



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NOS.10002 TO 10005 OF 2014

1.D.Manoharan

... Petitioner in WP.No.10002 of 2014

2.C.Ranganathan

... Petitioner in WP.No.10003 of 2014

3.V.Gunasekaran

... Petitioner in WP.No.10004 of 2014

4.K.Munirathnam

... Petitioner in WP.No.10005 of 2014

Vs.

1. The Government of Tamil Nadu,  
Rep. by it Secretary,  
Municipal Admn. & Water Supply Dept.,  
Fort St.George, Chennai-9
2. The Director of Town Panchayat,  
Kuralagam Building,  
Esplanade, Chennai.
3. The Assistant Director of Town Panchayat,  
Vellore, Vellore District.
4. The Executive Officer,  
Odugathur 1<sup>st</sup> Class Town Panchayat,  
Vellore Taluk,  
Vellore District.

... Respondents in all W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the fourth respondent relating to his proceedings in Na. Ka. No.125/2009 dated 11.12.2009 and quash the same and consequently direct the respondents herein to regularise the service of the petitioner



on time scale of pay in accordance with G.O.Ms.No.198 MA & WS Dept. dated 26.10.1998 with all attendant benefits.

WEB COPY

For Petitioner : Mr.R.Sunil Kumar  
(in all W.Ps)

For Respondents : Mrs.Anitha  
Special Government Pleader  
(in all W.Ps)

#### COMMON ORDER

The order passed by the respondent in proceedings dated 11.12.2009 appointing the writ petitioners in regular time scale of pay based on the order issued in G.O.Ms.No.242 by the Municipal Administration and Water Supply Department on 10.12.2009 is under challenge in the present writ petitions.

2. The writ petitioners were initially engaged as daily wage employees. The petitioners were working continuously as daily wage employees. The learned counsel for the petitioners mainly contended that the Government issued G.O.Ms.No.198, Municipal Administration and Water Supply Department dated 26.10.1998 stating that the employees, who all are serving for long years on temporary basis are eligible for regularization in the regular time scale of pay. However, the benefits of the said Government Order were not extended during the relevant point of time.

3. Subsequently, the case of the writ petitioners were considered for regular appointment and the Government passed an order in G.O.Ms.No.242, Municipal Administration and Water Supply Department dated 10.12.2009. Based on the said order, the service of the writ petitioner was brought under the regular establishment by fixing the time scale of pay. The Government Order in G.O.Ms.No.242 was issued granting the benefit of regular time scale of pay in respect of the daily wage employees, who all are serving more than 10 years. Thus, the case of the writ petitioners were also considered with reference to the G.O.Ms.No.242 dated 10.12.2009 and consequently, the petitioners were given appointment in the regular time scale of pay in proceedings Na.Ka.No.125/2009 dated 11.12.2009 and the said order is under challenge in the present writ petition.

4. The G.O.Ms.No.198 relates to norms for constitution of post. Several conditions were also stipulated in the said Government Order. Therefore, it is not as if the Government has



passed an order to grant the benefit to regularization of the employees, who all are engaged on daily wage basis. One of the conditions is that the employee should be engaged through District Employment Exchange and in respect of the employees, who have not registered their names in the Employment Exchange, also to be considered only after such registration, and based on the seniority.

5. Daily wage employees who have not registered their names in the Employment Exchange, shall be insisted to register their names in the Employment Exchange. The minimum prescribed qualification and the technical skills are also to be verified for such absorption. Therefore, the G.O.Ms.No.198 contemplates several restrictions for grant of benefit for regular time scale of pay and regularization of service. However, the fact remains that the service of the writ petitioners was not regularized based on G.O.Ms.No.198. The present writ petition was filed after granting the benefit of regularization in the year 2009 based on G.O.Ms.No.242 dated 10.12.2009.

6. Regularization or permanent absorption cannot be granted in violation of service rules in force. Appointments are to be made strictly in accordance with the rules in force and through open competitive process. The principles for grant of regularization or permanent absorption has been settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of Secretary, State of Karnataka Vs. Umadevi & Others reported in 2006 (4) SCC 1. The Constitution Bench in unequivocal terms held in paragraph 54 that any judgment running counter to the principles laid down in that case will stand denuded of their status as precedent. Therefore, the subsequent cases decided based on certain particular facts and circumstances cannot be considered as precedent for the granting the relief. The principles laid down by the Constitutional bench became the law which is to be followed by all Courts across the country.

7. Even the Governments are not empowered to grant regularisation or permanent absorption in violation of the principles settled by the Constitution Bench of Apex Court of India.

8. In the present case the service of the petitioners were regularised based on G.O.Ms.No.242 dated 10.12.2009 and they were fixed with the time scale of pay. The claim of the writ petitioners are to grant retrospective regularisation based on G.O.Ms.No.198. The fact remains that the case of the writ petitioners were not considered based on G.O.Ms.No.198 as they were appointed as daily wage employees and the respondents have



also taken up the stand that G.O.Ms.No.198 dated 26.10.1998 is not applicable to the case of the writ petitioners. The petitioners during the relevant point of time has not initiated any steps to claim the benefits. However, only after regularisation of the service in the year 2009 they have chosen to file the present writ petitions in the year 2014 after a lapse of 5 years from the date of grant of regularization and fixing time scale of pay.

9. The benefit to regularization granted by the Government as one time measure itself is a concession extended. The daily wage employees are not entitled for such regularization as per the principles set out by the Constitution Bench of the Supreme Court of India. Illegal and irregular employees cannot be regularized in violation of the recruitment rules in force. Equal opportunity in the public employment is the constitutional mandate of eligible candidates, who are all aspiring to get public employment. Employees must be provided with an opportunity to participate in the selection and therefore, the back door appointment cannot be a ground to seek regularization in the sanctioned post. The one time measure to grant regularization is a concession extended to such employees, who have served for long years. Therefore, such concessions cannot be extended for the purpose of granting retrospective regularization.

10. In the present case, the petitioners admittedly were appointed as daily wage employees on temporary basis and the benefits for regularisation were granted to them through G.O.Ms.No.242 on 10.12.2009 and therefore, regularization granted by way of concession in respect of the writ petitioners cannot be extended for the purpose of considering their case for retrospective regularisation. Thus, there is no infirmity in the order impugned. Accordingly, the Writ Petitions stand dismissed. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Jeni/Mrm

To

1. The Secretary,  
Government of Tamil Nadu,  
Municipal Admn. & Water Supply Dept.,  
Fort St.George, Chennai-9



2. The Director of Town Panchayat,  
Kuralagam Building,  
Esplanade, Chennai.

3. The Assistant Director of Town Panchayat,  
Vellore, Vellore District.

4. The Executive Officer,  
Odugathur 1<sup>st</sup> Class Town Panchayat,  
Vellore Taluk,  
Vellore District.

+lcc to the Government Pleader, S.R.No.36911

W.P.Nos.10002 to 10005 of 2014

SSD(CO)  
RLP(07/07/2022)