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W.P.No.14339 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14339 of 2016
and
W.M.P.No.12519 of 2016

R.Iyyasamy

... Petitioner

Vs.

1.The Union Territory of Puducherry,
Rep by its Chief Secretary,
Government of Puducherry,
Secretariat,
Puducherry.

2.The Secretary,
Public Works Department,
Government of Puducherry,
Secretariat,
Puducherry.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents herein to dispose off the representation of the petitioner herein dated 14.03.2016 based on the Office Memorandum No.11024/96 Estt (D) dated 18.05.1998 and G.O.Ms.No.22, Department of Personnel and Administrative Reforms and order dated 23.12.2010 in WP.No.18615 of 2005 and batch matters.



WEB COPY



W.P.No.14339 of 2016

For Petitioner : Mr.D.Ravichander
For Respondents : Mr.E.Balamurugane
Government Pleader (I/C) cum
Public Prosecutor [Puducherry]

ORDER

The writ of mandamus has been instituted to dispose of the representation submitted by the writ petitioner on 14.03.2016 based on the Office Memorandum No.11024/96 Estt (D) dated 18.05.1998 and G.O.Ms.No.22, Department of Personnel and Administrative Reforms and order dated 23.12.2010 in WP.No.18615 of 2005 and batch matters.

2. The petitioner states that he is a graduate and registered his name in the Employment Exchange with a fond hope that he will get an opportunity for public employment. The complaint of the writ petitioner is that back door appointments alone are made in Government Departments in the Union Territory of Puducherry and no regular appointments are made against the sanctioned posts by following the procedures as contemplated under the Recruitment Rules. In the name of temporary engagements, the recruitment rules are flouted. Favouritism and Nepotism plays major role in engaging such temporary employees in the Union Territory of Puducherry,



which causes prejudice to the interests of the large number of unemployed persons, who all are waiting to secure public employment through regular mode of recruitment.

3. The petitioner made a representation in this regard to the authorities competent to ensure that the temporary and permanent appointments are made by following the procedures as contemplated, enabling the unemployed citizen to get employment equally, so as to avoid back door appointments in Government projects and departments.

4. The learned counsel for the petitioner strenuously contended that trickery is played for the purpose of engaging temporary employees by the authorities of the Union Territory of Puducherry. Most of the appointments are through back door and or in violation of the Rules. Political appointments are made, flouting the recruitment rules and more specifically, during Elections, large scale illegal and irregular appointments are made, depriving equal opportunities to all the citizens, who all are aspiring to secure public employment through open competitive process.



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5. The learned counsel for the petitioner made a submission that the Hon'ble Division Bench of this Court passed an order in W.A.No.2326 of 2005 on 28.03.2006, directing the respondents therein not to appoint daily rated workers for the public works or any other Government Department, except in accordance with the circular of the Central Government dated 07.08.1988 and that of the Lt.Governor, Pondicherry dated 20.06.2005. Irrespective of the nature of work and duration, the daily rated workers or casual workers shall be drawn through Employment Exchange.

6. The Division Bench further directed the respondents, not to renew the employment of the existing daily rated workers on the expiry of their period and fresh appointments shall be made only as per the conditions stipulated. Further, the respondents were directed not to regularize and or absorb any of the daily rated workers engaged by the Administration without the prior permission of this Court.

7. Dehors the directions issued by the Hon'ble Division Bench of this Court, the respondents are going on engaging temporary workers without following the procedures as contemplated and more specifically, men and



women of the choice of the politicians are engaged for several years without following the recruitment procedures. Such irregular and illegal appointments are heart burn issue and many qualified, eligible and meritorious candidates are deprived of opportunities to secure public employment.

8. The learned Government Pleader appearing on behalf of the respondent/State of Union Territory of Puducherry objected the said contention by stating that certain temporary appointments were made on earlier occasions. However, the practice had already been dispensed with from the year 2016 onwards. Thereafter, there is no such temporary engagements in violation of the scheme or rules.

9. The Secretary to Government (Works) filed a counter affidavit, wherein, he undertook that no such engagements or appointments will be made in contravention to the provisions contained in the guidelines / scheme in future. Paragraph 15 of the counter affidavit, which reads as under:

“15. I submit that after removal of persons engaged on voucher payment basis, no person was so engaged. I further submit that this Hon'ble Court on 10.11.2022 was also



WEB COPY



W.P.No.14339 of 2016

pleased to direct the Respondent to furnish an undertaking that no appointments or engagement shall be made without following the procedures stipulated in the guidelines therefor. In strict obedience to the orders of this Hon'ble Court, I undertake that no such engagements/appointments shall be made in contravention of the provisions contained in the guidelines/scheme in future.”

