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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.4241 of 2022

and

W.M.P.Nos.4384 & 4385 of 2022

1.R.Sankar

2.E.Harikrishnan

3.D.Prasad

4.D.Kannan

5.K.Rajaram

6.M.Jaiganesh

7.S.Jayalakshmi

8.K.Ramesh

9.V.Babu

10.S.J.Lawrance

11.A.Ashok

12.M.Dhanasekarn

... Petitioners

vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Environment and Forest Department,
Fort St.George, Chennai.

2.The Principal Chief Conservator of Forest,
Head of the Department,
Panagal Building,
Saidapet, Chennai - 15.



3.The Additional Principal Chief Conservator
of Forest/Director,
Arignar Anna Zoological Park,
Vandalur, Chennai - 48.

4.The Wild Life Warden,
Wildlife Division,
Chennai - 600 022.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the orders in directing (1) Government Letter No.11207/FR.5/2017-2 dated 21.08.2017 of the 1st respondent (2) C.No.E1/5514/2019 dated 31.08.2020 of the 3rd respondent and (3) Na.Ka.No.Pa.2/3244/2021 dated 29.11.2021 of the 4th respondent quash the same and consequential direction to the respondents to regularize the services of the petitioners with effect from dated of their appointment with all consequential service and monetary benefits.

For Petitioners: Mr.T.Dharani

For RR1 to 4 : Mr.T.Arunkumar
Additional Government Pleader

O R D E R

This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus, quashing (1) Government Letter No.11207/FR.5/2017-2 dated 21.08.2017 of the 1st respondent; (2) C.No.E1/5514/2019 dated 31.08.2020 of the 3rd respondent; and (3) Na.Ka.No.Pa.2/3244/2021 dated 29.11.2021 of the 4th respondent, consequently, direct the respondents to regularize the services of the petitioners with effect from dated of their appointment with all consequential service and monetary benefits.

2. The case of the petitioner in brief:

The petitioners were appointed as Temporary Mazdoors on daily wages from 17.03.2005 to 01.09.2009 in Guindy Children Park and they have been continuing to work as such till date. But their service has not been regularised till date. The Wildlife Warden, Guindy Children's Park, 4th respondent herein, submitted a proposal dated 12.07.2016 to the second respondent, through the third respondent, requesting permission to appoint the petitioners as permanent Mazdoors, who possessed prescribed educational qualification. The above said proposal duly recommended by the third respondent was sent on 26.07.2016 to the second respondent. But the proposals were negatived by the first respondent vide letter dated 21.08.2017. Thereafter, the



petitioners made representation to the third respondent to include their name in the state wide seniority list of Social Forestry Workers. But, it was rejected vide order dated 31.08.2020. Further, the 4th respondent had also submitted a report dated 29.11.2021 to the third respondent that in view of the rejection of proposal by the first respondent dated 21.08.2017, no action can be taken at Wildlife Warden's level on the claim of Temporary Mazdoors and that the Government alone are empowered to take a policy decision in the matter. Hence, this writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the petitioners are fully qualified for being absorbed in the Tamil Nadu basic services, as per the proposal and they are serving on daily wages for meager amount from 17.03.2005 onwards and hence, the respondents may be directed to bring the petitioners into the regular establishment.

4. The learned Additional Government Pleader submitted that they were appointed as temporary Mazdoor, and as per G.O.Ms.No.74 dated 27.06.2013, the petitioners are not entitled for regularization of service, since they are not appointed in the regular vacancies. Therefore, the claim of the petitioner is liable to be dismissed.

5. Heard the counsels appearing for either side and I have perused the materials on record.

6. Admittedly, the petitioners were appointed as temporary Mazdoor on daily wages and also they are not appointed in the sanctioned post. In the similar issues, this court has passed order in W.P.No.18013 of 2021 dated 18.10.2021, following the decision of the Hon'ble Supreme Court in the case of Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and others [(2014) 4 SCC 769]. The relevant portion is extracted hereunder.

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



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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 adhoc 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



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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.



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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.

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



7. In the light of the decision of the Hon'ble Supreme Court as stated supra, this court is not inclined to entertain the writ petition. However, this court is not stand in the way of petitioner to seek remedy before the appropriate authority.

8. Accordingly, this writ petition is dismissed. No costs. Consequently, connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mst

To

1.The Secretary,
Environment and Forest Department,
Fort St.George, Chennai.

2.The Principal Chief Conservator,
Head of the Forest Department,
Panagal Building,
Saidapet, Chennai - 15.

3.The Additional Principal Chief
Conservator of Forest,
Arignar Anna Zoological Park,
Vandalur, Chennai - 48.

4.The Wild Life Warden,
Wildlife Division,
Chennai - 600 022.

+1cc to M/s.T.Dharani, Advocate, S.R.No.13833
+1cc to the Special Government Pleader, S.R.No.13923

W.P.No.4241 of 2022

PMK(CO)
SB(22/03/2022)