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W.P.Nos.7026 and 7027 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.7026 and 7027 of 2014

1.R.Arumugam ... Petitioner
in W.P.No.7026 of 2014

2.V.Sreenivasan ... Petitioner
in W.P.No.7027 of 2014

Vs.

1.The Secretary to Government,
Municipal Administration and
Water Supply Department,
Govt. of Tamil Nadu,
Fort. St. George,
Chennai – 600 009.

2.The Director of Municipal Administration,
Ezhilagam,
Chepauk,
Chennai – 600 005.

3.Avadi Municipality,
Rep. by its Commissioner,
Avadi,
Chennai – 600 054.

... Respondents
in both W.Ps

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to appoint the petitioner on permanent basis with effect from 27.05.1999 on consolidated basis for one year and thereafter the said period of one year, to place the petitioner on time scale of pay with all consequential benefits.



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For Petitioners : M/s.K.Shanmugakani
(in both W.Ps)

For R1 and R2 : No Appearance
(in both W.Ps)

For R3 : Mr.P.Srinivas
(in both W.Ps)

COMMON ORDER

The relief sought for in the present writ petitions is to direct the respondents to appoint the petitioners on permanent basis with effect from 27.05.1999 on consolidated basis for one year and thereafter, the said period of one year, to place the petitioners on time scale of pay with all consequential benefits.

2. The petitioners state that they have joined as Nominal Muster Roll (NMR) daily wage employees in the 3rd respondent / Municipality. The services of the writ petitioners were not regularised, despite the fact that they were continuously working as daily wage employees. The petitioners sent representations on 04.08.2008 and no orders were passed. Thus, the writ petitioners filed the writ petitions in W.P.Nos.22772 and 22773 of 2008 and the High Court passed an order on 18.09.2008 directing the respondents to consider the representations of the writ petitioners and pass orders.



3. Consequently, the 2nd respondent passed an order on 23.12.2008, rejecting the request of the writ petitioners to regularise their services.

Again, the petitioners filed writ petitions in W.P.Nos.1658 and 1659 of 2009 and this Court passed an order on 02.02.2010, setting aside the rejection order dated 23.12.2008 and remanded the matter back to the respondents to regularise the services of the petitioners in terms of G.O.(Ms).No.125 dated 27.05.1999. The 3rd respondent / Municipality preferred an Appeal in W.A.Nos.1529 and 1530 of 2010 and the writ appeals were dismissed on 19.08.2010. The Special Leave Petitions in S.L.P.(Civil).Nos.33756 and 33757 of 2010 were filed by the 3rd respondent / Municipality, which were also dismissed on 24.01.2011 and the petitioners were appointed in the regular post, now the petitioners are working as Regular employees.

4. Not satisfied with the benefit of regularisation granted pursuant to the orders of the Court in proceedings dated 24.01.2011, the petitioners filed the writ petitions on the ground that this Court directed the respondents in W.P.Nos.1658 and 1659 of 2010, to regularize the services of the petitioners in terms of G.O.(Ms).No.125 dated 27.05.1999. As per the said Government order, the petitioners state that they were appointed on 27.05.1999 on consolidated pay of Rs.2000/- and therefore, they should



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have been placed in the regular time scale of pay with effect from 27.05.2001. However, they were appointed in the permanent post only on 24.02.2011.

5. The learned counsel for the petitioners mainly contended that as per the said G.O.(Ms).No.125, the petitioners are entitled for the retrospective regularisation on completion of one year of consolidated pay services. The said position was reiterated by the Hon'ble Division Bench of this Court in W.P.Nos.42, 46 and 47 of 2022 dated 01.03.2022. The relief of regular time scale of pay as per G.O.(Ms).No.125 dated 27.05.1999 was granted by the Hon'ble Division Bench of this Court.

6. The learned counsel appearing on behalf of the respondents objected the said contention by stating that the issues regarding regularisation of Sanitary Workers appointed in Municipalities on consolidated pay was decided by the Full Bench of this Court in the case of *S.Dhanasekaran & 24 Others Vs. Government of Tamil Nadu* reported in *[2013 (6) CTC 593]*. The Full Bench has held that the employees are not entitled for retrospective regularisation from the date of completion of one year of service or three years of service. Again, a

Review Petition was filed and the Full Bench of this Court allowed the Review Petition and granted the benefit of retrospective regularisation on



completion of three years of service as per the Government orders passed.

The said judgment of the Full Bench in the Review Petition was taken by way of Appeal before the Hon'ble Supreme Court of India and a stay has been granted and the appeal is now pending before the Apex Court of India.

7. At the outset, the issues regarding regularisation and retrospective regularisation either in accordance with G.O.(Ms).No.71 dated 05.05.1998 or under G.O.(Ms).No.125 dated 27.05.1999. The Municipal Administration and Water Supply Department dated 27.05.1999 are now subjudiced. The G.O.(Ms).No.125 was issued superseding to G.O.(Ms).No.71 dated 05.05.1998, which was the subject matter dealt with by the Full Bench of this Court. Perusal of G.O.(Ms).No.125, reveals that G.O.(Ms).No.70 and G.O.(Ms).No.71 dated 05.05.1998, were referred and those Government orders were superseded and G.O.(Ms).No.125 was issued on 27.05.1999.

