



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.9352 of 2020

and

W.M.P. (MD)No.8500 of 2020

WEB COPY

N.Amutha

.... Petitioner

vs.

1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George, Secretariat,
Chennai.

2.The Director,
Rural Development and Panchayat Raj Department,
Chennai.

3.The District Collector,
Sivagangai,
Sivagangai District.

4.The Commissioner,
Panchayat Union,
Sivagangai.

5.The Chairman,
Sivagangai Panchayat Union,
Sivagangai.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for entire records relating to the impugned proceedings of the third respondent in Na.Ka.R1/8293/2020, dated 24.07.2020, quash the same as illegal and consequently, direct the third respondent to permit the writ petitioner to continue as Computer Assistant in the fifth respondent Panchayat Union, by regularizing her service by directing the respondents 1 and 2, based on the proposal of regularization submitted by the third respondent.

For Petitioner : Mr.VR.Shanmuganathan
for Mr.AL.Kannan

For Respondents : Mr.Veera.Kathiravan
Senior Standing Counsel
Assisted by
Mr.P.Subbaraj
Government Advocate

**ORDER**

This Writ Petition is filed seeking to quash the proceedings of the 3rd respondent, dated 24.07.2020, as illegal and consequently, direct the 3rd respondent to permit the petitioner to continue as Computer Assistant in the fifth respondent Panchayat Union, by regularizing her service and directing the respondents 1 and 2, based on the proposal of regularization submitted by the 3rd respondent.

2. According to the petitioner, she had completed her post-graduation in Economics and PGDCA, HDCA, Diploma Programmes in Computer, PGDCM Diploma in Co-operative Management. Also she had completed Typewriting Higher Grade in both languages Tamil and English. In the year 2009, a temporary post of Computer Assistant fell vacant in the 5th respondent / the Chairman, Sivagangai Panchayat Union. The writ petitioner was selected and appointed to the post of Computer Assistant with effect from 24.12.2009, on daily wages basis, vide Resolution No.340 and the same was approved by the 3rd respondent / District Collector, Sivagangai District. Further vide Resolution dated 13.06.2013, the 5th respondent / Sivagangai Panchayat Union had increased the petitioner's wages from Rs.3000/- to Rs.6000/- p.m.

3. Further, according to the petitioner, after completion of three years of the petitioner's service, the 2nd respondent, vide proceedings dated 24.05.2013, called for service particulars to regularize the service of petitioner. Accordingly, on 14.06.2013, the 4th respondent / the Commissioner, Panchayat Union, Sivagangai, forwarded the petitioner's service particulars to the 3rd respondent / District Collector, Sivagangai District, who in turn, forwarded the same to the 2nd respondent / the Director, Rural Development and Panchayat Raj Department. The petitioner was paid salary in the month of March 2020, for the service rendered by her in the month of February 2020.

4. Further, owing to COVID-19 pandemic situation, the petitioner was duly instructed by the 5th respondent / the Chairman, Sivagangai Panchayat Union, to stay at home. The petitioner has not received her salary for the month of April 2020, and on enquiry, it is learnt that a newly elected Chairman of 5th respondent Panchayat Union, had appointed one Rajiv, as Computer Assistant, additionally, on consolidated pay without getting any approval and following procedure. The petitioner was instructed by the 5th respondent to come to Office after relaxation of lock down and thereafter, the petitioner was not called for work. The writ petitioner has served in the said post for more than 11 years on consolidated pay and request for regularization of service is pending with the 2nd respondent / The Director, Rural Development and Panchayat Raj



Department, Chennai, along with the similarly appointed persons. While so, without any reason, she has not been permitted to join duty, which would in turn affect her regularization of service. In this regard, she has sent a representation to the second respondent on 07.05.2020. As there was no response to the same, the petitioner has filed W.P.(MD)No.6346 of 2020 before this Court, seeking a direction to the respondents 2 and 3 herein to regularize her services from the date of her appointment i.e., 24.12.2009 with all monetary benefits as per the proposal dated 14.06.2013, forwarded by the fourth respondent. This Court, by order dated 01.06.2020, disposed of the said Writ Petition, directing the third respondent herein to consider the representation of the petitioner, dated 07.05.2020, and pass orders on merits within two weeks from the date of receipt a copy of that order.

5.Pursuant to the said order passed by this Court, dated 01.06.2020, the third respondent, vide his impugned proceedings, dated 24.07.2020, rejected the representation of the petitioner. The petitioner has come out with the present Writ Petition, challenging the said order.

6.The learned counsel appearing for the petitioner submitted that the petitioner and many other persons, numbering 1758, Computer Operator/Typist were appointed in various Panchayat Unions on daily wage basis. The fourth respondent issued Identity Card to the petitioner, confirming that she is the Computer Assistant. Initially, the petitioner was paid Rs.3,000/- per month. One T.Jotheeswari working as Computer Assistant / Typist was transferred to some other Panchayat. Due to such transfer, workload of the petitioner was increased and the 5th respondent passed Resolution, increasing the salary of the petitioner from Rs.3,000/- to Rs.6,000/- per month. During the year 2013, the Government decided to regularize the services of Computer Assistant / Typist working in Panchayat Unions. The 2nd respondent, by proceedings, dated 11.06.20213, directed all the District Collectors to furnish details of the Staff working under daily wage basis for regularization of their services. Pursuant to that, the 4th respondent has sent details to the 2nd respondent stating that the petitioner was working on daily wage basis for three years and six months in the 4th respondent Panchayat Union. Hence, the reason given in the impugned order is erroneous, invalid and illegal. The petitioner was working from 2009 in the 4th respondent Panchayat Union without any break and proposal for regularization of the petitioner is pending with the 2nd respondent from 2013. Without considering the order of the 2nd respondent, which was passed in the year 2013, the impugned order has been passed without application of mind. The petitioner is entitled to regularization as per various Government Orders and prayed for setting aside the order.

