



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.18013 of 2021

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... Petitioner

-vs-

The District Educational Officer
Nagercoil
Kanyakumari District

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondent to regularize the petitioner's service as full-time sweeper on the date of completion of ten years of part time service from 26.09.1989 and to pay time scale of pay and other benefits payable with effect from 26.09.1999 by counting the 50% of part time service for the purpose of pension in the light of the order passed in W.A.(MD) No.93 of 2018, dated 27.03.2018 as confirmed by the Apex Court by dismissal of S.L.P.No.23980 of 2018.

For Petitioner : Mr.Maheswaran.R.

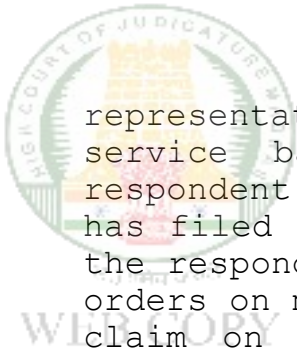
For Respondent : Mr.A.K.Manikkam

Government Counsel

O R D E R

The prayer in this writ petition is for issuance of a writ of mandamus directing the respondent to regularize the petitioner's service as full-time sweeper on the date of completion of ten years of part time service from 26.09.1989 and to pay time scale of pay and other benefits with effect from 26.09.1999 by counting 50% of part time service for the purpose of calculating pension in the light of the Judgment, dated 27.03.2018, passed in W.A.(MD) No.93 of 2018, as confirmed by the Apex Court by dismissal of S.L.P.No.23980 of 2018.

2.According to the petitioner, she was appointed as part time Sweeper in the respondent School on 26.09.1989 in a sanctioned post. Even though the nomenclature of the said post is Sweeper, the nature of the work done by the petitioner was that of the work done by a full time employee and she was paid a meager sum of Rs.70/- per month. At that time, the Government passed G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, regularizing the services of the daily wage employees working in Government Departments, who have rendered ten years of service as on 01.01.2006. Since, according to the petitioner, she has also rendered more than 32 years of service, she made several



representations to the respondent, seeking regularization of her service based on G.O.Ms.No.22, dated 28.02.2006. Since the respondent has not considered the petitioner's representations, she has filed a writ petition before this Court and this Court directed the respondent to consider the petitioner's representations and pass orders on merits. However, the respondent rejected the petitioner's claim on the ground that G.O.Ms.No.22, dated 28.02.2006 is not applicable to the part time employee. Subsequently, the Honourable Division Bench of this Court in W.A.(MD) No.93 of 2018 considered the issue as to whether the part time employees are entitled to the benefit under G.O.Ms.No.22 and by Judgment dated 27.03.2018, held that the part time employees are entitled to the relief of G.O.Ms.No.22 as long as they are appointed in sanctioned posts. The special leave petition in S.L.P.No.23980 of 2018 filed by the Department challenging the said Judgment was also dismissed by the Honourable Supreme Court by order dated 24.09.2018. Thereafter, according to the petitioner, the service of several part time Sweepers were regularized and hence, the petitioner made a representation to the respondent seeking regularization of her service also. Since the said representation has not been considered by the respondent, she has filed this writ petition seeking the relief as stated above.

3.The learned counsel appearing for the petitioner would submit that the petitioner has rendered the service as part time Sweeper in the respondent School for more than 32 years. As per G.O.Ms.No.22, dated 28.02.2006, the petitioner is entitled for regularization of her service. But, the respondent has rejected her claim on a vexatious ground. In similar matters, this Court by order dated 22.02.2017 in W.P.(MD) No.5935 of 2013 and Judgment dated 27.03.2018 in W.A.(MD) No.93 of 2018, directed the Authorities concerned to regularize the services of the petitioners therein by considering their representations based on G.O.Ms.No.22, dated 28.02.2006. Therefore, the learned counsel prays for a direction to the respondent herein on the same line of the aforesaid orders passed by this Court.

4.Heard the learned Government Counsel appearing for the respondent on the aforesaid submissions.

5.On perusal of the materials available on record, it is seen that the petitioner was appointed as part time Sweeper on 26.09.1989 in the respondent School. At this stage, it would be relevant to refer the appointment order, dated 26.09.1989, which is extracted hereunder:

"ஆரல் பெருமாள் பரம் அரசு நடுநிலைப் பள்ளியில் பகுதி நேர பெருக்குநராக பணியாற்றி வந்த திரு.என்.சோக்கலிங்க நாடார், இடமாறுதலில் சேன்றதால் ஏற்பட்ட காலியிடத்தில், மாவட்ட வேலை வாய்ப்பகம் வழி வரப் பெற்ற திருமதி.பி.ஞானேசி என்பார், பகுதி நேர பெருக்குநராக நியமனம் செய்யப்பட்டுள்ளார். அன்னார் உடனடியாக பணியில் சேர



அறிவுறுத்தப் படுகிறார். பணியில் சேரும் சமயம் மருத்துவ தகுதிச் சான்று உரிய படிவத்தில் சமர்ப்பிக்க வேண்டும்.

