



W.A.No.536 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

ORDERS RESERVED ON : 13.04.2022

ORDERS PRONOUNCED ON : 30.06.2022

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
and
THE HON'BLE MRS. JUSTICE N.MALA

W.A.No.536 of 2022
and
CMP.No.3916 of 2022

- 1.The Principal Secretary and Commissioner
of Agriculture Department,
Government of Tamil Nadu,
Agriculture Department,
Fort St. George,
Chennai – 600 009.
 - 2.The Commissioner cum Director of Agricultural,
Chepauk,
Chennai – 600 005.
 - 3.The Joint Director of Agriculture,
Kancheepuram.
 - 4.The Seed Testing Officer,
Seed Testing Laboratory,
Panji Pettai,
Kancheepuram District.
- ... Appellants

vs.



W.A.No.536 of 2022

R.Babu

... Respondent

Prayer: Writ Appeal Under Clause 15 of the Letter Patent, to allow this Writ Appeal and set aside the order dated 28.07.2021 made in Writ Petition No.W.P.No.5039 of 2015.

For Appellants : Mr.Mythreyechandru
Special Government Pleader

For Respondent : Ms.t.Aananthi

* * * * *

J U D G M E N T

[Order of the Court was made by S.VAIDYANATHAN, J. & N.MALA, J.]

The Writ Appeal is preferred against the order dated 28.07.2021 in W.P.No.5039 of 2015 allowing the Writ Petition with a direction to the appellants to regularize the services of the respondent within a period of three months from the date of receipt of the order copy in the light of the Government Orders.

2.The respondent was engaged as casual labour on daily wage basis on 27.03.1997 on a wage of Rs.235/- per day. The respondent was attending to all types of work and had completed 16 ½ years of continuous service on the date of the writ petition. The appellants on earlier occasions



W.A.No.536 of 2022

had passed several orders regularizing the services of casual labours by relaxing the relevant rules.

3.The respondent had earlier filed a Writ Petition in W.P.No.31348 of 2013, for a Writ of Mandamus, to regularize his services and for consequential reliefs. The Hon'ble Court vide order dated 21.11.2013, directed the respondents therein to consider the writ petitioner's claim for regularization, within a period of twelve weeks from the date of receipt of a copy of the order. Thereafter the appellant passed the impugned order dated 13.10.2014, rejecting the respondent's representation for regularisation by citing G.O.Ms.No.74 P & AR Department dated 27.06.2013. The first appellant further passed the G.O.(P).No.243 Agriculture Department dated 10.12.2013 granting permission to the second appellant to fill up 856 posts of Mazdoor, Watchman, Masalchi and Sweepers, the respondent therefore apprehended that the appellants would terminate his service and hence filed the writ petition.

4.The appellants filed a counter reiterating the stand taken in the impugned order and also relied upon the Judgments of the Hon'ble Supreme Court in the *State of Karnataka and Others Vs. Umadevi and others*,



W.A.No.536 of 2022

reported in ***AIR 2006 SC 1806*** and also the Judgment of the Hon'ble Supreme

WEB COURT in ***C.A.Nos.2726-2729 and 2730-2731 of 2014***.

5.The learned Single Judge on a consideration of the submissions made by the learned counsel and on perusal of the materials on records allowed the Writ Petition. Aggrieved by the order passed in the writ petition, the appellants have filed the above writ appeal.

6.M/s.Mythreyachandru, the learned Special Government Pleader appearing for the appellants submitted that the respondent was not entitled to the relief of regularization as he did not satisfy the criteria laid down in G.O.Ms.No.74 P & AR Department dated 27.06.2013. The learned Special Government Pleader further submitted that the length of service was irrelevant and the main criteria was the fulfillment of the Rules prescribed under the scheme for regularization.

7.The learned Special Government Pleader further submitted that there is no question of discrimination of the respondent and in any event there cannot be any negative equality.



W.A.No.536 of 2022

WEB COPY

8. In contra, the learned counsel for the respondent submitted that under various Government orders the Government had regularized the service of daily wage employees, casual labourers, Watchman and Masdoor in various Government Departments by relaxing the relevant Rules by considering the long and uninterrupted service. The counsel for the respondent further submitted that the appellants cannot discriminate against the respondent considering that the respondent put in an unblemished service of 16 ½ years. The learned counsel therefore prayed for dismissal of the writ appeal.

9. We have heard the learned counsels and have perused the records.

10. The gravamen of the issue in this Writ Appeal is whether the respondent is entitled for regularization of his services. In support of the respondent's continuous and uninterrupted service, the learned counsel for the respondent submitted the service record of the respondent signed by the Seed Testing Officer, Seed Testing Laboratory, Panji Pettai, Kancheepuram District dated 23.03.2022, wherein it is recorded that the respondent has worked for 1454 days for the period from 27.03.1997 to 31.12.2005, 1712.5 days for the



W.A.No.536 of 2022

period from 27.03.1997 to 31.03.2007 and 5084.5 days for the period from 27.03.1997 to 31.01.2022 and therefore from the appellants own records it is established that the respondent has put in uninterrupted service of 16 ½ years. The appellants have rejected the respondent's claim for regularization on the basis of G.O.Ms.No.74, P & AR Department, dated 27.06.2013.

