



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P(MD)No.20497 of 2021

and

W.M.P(MD)Nos.17131 and 17132 of 2021

- 1.P.Saranya
- 2.K.Sabitha
- 3.M.Angammal
- 4.K.Mathan
- 5.K.Maheswari
- 6.P.Sankar
- 7.R.viduthalai Veeran
- 8.R.Karthick
- 9.A.Murugan
- 10.S.Sulthan Allavudheen
- 11.P.Karthikeyan
- 12.A.Palaniammal
- 13.S.Vadivelu
- 14.S.Parthasarathi
- 15.P.Manimaran

... Petitioners

Vs.

- 1.The Registrar General,
High Court, High Court Buildings,
Chennai - 600 104.

- 2.The Principal District Judge,
Madurai.

... Respondents

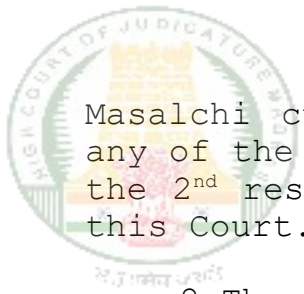
Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to regularize the services of the petitioners in the Post of Masalchi, Masalchi cum Night watchman, Night watchman, Gardener, Sweeper in any of the existing vacancies in the Subordinate Courts coming under the 2nd respondent Court within the time period stipulated by this Court.

For Petitioners :Mr.T.Lajapathi Roy
For Respondents :Mr.G.Thalaimutharasu

ORDER

(Order of the Court was made by
PUSHPA SATHYANARAYANA, J.)

The Writ Petition has been filed by the petitioners seeking for issuance of a Writ of Mandamus, directing the respondents to regularize the services of the petitioners in the Post of Masalchi,



Masalchi cum Night watchman, Night watchman, Gardener, Sweeper in any of the existing vacancies in the Subordinate Courts coming under the 2nd respondent Court within the time period to be stipulated by this Court.

2. The case of the petitioners is that the petitioners were given appointment in the post of Masalchi, Masalchi cum Nightwatchman, Nightwatchman, Gardener, Sweeper on temporary basis for a period of six months in the year 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 submit that their tenure is going to expire on 30.11.2021. According to the petitioners, they were unable to apply for the post which they are holding, since the those posts were not notified enabling them to apply. Thus, the writ petition has been filed seeking regularisation of their services or to accommodate them in any of the existing vacancies in the Subordinate Courts coming under the 2nd respondent Court.

3. When the matter is taken up for hearing today, the learned counsel appearing for the respondents would submit that similar issue has been considered by the First Bench of this Court in W.P.No.24990 of 2021 dated 23.11.2021 (***R.Rajaram and others vs. The Secretary to Government, Government of Tamil Nadu, Chennai and two others***) and the said writ petition was disposed of with certain directions and has produced a copy of the said order.

4. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and perused the materials available on record.

5. From a perusal of the order made in W.P.No.24990 of 2021 dated 23.11.2021, it could be seen that the issue raised in this writ petition is covered by the order referred to supra. Relevant portion of the said order is extracted hereunder:

"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.26306, 26308 and 26309 of 2021 are closed."

6. In view of the above, the writ petition is disposed of in similar line. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

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:

1.The Registrar General,
High Court, High Court Buildings,
Chennai - 600 104.

2.The Principal District Judge,
Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-36893[F] dated
01/12/2021)

W.P (MD) No.20497 of 2021
30.11.2021

SS (CO)
KB(10.12.2021) 4P 4C