அவரது ஊதியம், மாவட்ட ஆட்சித் தலைவரால் நிர்ணயிக்கப்படும் நேரத்தில் வழங்கப்படும்.

இந்நியமனம் தற் காலிகமானது. இவரது பணி நீட்டிப்பிற்கு உத்தரவாதமல்ல.

இவர் பணியேற்ற நாளினை இவ் வலுவகத்திற்கு உடனடியாக தெரிவிக்க தலைமை ஆசிரியர் கேட்டுக் கொள்ளப்படுகிறார்."

6. Thereafter, the Government issued G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, regularizing the services of the daily wage employees working in all Government Departments, who have rendered ten years of service as on 01.01.2006. The said Government Order is extracted hereunder:

"The Hon'ble Chief Minister had announced during the Tamil Nadu Government Officials Union and Government Servants and Teachers Associations General Conference held on 8.2.2006, that the services of employees working in various Government Departments on daily wages basis who have completed more than 10 years of service as on 1.1.2006 will be regularized.

2. Based on the announcement made by the Hon'ble Chief Minister on 8.2.2006, the Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 1.1.2006 be regularised by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned, subject to their being otherwise qualified for the post.

3. The Departments of Secretariat may, therefore, be directed to pursue action to regularise the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 1.1.2006 as ordered in para 2 above, in consultation with the respective Heads of Departments wherever necessary. In special cases wherein relaxation of rules is required, proposal shall be sent to Government.

4. This order issues with the concurrence of Finance Department vide its U.O.No.985/FS/2006, Dated 28-2-2006."

7. Subsequently, based on the aforesaid Government Order, several part time employees, who have rendered more than ten years of service in various Departments as on 01.01.2006, approached this



Court seeking direction to the Authority concerned to regularize their services and this Court also granted the relief as prayed for in the writ petitions.

8. In such circumstances, inasmuch as some deviations were noticed in certain cases, the Government reconsidered the matter and issued G.O.(Ms) No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, revising earlier G.O.(Ms) No.22, dated 28.02.2006. The said order is extracted hereunder:

"In the Government Order read above, orders have been issued directing the Departments of Secretariat to pursue action to regularize the services of the daily wage employees working in all Government Departments, who have rendered 10 years of service as on 1.1.2006 by appointing them in the time-scale of pay of the post in accordance with the service conditions prescribed for the post concerned, subject to their being otherwise qualified for the post in consultation with the respective Heads of Departments and proposal may be sent to Government wherever necessary in special cases, wherein relaxation of rule is required.

2) In certain cases of regularization ordered invoking the Government Order read above, the following deviations were noticed:

(a) The benefit of regularization available to the full time daily wage employees has been extended to part-time employees also;

(b) The benefit of regularization available to the daily wage employees initially recruited through the employment exchange has been extended to those initially appointed illegally without reference by the employment exchange or through an open competitive process;

(c) The services were regularized from the date of initial appointment instead of regularizing the services from the date of issue of the order;

(d) The monetary and other services benefits were allowed retrospectively from the date of regularization in cases where relaxation of service rules are involved without consideration of financial implication;



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(e) While relaxing service rules, the rules relating to educational qualification and more of recruitment are also relaxed;

(f) For allowing the monetary and other service benefits with retrospective effect Rule 23(a) (ii) of the General Rules for Tamil Nadu State and Subordinate Services was also relaxed, which cannot be relaxed;

(g) The services of daily wage employees appointed after 01.01.1998 were also regularized invoking the Government Order read above.

3) Persons ineligible to get benefit of regularization as per the Government Order read above have sought legal remedy through writ petitions in the Hon'ble High Court of Madras. In such cases, the Court has passed orders. It is noticed that such orders are passed because of the following reasons:-

a. Counter affidavits were not filed promptly resulting in ex parte orders pronounced by the Hon'ble Courts.

b. Even in cases where counter affidavit is filed, the facts and rules are not presented comprehensively.

c. Appeals are not filed in time.

d. Delays in filing the Writ Appeals or Special Leave Petitions resulted in interim orders being confirmed by the Hon'ble Courts.

4) Such court orders have been implemented and the benefits are being extended to similarly placed persons without examining the merits of individual cases and its financial implications on the State Exchequer.

5) The improper implementation of regularization scheme has caused huge financial commitment running into several crores of rupees to the State Exchequer and defeated the purpose of the Government Order read above. To arrest the improper implementation of the one time regularization scheme ordered in the Government Order read above, the Government have now decided to lay down fresh modalities to govern the regularization of the services of full time daily wage employees.



