.2006. According to the petitioner, the similarly placed persons were regularized their services based on the directions of this Court in WP.No.14623 of 2010 dated 20.04.2012 and this Court has allowed the said writ petition. Therefore, the petitioner has come up with the present Writ Petition.

5. In fact, based upon the G.O.Ms.No.22 Personnel and Administrative Reforms Department dated 28.02.2006 several individuals approached this Court and obtained orders in a batch of cases in writ petition No. 4859 of 2009. Those orders were also confirmed on appeals in Writ Appeal No. 1520 of 2010 etc batch, by the Division Bench of this Court by order dated 25.10.2010. Consequent SLPs filed by the Government were also dismissed by the Apex Court. Thereafter, several similarly placed persons started filing Writ Petitions and all those cases were allowed by the learned Judges sometimes after notice and sometimes even at the admission stage. In a recent decision of the Hon'ble Supreme Court in SLP Civil Nos.2726-2729 of 2014 with civil appeal Nos.2730-2731 of 2014. Those appeals were allowed by the Supreme Court by a judgment dated 21.02.2014 in "**Secretary to Government, School Education Department vs. Thiru.R.Govindasamy and others**", reported in CDJ Law Journal 2014 SC 146, wherein, the Hon'ble Supreme Court held in paragraphs 5 to 8 as under:

"5.The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularised. The issue is no more less integra. In State of Karnataka & Ors v. Umadevi & Ors A I R 2006 S C 1806, this Court held as under:

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily



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wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.

6. In *Union of India & Ors. v. A. S. Pillai & Ors.*, (2010) 13 S CC 448, this Court dealt with the issue of regularisation of part-time employees and the court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

7. This Court in *State of Rajasthan & Ors. v. Daya Lal & ors.*, A I R 2011 S C 1193, has considered the scope of regularisation of irregular or part time appointments in all possible eventualities and laid down well settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein, the same are as under:

8(i) The High Courts in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.



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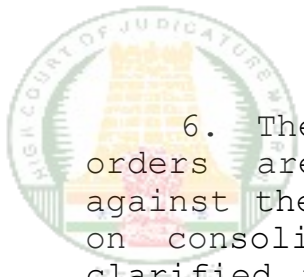
(ii) Mere continuation of service by a temporary or ad hoc or daily wage employee, under cover of some interim orders of the Court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut off date (that is a scheme providing that persons who had put in a specified number of years and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cutoff dates.

(iv) part time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) part time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute. (emphasis added)

"8. The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgment. Therefore, the appeals are allowed. However, in light of the facts and circumstances of the case as Shri P.P.Rao, learned senior counsel has submitted that the appellant has already implemented the impugned judgments and does not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected."



6. There is no dispute about the fact that the Government orders are applicable to full time daily wage employees appointed against the sanctioned vacancies paid not out of contingent fund or on consolidated pay. Further by G.O.Ms.No.74, the Government clarified that G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006, is not applicable to part time, the consolidated pay employees and employees appointed on temporary basis.

7. In view of the authoritative pronouncement of the Apex Court referred to above in "**Secretary to Government, School Education Department vs. Thiru.R.Govindasamy and others**" reported in C DJ Law Journal 2014 S C 146, a direction to the department to regularise the services of daily wagers, temporary, part time, contract workers and persons employed on consolidated salary cannot be issued by this Court based on the Government orders issued contrary to statutory provisions of appointment being made without following the regular procedure.

8. In the light of the above discussion, this Court is of the view that writ petitioner is not entitled to get the relief for regularization of services by relying on G.O.Ms.No.22 Personnel and Administrative (Reforms) Department dated 28.02.2006. Therefore, the Writ Petition fails and it is dismissed. No costs. It is for the writ petitioner to work out his remedy before the appropriate forum if it is permissible under the law.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

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**To**

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Education Department,  
Fort St George,  
Chennai-9

2.The Director of School Education,  
College Road,  
Chennai-6.

3.The District Educational Officer,  
Kuzhithurai,  
Kanyakumari District.



+1 CC to M/s.S.J.CHAKKKRAVARTHY, Advocate ( SR-26223[F] dated 13/08/2021 )

+1 CC to M/s.SPL GP ( SR-26497[F] dated 17/08/2021 )

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DJ (CO)  
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