



W.P.No.20690 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.20690 of 2018

1. K.Somu

2. R.Karpagam

3. J.Ellammal

4. M.Malathy

5. S.Aadhirai

6. T.Tamil Selvi

... Petitioners

Vs.

1. The Government of Tamil Nadu,
Rep by Principal Secretary to Government,
Department of School Education,
Fort St. George, Chennai-9

2. The Director of Public Libraries,
O/o.Director of Public Libraries,
No.731, Anna Salai, Chennai-2.

3. The District Library Officer,
O/o.District Center Library,
Dharmapuri District.

... Respondents



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Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the respondents to allot GPF Account for grant of pension under the Tamil Nadu Pension Rules, 1978 by counting 50% of service rendered by the petitioner in the post of part time librarian and village librarian till their respective regularization in service in the post of grade-III librarian even though they were brought into regular after 01.04.2003.

For Petitioners : Mr.I.Siddiq

For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

The order of regularization dated 01.04.2003, regularizing the services of the writ petitioners in the sanctioned post of Grade-III Librarian with effect from the date of joining as Grade-III Librarian is under challenge in the present writ petition.

2. The petitioners state that they were appointed by the District Library Officer, Dharmapuri/third respondent as Village Librarian on consolidated pay salary of Rs.1,000/- (Rupees one thousand only) per month. The petitioners are working as Village Librarian and considering



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their long services in the post of Village Librarian, the respondents regularize the services of the writ petitioners in the post of Grade-III Librarian, which is a sanctioned post in the time scale of pay. However, the benefit of regularization and permanent absorption was granted from the date on which they were appointed as Grade-III Librarian.

3. The learned counsel appearing on behalf of the writ petitioner contended that the benefit of regularization and permanent absorption is to be granted retrospectively with effect from the date on which the petitioners were initially appointed as Village Librarian and therefore, the order of regularization passed with effect from the date of appointment as Grade-III Librarian is erroneous.

4. The learned counsel for the petitioners reiterated that the initial appointment of the writ petitioners to the post of Village Librarian was made by way of selection and the petitioners were appointed in the permanent post of Village Librarian through District Employment Exchange concerned and therefore, they are entitled to be regularized from the date on which they are appointed as Village Librarian. Thus, the benefit of regularization extended from the date of appointment as Grade-



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III Librarian is to be set aside and the benefit of retrospective regularization is to be granted to the writ petitioners along with service benefits and other consequential benefits.

5. The learned counsel for the petitioners reiterated that the Government order passed in G.O.No.156, School Education (K2) Department dated 10.09.1998, guidelines were issued for appointment of Village Librarian on consolidated pay. As per the said Government order, the petitioners were recruited as Village Librarian and therefore, there is no irregularity regarding the appointment of the writ petitioners as Village Librarian in accordance with the said guidelines issued by the Government in G.O.No.156, School Education (K2) Department dated 10.09.1998. It is contended that the appointment to the post of Village Librarian was made by following the procedures as contemplated under the Government order and by applying the Rule of Reservation under Rule 22 of the General Rules for the Tamilnadu State and Subordinate Service Rules and therefore, there is no irregularity in the appointment of the writ petitioners as Village Librarian. Thus, they are entitled to be regularized with retrospective effect.



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6. The learned Special Government Pleader appearing on behalf

of the respondents objected the contentions raised on behalf of the petitioners by stating that no doubt, the petitioners were selected and appointed as Village Librarian through District Employment Exchange. But the post of Village Librarian is an unclassified post and not falling under the cadre post. Thus, the post of Village Librarian is filled through the District Employment Exchange by following the guidelines as contemplated in G.O.No.156, School Education (K2) Department dated 10.09.1998 and the writ petitioners are paid consolidated pay salary of Rs.1,000/- per month and it was periodically enhanced.

7. The learned Special Government Pleader reiterated that the post of Village Librarian is a part-time job and the Libraries in villages are mostly opened during early morning and evening hours and they hardly worked for about 4 to 5 hours per day. Thus, the Government formulated separate guidelines for appointment of Village Librarian and the opportunities are given to the local candidates to secure appointment as Village Librarian, so as to maintain the Village Libraries properly. Thus, the Post of Village Librarian is not a sanctioned post. It is an unclassified post and part-time job and therefore, the benefit of regularization and



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permanent absorption in the regular sanctioned post of Grade-III Librarian cannot be granted with retrospective effect. Since the post of Village Librarian is not falling under the cadre strength, regularization cannot be granted in the post of Village Librarian in favour of the writ petitioners.

8. The terms and conditions for the post of Village Librarian were made clear at the time of issuing notification and the petitioners were also aware of the terms and conditions. It is a part-time job and the petitioners were receiving the consolidated pay salary. The Government by way of concession, extended the benefit of absorption of these Village Librarian to the regular post of Grade-III Librarian and the qualified Village Librarians, who all are fit for appointment to the post of Grade-III Librarian were appointed and accordingly, their services are regularized from the date of appointment as Grade-III Librarian. Thus, there is no infirmity in respect of the order of regularization passed in favour of the writ petitioners from the date on which they are regularly appointed as Grade-III Librarian in the Public Libraries Department.