6) In supersession of the orders issued in the Government Order read above, the Government now issue revised orders on regularization of services of full time daily wage employees working in all Government departments as detailed below:

(i) This order shall be deemed to have been come into force with retrospective effect from 01.01.2006;

(ii) The services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and completed 10 (ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength;

(iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and more of recruitment shall not be relaxed;

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23(a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services;

(v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularization;

(vi) The Part-time and casual employees are not entitled to the concession referred to at para (ii) above;

(vii) The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularized;

(viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules against the person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the above said instructions are followed without fail and lapses if any found,



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responsibility will be fixed against them;

(ix) All the proposals for regularization of the services of full time daily wage employees should be sent to the Government even in cases where relaxation of rules are not involved.

7) This Government order shall not be applicable to the cases where orders have already been issued by the competent authority in pursuance of the Government Order (Ms) No.22, Personnel and Administrative Reforms (F) Department, dated 28.2.2006 and also the orders issued in pursuance of the Court directions where the verdict reached finality.

8) This order issues with the concurrence of Finance Department vide its U.O.No.2247/FS/P/13, dated 24.06.2013."

9. In the aforesaid revised Government Order, it is categorically mentioned that the services of the full time daily wage employees, who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and completed ten years of service as on 01.01.2006 shall be regularized against the regular vacancies in the sanctioned cadre strength and the part-time and casual employees are not entitled to the above concession.

10. Thereafter, the Government also filed appeals before the Honourable Supreme Court in the case of **Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and others [(2014) 4 SCC 769]** wherein in Paragraph No.7, the Apex Court has observed as follows:

"7. This Court in *State of Rajasthan & Ors. vs. Daya Lal & Ors.*, AIR 2011 SC 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.

(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 of service 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 cut-off 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



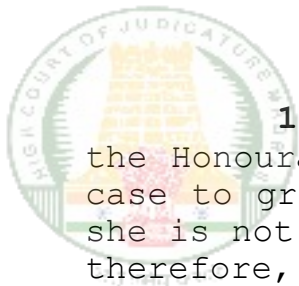
arise under a contract or under a statute." (Emphasis added)

11.Subsequent to the aforesaid orders passed by the Honourable Supreme Court, the writ petitions seeking the relief sought for under G.O.Ms.No.22, dated 28.02.2006 were came to be dismissed by this Court.

12.On coming to the case on hand, though the petitioner, in her affidavit, has stated that the post in which she was fully eligible by passing the required educational qualification. Further, in G.O.(Ms) No.74, dated 27.06.2013, in Clause (2)(g) it is clearly stated that the services of daily wage employees appointed after 01.01.1998 were also regularized invoking the Government Order read above and in Clause (6)(vi) it is clearly stated that the part-time and casual employees are not entitled to the concession referred to at para (ii) above. On reading of said Government Order, it is seen that the petitioner has not satisfied the eligibility criteria to regularize her service based on G.O.(Ms) No.22, dated 28.02.2006.

13.As held by the Honourable Apex Court in **R.Govindaswamy's** case (supra) mere continuation of service by a temporary or daily wage employee, on the strength 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. That apart, the Government has also in the revised Government Order has categorically held that part time and casual employees are not entitled to regularisation of service.

14.Though the learned counsel for the petitioner placed reliance upon the order of this Court dated 22.02.2017 in W.P.(MD) No.5935 of 2013 in support of his contentions, in view of the above observations of the Honourable Supreme Court, the said decision is not applicable to the facts of the present case. That apart, the Judgment dated 27.03.2018 in W.A.(MD) No.93 of 2018, relied on by the learned counsel for the petitioner in support of his contentions, is also not applicable to the facts of the present case and also distinguishable on facts for the reason that in the said decision, the respondent / writ petitioner was a full time employee, whereas in the present case the petitioner was a part time employee. Therefore, the petitioner is not eligible for regularisation of service in view of G.O.(Ms) No.74, dated 27.06.2013 and in the light of the decision of the Honourable Apex Court in the case of **R.Govindaswamy** (supra).



15. Therefore, in view of the above well settled position by the Honourable Apex Court, this Court does not find any *prima facie* case to grant the relief as prayed for by the petitioner and hence, she is not entitled to succeed in her case and the writ petition is, therefore, liable to be dismissed.

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16. In fine, the writ petition fails and it is dismissed.
No costs.

Sd/-

Assistant Registrar (A.D I)

// True Copy //

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Sub Assistant Registrar (CS)

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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.

To:

The District Educational Officer,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.SPL.GP (SR-31978[F] dated 11/10/2021)

W.P. (MD) No.18013 of 2021

08.10.2021

NSN (CO)

RS (28.10.2021) 10P 3C