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Writ Petition Nos.4993 & 4994 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition Nos.4993 & 4994 of 2018

and

W.M.P.Nos.6176 & 6177 of 2018

R.Sethumadhavan
S/o.A.Ranganathan

... Petitioner in W.P.No.4993/2018

S.Rammohan
S/o.Sengamuthu

... Petitioner in W.P.No.4994/2018

Vs.

1.The Government of Tamil Nadu,
represented by its Principal Secretary,
Education, Science and Technology,
(H.S.II) Department, Fort St.George,
Chennai - 9.

2.The Director of School Education,
College Road, Chennai - 6.

3.The Chief Educational Officer,
Chennai District,
Chennai.

4.The Headmaster,
Government Higher Secondary School,
C.M.D.A. Colony, Arumbakkam,
Chennai.

... Respondents in both W.Ps.



Writ Petition Nos.4993 & 4994 of 2018

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to regularize the services of the petitioner as full time Vocational Instructor in terms of G.O.(Ms) No.35, School Education Department, dated 09.02.2007 with effect from initial date of appointment besides pay all the arrears within a short date that may be fixed by this Court with all consequential service benefits such as due placement in the seniority on the basis of length of service and all other allowances attached to the posts.

For Petitioners : Mr.V.Jayaprakash Narayanan
[in both W.Ps.] for Mr.V.Jaisankar

For Respondents : Mrs.S.Mythreya Chandru
[in both W.Ps.] Special Government Pleader

COMMON ORDER

A writ of mandamus has been instituted to direct the respondents to regularize the services of the petitioners as full time Vocational Instructors in terms of G.O.(Ms) No.35, School Education Department, dated 09.02.2007, with effect from the initial date of appointment with all monetary benefits.

2. The petitioners state that they were appointed as Vocational Instructors in the fourth respondent Government Higher Secondary School by the Headmaster of the School on 01.09.2004 and 01.08.2001 respectively with



Writ Petition Nos.4993 & 4994 of 2018

the aid of Parent-Teacher Association against vacancy. The petitioners are working continuously as Vocational Instructors and receiving consolidated pay salary from the funds of Parent-Teacher Association.

3. Learned counsel for the petitioners mainly contended that the Government issued orders in G.O.(Ms) No.35, School Education Department, dated 09.02.2007, granting the benefit of regularization and permanent absorption to the part-time Vocational Instructors, who were appointed through Parent-Teacher Association and the Government accorded permission to appoint 213 Vocational Instructors in the said Government Order. However, the case of the petitioners was not considered based on the Government Order and they are continuously working as Parent-Teacher Association employee and receiving consolidated pay salary. It is contended that the similarly placed teachers, vocational instructors, were absorbed on permanent basis on time scale of pay and therefore, the petitioners are entitled to regularization and permanent absorption in the sanctioned posts. Since the claim of the petitioners were not considered, the petitioners are constrained to move the present writ petitions.



4. Learned Special Government Pleader appearing on behalf of the respondents objected the contention of the petitioners by stating that G.O.(Ms) No.35, School Education Department, dated 09.02.2007 is not applicable to the case of the petitioners since the Government accorded permission only to absorb 213 part-time vocational instructors, who were appointed prior to 20.09.1996. However, the petitioners were appointed in the years 2001 and 2004 and therefore, they are not falling under the purview of the Government Order issued in G.O.(Ms) No.35, School Education Department, dated 09.02.2007 and therefore, the writ petitions are to be rejected.

5. Regularization and permanent absorption cannot be granted in violation of the rules in force. Equal opportunity in public employment is the constitutional mandate. Since posts are to be filled up by following the procedures contemplated under the recruitment rules, a person appointed through Parent-Teacher Association cannot seek permanent absorption in a sanctioned post and in the event of considering such cases, it would result in infringement of right of all other persons, who are all aspiring to secure public employment through open competitive process. Back door appointments are prohibited by the Supreme Court of India. All appointments are to be made strictly in accordance with the rules.



6. In the present case, the petitioners were appointed as Vocational Instructors through Parent-Teacher Association on consolidated pay salary.

Therefore, they were not appointed by the competent authority of the Education Department under the relevant service rules in force. Thus, the initial appointment of the petitioners itself was not by the competent authorities and therefore, the benefit of permanent absorption cannot be granted.

7. The Constitution Bench of the Supreme Court in ***Secretary, State of Karnataka Vs. Uma devi [2006 4 SCC 1]*** settled the principles in the matter of public appointments. The Constitution Bench, in unequivocal terms, held that back door appointments cannot be regularized in violation of Articles 14 and 16 of the Constitution of India. One time benefit contemplated in paragraph No.53 of the aforesaid judgment cannot be extended in perpetuity so as to regularize the irregularity or illegal appointment. In paragraph 53 of the aforesaid judgment, the Supreme Court of India has given one time measure for the purpose of regularizing the services for the purpose of clearing the proposals, which all are pending before the Government for regularization. Such one time measure or benefit granted cannot be continued for an indefinite period.



8. In paragraph No. 54 of the *Uma Devi's case (supra)*, the Constitution Bench reiterated that any subsequent judgment running contrary to the principles laid down by the Constitution Bench denuded to loose its status as precedent and the same cannot be followed for the purpose of grant of regularization or permanent absorption and those judgments are constrained to its facts and circumstances alone. Therefore, all the Government orders passed long back and the benefits of regularization, if any, granted cannot be cited as a precedent for the purpose of committing further illegality in perpetuity. Thus, the question of considering the similar cases would not arise at all after the judgment of the Constitution Bench of the Supreme Court in *Uma Devi's case (supra)*.