9. The learned Special Government Pleader relied on various judgments of this Court, stating that regularization in respect of



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unclassified post cannot be granted with retrospective effect. When the post itself is unclassified and the nature of job is part-time and a consolidated pay salary was paid to the persons appointed as Village Librarian, there is no reason whatsoever to grant regularization or permanent absorption in the unclassified post, which is impermissible under the Service Rules. Thus, the very claim of the writ petitioners for retrospective regularization is untenable and the writ petition is to be rejected.

10. During the arguments in the present writ petition, it is brought to the notice of this Court that the benefit of regularization and permanent absorption was granted by the District Library Officer, Salem in violation of the Government orders and without the prior permission of the Government, which is mandatory. In other words, the District Library Officer, Salem has passed some illegal orders without obtaining prior permission or an intimation to the Government, regularized the services of certain employees on extraneous considerations. When it was brought to the notice of this Court by the learned counsel for the petitioners that such benefits are granted to those persons, the similar benefits are extended to the writ petitioners. This Court directed the learned Special Government



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Pleader to verify the sanctity of the said order and on verification, the

Director of Public Libraries placed on record that it is an illegal order passed by the District Library Officer, Salem, without obtaining prior permission either from the Director of Public Libraries or from the Government as per the Government orders in force and all appropriate actions are taken to cancel the order by following the procedures and to initiate action against the officials, who all are responsible and accountable for such illegalities. It is made clear that further enquiry is also to be conducted, if required, through the Department of Vigilance and Anti-Corruption.

11. It is made clear that the Director of Public Libraries is duty bound to verify, whether any such illegal orders are passed by any other District Library Officer in any District across the State of Tamilnadu. If any such informations are provided, immediate actions are to be taken by the Head of the Department as per law.

12. Regularisation or permanent absorption can never be claimed as a matter of right. Regularisation is to be granted strictly in accordance with the rules in force. The claim of the writ petitioners are



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that their services in the post of Village Librarian is to be regularised for all purposes to get the service benefits. However, the fact remains that the post of Village Librarian is an unclassified post and not falling under the cadre strength and the appointments are made through the District Employment Exchange on consolidated pay salary and therefore, the post of Village Librarian forms a separate category to maintain the Libraries in villages and it is a part-time job. When the post of Village Librarian is a part time job and the persons were appointed on consolidated pay salary, their services cannot be regularized in the post of Village Librarian.

13. Regarding the part-time employment, the Hon'ble Supreme Court of India in the case of ***Secretary to Government School Education Department, Chennai vs. R.Govindaswamy and others*** reported in ***(2014) [4] SCC 769***, held as follows:

“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



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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 ad hoc 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 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.



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(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)

14. In the present case, the petitioners were appointed as Grade-III Librarian on regular basis in the time scale of pay with effect from the year 2006. Such an absorption itself is a concession extended by the Government by considering the long services rendered by these writ petitioners in the post of Village Librarian. Thus, the Government granted the benefit of regularisation from the date on which the petitioners were appointed as Grade-III Librarian in the sanctioned post in the time scale of pay. Thus, there is no infirmity in respect of the regularisation done in favour of the writ petitioners in the post of Grade-III Librarian, which is a sanctioned post in the department of Public Libraries.



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15. As far as the retrospective regularisation is concerned, it is made clear that the petitioners were appointed in the sanctioned post in the time scale of pay and they were appointed as Village Librarian on consolidated pay salary, which is an unclassified post and more so, a part-time job. Thus, the retrospective regularisation in the post of Village Librarian cannot be granted and the petitioners had been extended the benefit of regular appointment in the sanctioned post of Grade-III Librarian. The said absorption itself is a concession extended to the writ petitioners, considering the long services rendered by them in the post of Village Librarian and therefore, the claim of the writ petitioners for retrospective regularisation deserves no merit consideration and the benefit of regularisation and permanent absorption already granted with effect from the date of appointment of the writ petitioners as Grade-III Librarian is in consonance with the principles laid down by the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***The Secretary, State of Karnataka and others v. Uma Devi & others*** reported in ***(2006) 4 SCC 1***. Thus, there is no perversity or otherwise in the matter of grant of regularisation to the writ petitioners in the post of Grade-III Village Librarian.



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16. As far as the illegal orders passed by the Subordinate authorities without the permission of the Head of the Department of the Government are concerned, strict actions are to be initiated to prevent any further illegality or corrupt practices or paving way for other unclassified persons to claim similar benefits or otherwise. Such actions are directed to be initiated immediately by the Head of the Department / The Director of Public Libraries as it will lead to several illegalities and corrupt activities in the Department.

17. With these observations, the writ petition stands **dismissed**. No costs.

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Internet : Yes
Index : Yes
Speaking order



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S.M.SUBRAMANIAM, J.

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To,

1. The Government of Tamil Nadu,
Rep by Principal Secretary to Government,
Department of School Education,
Fort St. George, Chennai-9
2. The Director of Public Libraries,
O/o.Director of Public Libraries,
No.731, Anna Salai, Chennai-2.
3. The District Library Officer,
O/o.District Center Library,
Dharmapuri District.

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