10. Relying on the above undertaking, the learned Government Pleader appearing on behalf of the respondent/State of Union Territory of Puducherry reiterated that the procedures as contemplated under the Recruitment Rules or scheme are scrupulously followed as of now and the Government have no idea of making any back door recruitments hereinafter. Thus, the writ petition becomes unnecessary.

11. Equal opportunity enunciated under the Constitution, at no circumstances, be diluted by the authorities of the State. It is mandatory on the part of the State to ensure that all the citizens are being treated equally and in the event of any Favouritism, Nepotism or back door appointments, the State itself is discriminating its own citizens. Thus, the State Committing unconstitutionality, at no circumstances, be tolerated by the Constitutional



Courts. State is duty bound to ensure equal opportunity in public employments. Lakh and lakh of youth of our great Nation are longing to secure public employment through open competitive process. State, depriving or discriminating its own citizens is the worst form of unconstitutionality.

12. This Court is of the considered opinion that the State at no circumstances, commit irregularity or illegality in the matter of providing public employment. Equal opportunity in public employment is the constitutional mandate and the State is bound to ensure that all appointments are made only under constitutional schemes and by following the procedures established. Even for temporary engagements in Government related projects or State organizations or societies, the procedures contemplated are to be followed for the purpose of engaging daily rated employees or temporary employees in order to ensure equal opportunity.

13. The Hon'ble Division Bench of this Court has already directed not to make illegal or irregular appointments in violation of the recruitment rules in force. While so, the Government may take a stand that, in respect of time



projects, they are compelled to recruit temporary employees. In such circumstances, they have to recruit the temporary employees / labourers through Employment Exchange concerned or by inviting applications from open market and by following the procedures established. At the outset, uniform procedure is to be followed even for making temporary engagements to implement Government projects, schemes in Government institutions, undertakings etc., At all circumstances, the Government should ensure that the citizens are treated equally and that everyone will get an opportunity based on their own merits, eligibility, suitability and through the rule of reservation.

14. Thus, violation in this regard is to be construed as a failure on the part of the State in implementing the constitutional mandates and thus, the Government would be answerable and accountable.

15. The grievances of the writ petitioner is that several directions were earlier issued by the Court and in spite of those directions, the respondents are violating the procedures established and the rules in force. Irregular and illegal engagements are made in large scale, more specifically, during



election times. Therefore, he is forced to move the present writ petition.

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16. In view of the undertaking now given by the respondents in the present writ petition, this Court is of an opinion that all regular appointments against sanctioned post and temporary engagements in society, institutions or to implement Government projects etc., the engagement of temporary employees / labourers are to be made either through Employment Exchange or through open competitive process by issuing notification widely in newspapers and by inviting applications and thereafter, by following the procedures established. In the event of any violation hereinafter by the respondents, the same is to be viewed seriously and such violations if committed, would not only be construed as unconstitutionality, but the Government commits such unconstitutionality intentionally and wilfully. In such circumstances, the authorities competent must be held accountable and answerable for all the consequences.



17. In view of the facts and circumstances, this Court is inclined to pass the following orders:

(1) In view of the undertaking given by the respondents, they are directed to follow the procedures as contemplated and the rules in force as the case may be, even for engagement of temporary employees/labourers for the purpose of implementing the Government projects, in Government Department, institutions or societies or in Government organizations etc.,

(2) In the event of filling up the regular sanctioned post, then the recruitment rules as applicable are to be followed scrupulously and selection must be conducted in a transparent manner and by affording equal opportunity to all the eligible candidates through open competitive process.

(3) The respondents are directed to follow the recruitment rules / established procedures for recruitments through open competitive process or through Employment Exchange even in public sector undertakings under the Union Territory of Puducherry.

(4) In the event of any violation of recruitment rules or established procedures for recruiting persons in public employment, then the said act of the authorities would be construed as contempt of this Court and any person aggrieved



WEB COPY



W.P.No.14339 of 2016

from and out of such illegal appointments or otherwise, is at liberty to approach this Court by filing an appropriate petition for contempt of Court.

18. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

21.11.2022

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Index : Yes

Speaking order: Yes

To

1. The Chief Secretary,
The Union Territory of Puducherry,
Government of Puducherry,
Secretariat,
Puducherry.

2. The Secretary,
Public Works Department,
Government of Puducherry,
Secretariat,
Puducherry.



WEB COPY



W.P.No.14339 of 2016

S.M.SUBRAMANIAM, J.

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W.P.No.14339 of 2016

21.11.2022