11.According to the appellants as the respondent did not satisfy the conditions laid down in G.O.Ms.74 P & AR Department dated 27.06.2013, he was not entitled for regularization of his services. The criteria which the respondent is said to have not satisfied are that he did not complete ten years of service as on 01.01.2006, he was not selected through Employment Exchange, and his selection was not against a regular vacancy.

12.In the light of this specific stand taken by the appellants it is to be considered whether G.O.Ms.No.74 P & AR Department dated 27.06.2013, is at all applicable to the respondent. It is seen that the respondent was appointed on 27.03.1997 and he had completed more than ten years of service even before the issuance of G.O.Ms.No.74 P & AR Department dated 27.06.2013.



W.A.No.536 of 2022

WEB COPY

13.It is pertinent to note here that before G.O.Ms.No.74 P & AR Department dated 27.06.2013 was passed, G.O.Ms.No.22 P & AR Department dated 28.02.2006 was followed for regularizing the services of casual labourers. In G.O.Ms.No.22 P & AR Department dated 28.02.2006, the only requirement was that the person should have completed more than ten years of service as on 01.01.2006, for claiming regularization. The other criteria in G.O.Ms.No.74 P & AR Department dated 27.06.2013 were not prescribed in G.O.Ms.No.22 P & AR Department dated 28.02.2006.

14.It is seen that this Hon'ble Court when considering the issue of applicability of G.O.Ms.No.22 P & AR Department dated 28.02.2006, to persons who did not complete ten years of service as on 01.01.2006, held that even such persons were entitled to the benefit of regularization. It is seen from the documents filed in the writ appeal that some of the orders granting regularization to persons who did not satisfy the criteria of completion of ten years of service as on 01.01.2006 under G.O.Ms.No.22 P & AR Department



W.A.No.536 of 2022

dated 28.02.2006 were taken up by way of appeal to the Hon'ble Division Bench of this Hon'ble Court and also to the Hon'ble Supreme Court. The orders granting regularisations were confirmed in appeal by both the Hon'ble Division Bench of this Court and also by the Hon'ble Supreme Court. It is therefore seen that even for persons, who did not strictly come within the frame work of G.O.Ms.No.22 P & AR Department dated 28.02.2006, but still on the basis of the orders passed by this Court and the Hon'ble Supreme Court on liberal interpretation of G.O.Ms.No.22 P & AR Department dated 28.02.2006, the services of the said persons were regularized.

15.It is seen that G.O.Ms.No.74 P & AR Department dated 27.06.2013 was issued superseding G.O.Ms.No.22 dated 28.02.2006 with a view to restrict the regularization of different categories of persons by laying guidelines for such regularization, which were originally not prescribed in G.O.Ms.No.22 P & AR Department dated 28.02.2006. When the issue of applicability of G.O.Ms.No.74 P & AR Department dated 27.06.2013 to cases pending in appeal against the orders of regularization were heard by the Hon'ble Division Bench, the Hon'ble Division Bench held that G.O.Ms.No.74 P & AR Department dated 27.06.2013 was not applicable to such cases on



W.A.No.536 of 2022

the ground that a right that was accrued before the passing of the G.O. could not be divested and also the said G.O. would not apply to appointments made much before the passing of the G.O.

16.Two Division Bench Judgments of the Hon'ble Court are referred herein to elucidate the same. In the Division Bench Judgment of this Hon'ble Court in W.A.(MD).No.913 of 2015 dated 21.02.2017, it was held as follows:

“9.Yet another submission made by the learned Special Government Pleader is that as per G.O.(Ms)No.74, Personnel and 7 Administrative Reforms (F) Department, dated 27.06.2013, 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 those who have completed 10 (ten) years of service as on 01.01.2006 shall be regularized. However, we find that the said Government Order came into effect only on 27.06.2013 and it was issued by way of



W.A.No.536 of 2022

clarification of G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. G.O.Ms.No.74 was issued only on 27.06.2013, whereas, the respondents were appointed in the year 1984, 1995 and 1998 respectively, that is to say, much earlier to the said Government Order. Therefore, the second submission made by the learned Special Government Pleader cannot be accepted. Therefore, we are of the opinion that absolutely, there is no infirmity in the order passed by the learned Single Judge warranting interference at the hands of this Court.”

17. Similarly in order dated 12.07.2017 in W.A.No.686 of 2017 the Division Bench of this Court passed the following order:

“3. Even though the appellant is right in contending that as on 01 January 2006, the writ petitioner had not completed 10 years and therefore he cannot avail the benefit in terms of G.O.Ms.No.22,



WEB COPY



W.A.No.536 of 2022

Personnel and Administrative Reforms Department, dated 28 February 2006, we are still not inclined to interfere with the order passed by the learned Single Judge. We note that in similar cases, the Government had granted relaxation and regularized such services. For instance in G.O.Ms.No.3, Environment and Forest Department, 2013, dated 10 January 2013, the services of as many as 14 persons who were working in the appellant department were regularized. In fact the said 14 persons had completed 10 years only as on 01 January 2011. It is not the case of the appellant that the writ petitioner had gained back door entry.

