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W.P.(MD)No.23706 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.02.2021**

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS. JUSTICE S.ANANTHI

W.P. (MD)No.23706 of 2018

(Through Video Conferencing)

S.Maheswari

: Petitioner

Vs.

1.The State of Tamilnadu represented by
The Secretary to Government
Home (Court) Department
Secretariat, Chennai.

2.The Registrar General
Madras High Court, Chennai.

3.The Additional Registrar General
Madurai Bench of Madras High Court,
Madurai.

4.The Principal District Judge,
District Court Complex, Thoothukudi

5.The District Employment Officer,
District Employment Office,
No.64/4G Teachers Colony Junction,
Thoothukudi.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of ousted passed by the 4th respondent in order A.No.33/2016 dated 02.02.2016 received only on 06.02.2016 and quash the same and consequently direct the 4th respondent to appoint the petitioner to any other suitable post which is not required to be filled up through the TNPSC in the light of the orders dated 10.08.2009 passed by this Court in W.P.Nos.9710 and 10189 of 2009.

For Petitioner : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.R.Murugaraj for R1

Government Advocate

Mr.T.S.Mohammed Mohideen for R2



ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

By the impugned order, the petitioner, who was working on a temporary basis appointed under Rule 10(a)(i) of Tamil Nadu Subordinate Service Rules, 1955, seeks to challenge the same before us.

2. When the matter is taken up for hearing, the learned Counsel appearing on either side submitted that the issue is no longer *res integra*, in view of the order passed by a Division Bench of this Court in W.P.No.3498 of 2013, etc., batch, dated 27.11.2014.

3. By the said order, the Division Bench was pleased to hold as follows:

"5. We have examined the said submission. We are of the considered view that such a direction cannot be granted for more than one reason. Firstly, the petitioners, while working in the post on temporary basis, had an opportunity to participate in the examination conducted by the Public Service Commission for appointment in the said post. Some of the candidates had appeared for the examination and also come out successfully. The petitioners, it appears, have not participated in the selection process. Secondly, the petitioners, while accepting the appointment on temporary basis, were conscious of the fact that their appointment was only till regularly appointed incumbents are available. Thirdly, the petitioners' appointment was not in accordance with the Constitutional scheme of employment. Thus, it cannot be directed to conduct a separate examination for regularization of the present employees.

6. However, to meet the ends of justice, we feel just and proper that in future, whenever selection takes place and the petitioners apply for the same post in which they are working, the Government may take into account, their work as temporary employees and grant age relaxation to them, to the extent of their service in the same post.

7. We also make it clear that if the petitioners make a representation to the employment exchange for maintaining seniority in the list, as on account of their appointment temporarily, their names have been struck off, the authorities will consider the same sympathetically to restore their seniority in the list.

8. In fine, the writ petitions are disposed of with the above observations and in terms of the order of this



Court dated 21.11.2014 (supra). No cost. Connected Miscellaneous Petitions are closed."

4. In view of the aforesaid position, this writ petition also stands disposed of in the above terms. No costs.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Secretary to Government
Home (Court) Department
Secretariat, Chennai.
- 2.The Registrar General
Madras High Court, Chennai.
- 3.The Additional Registrar General
Madurai Bench of Madras High Court,
Madurai.
- 4.The Principal District Judge,
District Court Complex, Thoothukudi
- 5.The District Employment Officer,
District Employment Office,
No.64/4G Teachers Colony Junction,
Thoothukudi.

+1 CC to M/s.SPL GP (SR-6454[F] dated 22/02/2021)

+1 CC to M/s.P.M.VISHNUVARTHANAN, Advocate (SR-6577[F] dated 23/02/2021)

W.P. (MD)No.23706 of 2018

Dated: 19.02.2021

TP (CO)

KB(15.03.2021) 3P 8C

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