7.The learned Senior Standing Counsel appearing for the



respondents submitted that the petitioner was working only on outsourcing basis in the 4th respondent Panchayat Union and permanent employees were appointed through TNPSC. Hence, there is no necessity to outsource the work of the 4th respondent Panchayat Union. The learned Senior Counsel further submitted that the appointment of the petitioner is back door entry and she was not appointed through Employment Exchange by conducting interview or by issuing notice. The appointment of the petitioner is illegal and the same will not confer any regularization as held by the Hon'ble Apex Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi and three others** reported in **2006 (4) SCC 1**, wherein at Paragraphs 46, 47 and 49, the Hon'ble Apex Court has held as follows:-

'46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in *Dharwad* [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , *Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , *Jacob* [*Jacob M. Puthuparambil v. Kerala Water Authority*, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and *Gujarat Agricultural University* [*Gujarat Agricultural University v. Rathod Labhu Bechar*, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See *Lord Diplock in Council for Civil Services Union v. Minister of Civil Service* [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] , *National Buildings Construction Corpn. v. S. Raghunathan* [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] and *Chanchal Goyal (Dr.) v. State of Rajasthan* [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] .] There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments



made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] . Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment



and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.''

8. In reply, the learned counsel appearing for the petitioner submitted that the arguments advanced by the learned Senior Standing Counsel appearing for the respondents are not in the impugned order. The respondents are taking a contradictory stand that the petitioner was paid only for typing charges on outsourcing basis and at the same time, their stand is, the petitioner was appointed by back door method. In view of contradictory stand taken by the respondents, the impugned order may be set aside and the matter remanded back to the third respondent to give an opportunity to the petitioner to produce all the documents to prove that she was not an outsourcing employee and prayed for allowing the writ petition.

9. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the respondents and perused the materials on record.

10. From the above rival submissions and the materials available on record, it is seen that the petitioner is working in the 4th respondent Panchayat Union from the year 2009. The dispute is with regard to the capacity in which the petitioner was working. According to the petitioner, the petitioner was working as an employee of the 4th respondent Panchayat on daily wage basis. The learned counsel appearing for the petitioner strongly relied on the I.D. card issued by the 4th respondent, the resolution of the 5th respondent and the proceedings of the 4th respondent, dated 14.06.2013. In the I.D. card issued by the 4th respondent, the petitioner was shown as Computer Assistant, the date of joining as 24.12.2009 and date of retirement as 31.05.2035. In the Resolution dated 28.02.2011, it has been stated that the daily wage of the petitioner is increased to Rs.200/- per day due to heavy workload. Further, the 4th respondent, in his proceedings, dated 14.06.2013, sent the particulars of the petitioner to the 3rd respondent as per the direction of the 2nd respondent, dated 24.05.2013. In the said proceedings, the 4th respondent has furnished the qualification of the petitioner, date of joining and period of working as Computer Assistant i.e., for three years and six months on daily wage basis. The 4th respondent also mentioned that the petitioner belong to



Backward Community. The said proposal was forwarded to the 2nd respondent and the said proposal was kept pending with the 2nd respondent from 2013 onwards. Meanwhile, the petitioner was working as Computer Assistant / Typist on daily wage basis in the 4th respondent Panchayat Union. Only when she was not permitted to work, she gave a representation dated 07.05.2020. From the impugned order, it is seen that the 4th respondent has stated that the petitioner was engaged on outsourcing basis. The said submission of the 4th respondent is contrary to his earlier proceedings, dated 14.06.2013, wherein he has stated that as on that date, the petitioner was working as Computer Assistant / Typist on daily wage basis for three years and six months.

11.The letter of the 4th respondent dated 29.06.2020, referred to in the impugned order, is contrary to the proceedings of the 4th respondent, dated 14.06.2013 and other records. The 3rd respondent without properly considering the records of the petitioner and proceedings of the 4th respondent, dated 14.06.2013, relying on erroneous statement made by the 4th respondent, in his letter, dated 29.06.2020, rejected the representation of the petitioner. The reasoning given by the 3rd respondent in the impugned order is contrary to the earlier proceedings and materials on record and the reasons given by the 3rd respondent is erroneous and invalid and therefore, the impugned order dated 24.07.2020, is liable to be set aside and accordingly, it is set aside.

12.In the result, the impugned order of the third respondent, dated 24.07.2020, is set aside and the matter is remitted back to the third respondent for considering the issue afresh taking into account the proceedings of the fourth respondent, dated 14.06.2013 and documents produced by the petitioner after giving an opportunity to the petitioner and pass orders on merits within a period of four weeks from the date of receipt of a copy of this order. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (w)

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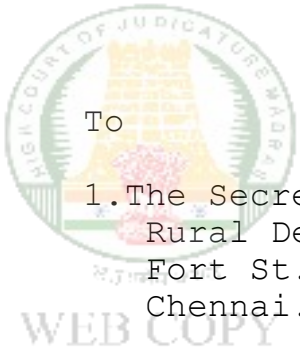
/ /2021

Sub Assistant Registrar(CS)

smn2

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George, Secretariat,
Chennai.

2.The Director,
Rural Development and Panchayat Raj Department,
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Sivagangai.

5.The Chairman,
Sivagangai Panchayat Union,
Sivagangai.

+1 CC to M/s.AL.KANNAN, Advocate (SR-22710[F] dated 15/07/2021)

+1 CC to M/s.SPL GP (SR-22933[F] dated 16/07/2021)

W.P(MD)No.9352 of 2020
14.07.2021

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