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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.01.2022

PRONOUNCED ON : 14.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.7893 of 2021

and

W.M.P.No.8431 of 2021

- 1.E.S.Vanumamalai
- 2.Ravi.K
- 3.M.Selva Perumal
- 4.S.Sivasankar
- 5.M.Muthusaravanan
- 6.Subramanian.R
- 7.M.Rajkumar
- 8.Mahesh Kumar.K
- 9.Nainar.R
- 10.P.Sankar Kumar
- 11.B.Anbu
- 12.S.Franklin
- 13.D.Arun Raja
- 14.S.Gunasekaran
- 15.M.Nirmal Raj
- 16.Jaganath.K
- 17.K.R.Senthil Prakash
- 18.G.Prasad
- 19.M.Narayanan
- 20.Kathivela.A
- 21.Udayabaskar.R
- 22.M.Padmanabhan
- 23.K.Venkatachalam
- 24.K.Bakkiyaraju
- 25.G.Pannerselvam
- 26.M.Arul
- 27.A.Jayaprakasam
- 28.M.Subramaniam
- 29.A.Selvam
- 30.R.Rajendra Prasath
- 31.Sakkan.M
- 32.R.Selvaraj
- 33.V.Rajalakshmi
- 34.N.Saravanan
- 35.M.Shanmugaraja
- 36.S.Selvanathan
- 37.M.Kartheesan



38.S.Narayanan
39.P.Kumar
40.N.Shanmugasundar
41.Manickavasagam.R
42.P.S.Krishnamoorthy
43.V.Senthil Kumar
44.M.Meenatchi
45.V.Mohan

...Petitioners

Vs.

1. The Principal Secretary to Government,
Home (Tr) VII Department,
Secretariat, Chennai-9.

2. The Transport Commissioner,
Chepauk, Chennai-5.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to regularise the services of the petitioners in the Transport Department in the light of the long years of service rendered by them and in the light of the judgment of this Court in W.P.Nos.14782 and 19961 of 2020 dated 03.02.2021, with all attendant benefits.

For petitioners: Mr.V.Vijay Shankar

For Respondents: Mr.L.S.M.Hasan Fizal,
Addl. Govt. Pleader for RR1 to 2

ORDER

This writ petition has been filed to issue a Writ of Mandamus, directing the respondents to regularise the services of the petitioners in the Transport Department in the light of the long years of service rendered by them and in the light of the judgment of this Court in W.P.Nos.14782 and 19961 of 2020 dated 03.02.2021, with all attendant benefits.

2.The case of the petitioners is that they have been working as Computer Operators in various RTO Offices in Tamil Nadu whose work is related to data entry, Backlog update, photograph of individuals, printing and lamination of cards. All the petitioners were engaged originally through Elcot and later through other Agencies. The petitioners have been continuously engaged for a period of 15 to 20 years.

3.In the year 2014, taking note of the continuous and increasing work load in the Transport Department, a proposal was made on 20.05.2014, for sanctioning of posts on regular basis.



The proposal which was originally sent on 20.05.2014, did not evince any response and the second respondent was constrained to send another detailed proposal dated 18.12.2017, stressing the need for System Analyst, Programmer and DEO.

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4. When the proposals are pending before the Government, in respect of similar claims, this Court in W.P.Nos.14782 & 19961 of 2020, dated 03.02.2021, has ordered regularization of service of the petitioners therein, after taking note of the fact of proposals emanated for their regularization from the authorities concerned. This Court's attention has been drawn by the learned counsel for the petitioners to the observations and the conclusion of the learned Judge from paragraph Nos.13 to 18, which are extracted hereunder:

"13. It is pertinent to state here that the appointment of these petitioners is not by way of any illegal mode and in other words, it can be said that their appointment can be construed, at the most, as irregular. The Government has engaged them, of course not directly, but through contractors, for the purpose of getting works done and it is highly unfair on the part of the Government to keep them on temporary basis till completion of their work and to oust them from their services in one fine morning after sucking their blood for 10 to 15 years without granting any monetary benefits, thereby leaving them at lurch and abetting to commit suicide. In case their services are not needed, it is not known as to why the Government permitted them to work all along and if they were disengaged from services before their age-barring, at least they may have a chance to sit for competitive examinations and get placement in Government and the Government has neither let them live nor die. The Government and its Officials are in a better position to analyze the vacancies that arise every year on account of retirement, death, etc., and they can very well recruit candidates against the sanctioned posts, instead of hiring through manpower agencies, which, instead of solving unemployment problems, aggregates it to the maximum extent and the award of contract for hiring persons always results in monocracy, slavery, etc. In case the Government feels that their services are required only for a limited period, they should have been disengaged within a short period of not less than 1 to 2 years and not after 10 to 15 years.

14. It was stated by the petitioners that there were regularizations in other Departments, including Madras High Court. It is poignant to mention here that though their statement with regard to



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regularization of services of similarly placed persons in other Department, may be true, insofar as Class-IV employees working in Public Works Department are concerned, they were not regularized in service, except granting decent / fixed, wages of approximately Rs.18,000/- as per the orders of this Court. Article 41 of the Constitution of India insists upon the need for securing the right to work and the State is not justified in giving employment through Contractors and to the extent possible, the contract system should be abolished. For the sake of convenience, Article 41 of the Constitution of India is extracted hereunder:

"The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want."