8. All these Government orders were issued prior to the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of ***State of Karnataka Vs. Uma Devi and Others*** reported in [2006 (4) SCC 1],

wherein, the principles to be followed for grant of regularisation and permanent absorption are settled. Therefore, any judgment or Government



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orders, which all are running counter to the principles settled by the Constitution Bench of the Hon'ble Supreme Court of India have denuded to lose its status as precedent. The said directions are issued by the Hon'ble Supreme Court of India in paragraph 54 of the judgment itself. Therefore, those Government orders and the judgments of the Courts running counter to the principles settled by the Constitution Bench cannot be followed as precedent. Thus, all writ petitions filed based on the earlier Government orders issued prior to the judgment of the Constitution Bench of the Hon'ble Supreme Court lost its status as precedent and also such Government orders became unconstitutional, in view of the principles settled. Those judgments, undoubtedly are running counter to the principles settled by the Hon'ble Supreme Court of India.

9. Again, 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 that High Court cannot issue any direction to regularize the services of the employees, which is otherwise not in accordance with the Service Rules in force. The power of judicial review cannot be extended for the purpose of grant of regularization or to extend the regularization with retrospective effect. Therefore, few judgments, which all are running counter to the



judgment of the Apex Court of India or the decision of the authorities cannot be a ground to continue the irregularity, which is otherwise impermissible in view of the principles settled by the Constitution Bench of the Hon'ble Supreme Court of India.

10. Equal opportunity in public employment is a Constitutional mandate. Back door appointments were strongly criticised by the Hon'ble Supreme Court of India. Irregularity and illegality in public employments can never be regularised in violation of the service rules in force. All candidates, who all are aspiring to secure public employment, must be provided with equal opportunity. Any back door appointments resulting in grant of regularisation would lead to not only unconstitutionality, but amounts to infringement of the Fundamental Rights of the Citizen, who all are longing to secure public employment through open competitive process. Therefore, those Government orders cannot be followed for grant of regularisation and permanent absorption as the Government orders are not only running counter to the principles settled by the Constitution Bench of the Hon'ble Supreme Court of India, but also amounts to regularization of the back door appointments. Thus, the law of the land on the subject cannot be violated after the judgment of the Constitution Bench. The Government also issued subsequent orders. Even the



(F) Department dated 27.06.2013, stating that regularisation proposals are sent to the Government for consideration. The authorities of various departments are prevented from granting regularisation and permanent absorption by passing orders. In order to maintain consistency in the matter of regularisation, the Government also passed such orders. Under these circumstances, the earlier judgments or the Government orders cannot be considered for the purpose of granting retrospective regularisation or permanent absorption.

11. The principles of justice requires that the Constitutional principles and mandates are preserved in the interest of the society at large. Misplaced sympathy or leniency, if leads to unconstitutionality, then the Courts would be slow in showing such sympathy or leniency. Therefore, the leniency may be permissible only in certain exceptional cases, in the event of no unconstitutionality or non violation of any Statutes and Rules. Thus, there cannot be any misplaced sympathy in the matter of upholding the Constitutional mandates, Philosophy and Ethos.

12. If at all, the benefit of regularisation and permanent absorption are granted to irregular and illegal appointments in a routine manner, no doubt, the fundamental rights of all the eligible persons, who all are waiting for securing public employment are violated. Courts are bound to



consider the plea of those poor people from rural and semi-urban areas of our great Nation, who all are preparing meticulously to face the competitive process with a fond of hope that their merits will be recognised by the State in one way or other for the purpose of securing public employment. What would be the answer for those poor people from villages and semi-urban areas, who all are mostly non exposed to these illegalities and irregularities and corrupt activities in Government employments. Thus, the Constitutional Courts are bound to protect the interest of those meritorious candidates, who all are not before the Courts. The principles of justice requires that all these aspects are to be borne in mind.

13. In the present case, the services of the writ petitioners were regularised pursuant to the orders passed by the High Court in W.P.Nos.1658 and 1659 of 2009. When the benefit of regularisation was granted to the writ petitioners pursuant to the orders of this Court from the year 2011, that itself a concession extended to the writ petitioners. After getting regularisation from the year 2011, again the writ petitioners filed the present writ petitions, seeking retrospective benefits. The order passed in the writ petitions filed by the writ petitioners in W.P.Nos.1658 and 1659 of 2009, reveal that the Court directed the respondents to regularise



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the services of the writ petitioners in terms of G.O.(Ms).No.125 dated 27.05.1999. The said judgment was implemented as it was confirmed by the Division Bench of the Hon'ble Supreme Court of India. During the relevant point of time, the petitioners have not raised any objection with reference to the G.O.(Ms).No.125, which was mentioned in the order of the Court. Therefore, new writ petition on the same ground cannot be entertained.

14. When the Court issued a direction with reference to G.O.(Ms).No.125 and the said judgment was implemented and thereafter, the writ petitioners have not raised any objection and now they cannot file writ petitions on the ground that the G.O.(Ms).No.125 has not been implemented properly. The writ petitioners were estopped from re-adjudicating the issue, which was already adjudicated and reached finality. Thus, the writ petitioners have not made out any acceptable ground for the purpose of granting the relief as such sought for in the writ petitions and accordingly, these Writ Petitions stand dismissed. No costs.

07.07.2022

Jeni/Kak

Index : Yes

Speaking order : Yes

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