9. Even if some orders were passed by the Supreme Court granting the relief of relaxation and permanent absorption such judgments are to be confined with reference to the facts of the particular case and it cannot be followed as a precedent in view of the reading in Paragraph No.54 of the Constitution Bench of the Supreme Court in *Uma Devi's case (supra)*. It would prevail over all other judgments delivered by the Hon'ble two Judges Bench of the Supreme Court or by the High Courts across the country. Thus, the Government has to follow these principles in order to uphold the constitutional principles. In the



matter of providing public employment, there cannot be any violation of rules or infringement of the right of the citizens to secure employment in accordance with the rules.

10. However, there are authorities, who are even now extending the benefit of regularization in violation of the recent Government orders and the judgment of the Supreme Court. The benefit of regularization can be extended only if the initial appointments made are not irregular or illegal. In other words, employees appointed by following the procedures contemplated under the rules alone are eligible for regularization and permanent absorption and illegal and irregular appointments cannot be regularized, which are directly in violation of principles settled by the Constitution Bench of the Supreme Court in ***Uma Devi's case (supra)*** and the subsequent judgments of the High Court of Madras. Thus, at no circumstances, illegality can be followed as a precedent.

11. Regarding the equality clause as stated on behalf of the petitioners that similar cases were considered by the authorities, it cannot be followed mechanically and in this regard, it is relevant to rely on the principles laid down by the Division Bench of this Court in the case of ***Director of Sericulture Department Vs. K.Kumar*** reported in ***[2015 (4) CTC 241]***, wherein it has been



held as follows:

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"34. It is true that consistency helps the parties to a litigation to know where they stand. But, when it is brought to the notice of the Court that on most of the earlier occasions, several similarly placed employees obtained orders at the stage of admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.

35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in [A.R.Antulay vs. R.S.Nayak](#) [AIR 1988 SC 1531]. It was observed in the said decision that "in rectifying an error, no personal inhibitions should debar the Court because no person should suffer by reason of any mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by writ petitions getting allowed at the stage of admission and (2) by getting those orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the scale of pay to be granted for Selection and Special Grades. Hence, the second contention of the writ petitioners is also liable to be rejected.

41. In [Union of India v. Kartick Chandra Mondal](#) [(2010) (2) SCC 422], the Supreme Court, relying upon its previous decisions in various cases including the one in [State of Bihar v. Upendra Narayan Singh](#) [(2009) 5 SCC 69], held that [Article 14](#) is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. Interestingly, the decision of the Supreme Court in [Kartick Chandra Mondal](#) was subsequent to the decision in [Maharaj Krishan Bhatt](#) and the decision in [Maharaj Krishan Bhatt](#) is also referred to in [Kartick Chandra Mondal](#)."



12. The Supreme Court of India in the case of **Basawaraj & another v.**

Special Land Acquisition Officer [2013 (14) SCC 81], held that

"It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order."

13. Therefore, Article 14 of the Constitution of India is not meant to perpetuity and illegality. Even if a wrong order is passed by a judicial forum, others cannot invoke the jurisdiction of the Court for repeating or multiplying the same irregularity or illegality or for passing similarly wrong order. In this context, the judgment of the Constitution Bench in **Uma Devi's case (supra)** laid down the guiding principles, which are to be followed in the matter of regularization and permanent absorption and subsequent judgments granting relief are to be confined to the facts of those cases and cannot be followed as a precedent since the judgment of the Constitution Bench in **Uma Devi's case (supra)** became the law of the land and binding on all authorities.

14. In the present cases, the petitioners were appointed as Vocational



Writ Petition Nos.4993 & 4994 of 2018

Instructors by the Headmaster, who is not the appointing authority. The

appointment order was made through the Parent-Teacher Association and the petitioners are receiving salary from the Parent-Teacher Association funds, which is not a Government fund. Parent-Teacher Association is a private body and therefore, the appointment is not in accordance with the rules in force. However, there is no impediment for the petitioners to continue as Parent-Teacher Association employees on need basis. However, such appointments made through the Parent-Teacher Association cannot be a ground to seek regularization or permanent absorption, which is to be strictly done in accordance with the recruitment rules in force. The petitioners accepted the terms and conditions of the appointment as a teacher of Parent-Teacher Association and hence, they cannot now turn around and claim permanent post in Government services and such claims, if entertained would cause infringement of the right of other candidates, who are all aspiring to secure public employment through open competition process. Thus, the very claim of the petitioners for regularization is untenable and cannot be entertained. The Government orders issued previously or the benefit of regularization granted in violation of constitution principles or judgment of the Supreme Court cannot be followed as a precedent and even such Government orders running contrary to the principles of the Supreme Court cannot be hereafter continued by the



Writ Petition Nos.4993 & 4994 of 2018

Government. All appointments are to be made strictly in accordance with law so as to ensure that equal opportunity enshrined under the constitution is preserved and all citizens are treated equally. If any grievance exists for the petitioners regarding enhancement of salary, they are at liberty to approach the authorities concerned.

15. The respondents are directed to look into the irregularities in the matter of appointment of teachers through Parent-Teacher Association and take appropriate steps and ensure that illegal or irregular appointments are not made.

Accordingly, these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

17.11.2022

Index : Yes
Speaking order
gm

S.M.SUBRAMANIAM., J



Writ Petition Nos.4993 & 4994 of 2018

gm

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To

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