4. Admittedly, he had been in service right from 15 October 1997. There is no break in service. To deny the benefit of the regularization to an employee, who had completed 19 years as on date would not be just or equitable. Taking into account the special circumstances obtaining in this case, we do not wish to interfere with the order of regularization made in



W.A.No.536 of 2022

favour of the respondent herein.

WEB COPY

5.Thus, the appeal is therefore dismissed. No costs. Consequently, the connected miscellaneous petition is closed.”

Against the aforesaid Division Bench Judgment appeal was preferred to the Supreme Court in SLP Diary No.29276 of 2019 and the same was dismissed.

18.We digress here for a moment to discuss about G.O.Ms.No.74 dated 27.03.2013. The validity of G.O.Ms.No.74 dated 27.06.2013 was challenged in a batch of writ petitions before a learned Single Judge. The learned Judge vide order dated 28.07.2021 quashed G.O.Ms.No.74 dated 27.06.2013 as unconstitutional. The Government preferred an appeal and the learned Division Bench of this Hon'ble Court allowed the appeal and upheld the validity of G.O.Ms.No.74 dated 27.06.2013, but remanded the case to the learned Single Judge for fresh consideration. We have digressed from the main issue only to highlight that G.O.Ms.No.74 dated 27.06.2013 is valid as on date.



W.A.No.536 of 2022

19.Eventhough G.O.Ms.No.74 dated 27.06.2013 is held to be valid, we are of the view that we are bound by the Judgments of the Hon'ble Division Benches referred to supra and hence we hold that G.O.Ms.No.74 dated 27.06.2013 is not applicable to the facts of the present case.

20.As a co-ordinate Bench we are bound to follow the earlier Division Bench Judgments as judicial discipline and decorum requires us to do so. Useful reference can be made to the Judgment of the Hon'ble Supreme Court in the case of *Sandhya Educational Society and Another Vs. Union of India and Others*, reported in *2014 (7) SCC 701*.

21.In the light of the Hon'ble Division Bench Judgments, we are of the view that as the respondent in the present case was appointed as early as on 27.03.1997 and as he had completed more than ten years of service long before G.O.Ms.No.74 P & AR Department dated 27.06.2013 was passed the respondent is entitled to regularization. The contention of the appellants in the light of the Hon'ble Division Bench Judgments referred to above cannot be sustained.



W.A.No.536 of 2022

WEB COPY 22. As far as the applicability of *Umadevi's* case is concerned we are of the opinion that *Umadevi's* case dealt with the Menace of back door appointments and it was in *Umadevi's* case that the Hon'ble Supreme Court directed that a scheme for one time regularization of irregular appointees be framed. On the basis of the said Judgment G.O.Ms.No.22 dated 28.02.2006 was notified by the State Government. The Hon'ble Division Bench Judgments referred to supra on a liberal interpretation of G.O.Ms.No.22 applied it even to cases where on the cut off date of 01.01.2006, 10 years of service was not completed. On the face of **Uma Devi** case, writ petitioner was allowed to work. When the respondents in writ petition has given a go-bye to the decision of the Hon'ble Supreme Court, it calls serious disciplinary action against the persons who have appointed and allowed the petitioner to continue for years, and act of respondents involved in divesting off the duties/non-regulation is not justified.

23. The learned Judge has rightly relied on the case of *Sheo Narain Nagar and others Vs. State of Uttar Pradesh and Another*, reported in *(2018) 13 Supreme Court Cases 432*. We are in complete agreement with



W.A.No.536 of 2022

the learned Judge and we are also of the view that menial workers and last grade labourers do not require any educational qualifications and if under the exigencies of the case, the Government chose to engage them and keep them for years together, then the Government cannot turn around and say that such engagement was illegal. The act of the respondent in writ petition is nothing short of slavery system.

24. In the light of the above facts and law, we are of the considered view that there is no merit in the appeal and hence the appeal fails but without costs. Consequently the connected miscellaneous petition is closed.

[S.V.N.,J.]
30.06.2022

[N.M.,J.]

1/2

Index : Yes / No

Internet : Yes / No

ah

To

1. The Principal Secretary and Commissioner
of Agriculture Department,
Government of Tamil Nadu,
Agriculture Department,
Fort St. George,
Chennai – 600 009.



W.A.No.536 of 2022

WEB COPY

- 2.The Commissioner cum Director of Agricultural,
Chepauk, Chennai – 600 005.
- 3.The Joint Director of Agriculture,
Kancheepuram.
- 4.The Seed Testing Officer,
Seed Testing Laboratory,
Panji Pettai,
Kancheepuram District.



WEB COPY



W.A.No.536 of 2022

S.VAIDYANATHAN, J.
&
N.MALA, J.

ah

PRE DELIVERY JUDGMENT
IN W.A.NO.536 OF 2022



WEB COPY



W.A.No.536 of 2022

30.06.2022

1/2