15. A Hon'ble Division Bench of this Court in the case of T.Kingsly Thaya Singh and Others vs. The Chief Engineer General, Highways & Rural Works Department and Others [W.A. (MD) Nos. 786 to 788 of 2019] decided on 17.09.2019, interfered with the order of the learned Single Judge and directed the Government to regularize the services of the petitioners therein, by holding as under:

"8. Be that as it may, we do not find any ground to take a different stand between the persons who were already granted the benefit and the appellants, as we are fully convinced that the directions issued in the earlier writ petitions and affirmed by the Division Bench would govern the present cases as well. However, we find that the order and direction issued in W.P. (MD) No. 8512 of 2014 dated 10.07.2015 in the case of V. Meenakshi Sundaram and others v. Secretary to Government, Highways Department and another would be a reasonable order as it takes care of the interest of the appellant employees as well as that of the respondent Government. This decision has been confirmed in W.A. (MD) No. 913 of 2015 dated 21.02.2017. The relevant portion of the judgment reads as follows:



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"5. The learned Single Judge by order dated 10.07.2015, has allowed the Writ Petition, directing the appellants to regularize the services of the respondents from the date of the respondents approaching this Court in the earlier Writ Petition and affect monetary benefits with effect from 01.06.2015. In the said order, the learned Single Judge has also observed that the respondents are not entitled to backwages and that the period that the period of service during which they were actually working, which are mentioned in the counter and the said period alone shall be taken into account for the purpose of pensionary benefits and that period or any other period will not be taken into account for gratuity and other benefits. Aggrieved over the same, the present Writ Appeal has been filed."

9. Thus, following the above, these Writ Appeals are allowed and the respondents are directed to regularize the services of the appellants from the date on which they approached this Court by filing the writ petitions i.e., from 01.02.2010. However, the appellants are not entitled to backwages and the period of service, which they were actually worked alone shall be taken into account for the purpose of pensionary benefits and that period and any other period will not be taken for gratuity and other benefits. No costs."

16. In this case, a proposal (positive recommendation) was sent by the 2nd respondent for absorption of the services of the petitioners and the respondents have not produced any iota of evidence to prove the malpractices committed by the petitioners. Therefore, this Court is of the view that the petitioners are entitled to the relief sought for in these writ petitions.

17. Accordingly, these Writ Petitions are allowed and a direction is issued to the 1st respondent / Government to consider the case of the petitioners positively, by taking note of the proposal sent by the 2nd respondent in the year 2017 so that the petitioners shall eke out their livelihood peacefully. The 1st respondent is further directed to take a decision and pass order for regularization of the



services of the petitioners within a period of two months from the date of receipt of a copy of this order, without causing further hardship to these petitioners.

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18. Last but not the least, the Government shall also regularize the services of the Contract Labourers on par with these petitioners, who have been working in Public Works Department and also those, who have been deputed by PWD to Madras High Court and Madurai Bench of Madras High Court both Civil and Electrical, other Departments, etc., for more than 10 years and consider to bring them on regular employment under Class-IV, as their condition is worse than the petitioners herein and their future is more bleak. The Government must ensure that there is no economic death due to unemployment and a sword of Damocles, viz., disengagement cannot be allowed to be hung on these petitioners / similarly placed persons. Where a work is perennial in nature, the employees should be engaged directly. In view of that, when the Contractor is changing and the work is also perennial in nature in this case, it can be inferred that the contract itself is sham and nominal. No costs. Consequently, connected miscellaneous petitions are closed."

5. This Court's attention is further drawn to another similar recent order passed by this Court in W.P.No.7352 of 2021, dated 07.12.2021, wherein, this Court followed the above order passed in W.P.Nos.14782 & 19961 of 2020 dated 03.02.2021 and allowed the similar claim of 35 petitioners therein. As a matter of fact, this Court has also extracted the detailed findings of the above order passed by the learned Judge in that matter and passed orders. The observations in paragraph Nos.12 and 13 are extracted hereunder:

"12. The above orders passed by the learned Judge would have to be applied to the factual matrix of the present case as well. The directions as contained therein would also cover the present claim of these petitioners on all forces.

13. In the above circumstances, this Writ petition is also allowed and the first respondent is directed to pass appropriate orders regularising the services of the petitioners in the light of the proposals forwarded to the Government by the second respondent. The first respondent is directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the



connected miscellaneous petition is closed."

6. According to the learned counsel for the petitioners, since these petitioners are identically placed like the petitioners in the above mentioned writ petitions, they are also entitled to be granted similar relief as granted by this Court.

7. Although a detailed counter affidavit has been filed on behalf of the respondents, the above directions passed by this Court have not been disputed. On the other hand, the learned Special Government Pleader who appeared for the respondents fairly submitted that the issue as such is directly covered by the above decisions. In fact, in the counter affidavit, the contention of the respondents is that the petitioners are contract employees and therefore, not entitled to be regularized. However, this Court, in the above matters considered the very same objection and discountenanced the same.

8. In the above circumstances, the claim of the petitioners herein is to be held as fully covered on all fours. Therefore, this Court has no hesitation in granting relief to the petitioners herein also as prayed for.

9. Therefore, this writ petition stands allowed and the respondents are directed to regularize the services of the petitioners in the light of the judgment of this Court rendered in W.P.Nos.14782 & 19961 of 2020 dated 03.02.2021, followed by the recent judgment of this Court in W.P.No.7352 of 2021 dated 07.12.2021.

10. The respondents are directed to pass appropriate orders as indicated above, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

gsk

To

1. The Principal Secretary to Government,
Home (Tr) VII Department,
Secretariat, Chennai-9.



2. The Transport Commissioner,
Chepauk, Chennai-5.

+1cc to M/s.V.Vijay Shankar, Advocate, S.R.No.9759

+1cc to the Government Pleader, S.R.No.9510

W.P.No.7893 of 2021

and

W.M.P.No.8431 of 2021

PMK (CO)

RGA (02/03/2022)