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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition Nos.6235, 6236, 6237 & 6238 of 2014
and
M.P.Nos.1, 1, 1 & 1 of 2014

A.Muthu
S/o.Appusamy ...Petitioner in W.P.No.6235/2014

R.Sekar
S/o.K.Ramasamy ...Petitioner in W.P.No.6236/2014

U.Murugesan
S/o.N.Udaiyan ...Petitioner in W.P.No.6237/2014

S.Karuppasamy
S/o.Subramaniyan ...Petitioner in W.P.No.6238/2014

Vs.

1. The State of Tamil Nadu
represented by its
Secretary to Government,
Labour and Employment (E2) Department,
Chennai - 9.
2. The Commissioner of Labour,
Chennai - 6. ...Respondents in all petitions

PRAYER:

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records connected in G.O.Ms.No.58, Labour and Employment (E2) Department, dated 21.05.2008 passed by the first respondent and quash the same in respect of the regularisation of the petitioner from the date of issuance of the Government order insofar as the petitioner is concerned and directing the respondents to regularise the service of the petitioner either from the date of initial appointment (or) from the date of the actual vacancy arose (or) from the date of completion of 10 years of service as given to others with all benefits.

For Petitioners : Mr.A.R.Suresh
[in all petitions] for Mr.K.Sanjay

For Respondents : Mrs.S.Anitha
[in all petitions] Special Government Pleader



COMMON ORDER

These writ petitions have been filed challenging the Government Order issued in G.O.Ms.No.58, Labour and Employment (E2) Department, dated 21.05.2008.

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2. The petitioners were engaged as daily wage Watchmen through employment exchange in the department of labour. Admittedly, they were continuing as daily wage employees for more than 10 years and pursuant to the Government orders issued during the relevant point of time, proposals were submitted to regularize the services of the petitioners. Considering the proposal, the Government issued G.O.Ms.No.58, Labour and Employment (E2) Department, dated 21.05.2008 regularizing the services of the petitioners with effect from the date of the Government order i.e. 21.05.2008.

3. A perusal of the Government order reveals that rules relating to age and reservation were relaxed in favour of the petitioners for the purpose of grant of regularization. Thus, the initial appointment of the petitioners was irregular and not in accordance with the service rules in force.

4. In spite of the fact that the initial appointment of the petitioners was irregular and not in accordance with the rules in force, the Government regularized the services in favour of the petitioners considering the fact that they were continuing as daily wage employees for more than ten years. Thus, the benefit of regularization and permanent absorption itself was a concession extended by the Government, more so, by relaxing the relevant rules in force.

5. The question arises for consideration is whether relaxation of rules can be granted in favour of an individual in a routine manner.

6. The power of relaxation is conferred on the Government only for a limited purpose to mitigate the extraordinary circumstances or in case of gross injustice. The power of relaxation cannot be exercised in a routine manner. The power of relaxation is an exception to be exercised judiciously so as to ensure that the injustice, if any, crept in is rectified.

7. Learned counsel appearing for the petitioners strenuously contended that the similarly placed persons were granted the benefit of retrospective regularization with all benefits. When the benefit of retrospective regularization on completion of ten years has been granted to the other similarly placed persons, the said benefit cannot be denied to the petitioners and hence, the action of the respondents are discriminatory and in violation of Article 14 of the Constitution of India.



8. No doubt, there is force in the argument advanced by learned counsel appearing for the petitioners. However, the Courts are bound to consider the implications and the principles settled in the matter of regularization and permanent absorption. It is not as if the Courts can mechanically follow certain orders irrespective of the facts and circumstances involved in a particular case.

9. In the present case, the writ petitions itself have been filed after a lapse of about six years from the date of passing of the order. The impugned Government order was passed in the year 2008 and the writ petitions have been filed in the year 2014 after a lapse of six years. Thus, these petitions are liable to be rejected on the ground of laches.

10. Regarding regularization and permanent absorption, the Constitution Bench of the Hon'ble Supreme Court of India in the case of Secretary, State of Karnataka Vs. Uma devi [2006 4 SCC 1] settled the principles.

11. No doubt, the Constitution Bench extended one time benefit to the employees whose proposal were pending for regularization when the judgment was delivered in the year 2006. However, such one time benefit cannot be extended for an indefinite period and subsequently, the Courts have clarified that regularization and permanent absorption are to be made only if the appointments are made in accordance with the service rules in force.

12. In paragraph No. 54 of the Uma Devi's case (cited 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. This being the law in force, this Court is of the opinion that High Court cannot issue any direction to regularize the services of the petitioners, more so, with retrospective effect once the appointment is irregular or illegal.

13. The practice of filing similar writ petitions is in growing trend. While adopting the similarity and applying the principles of equality under Article 14 of the Constitution of India, the legality are also to be tested by the Courts. Any illegality cannot be a ground to claim equality. Thus, once the principles are settled in Courts of law and the persons aggrieved approaches the Court within a reasonable time, then alone the benefits are to be extended by applying Article 14 of the Constitution of India and not otherwise. It is not as if the petitioners can approach the Court of law by citing an order which is otherwise reversed subsequently or the principles are changed by the Courts on account of length of time or otherwise. All such factors would play a pivotal role



in extending such benefits as mechanical extension of such retrospective regularisation would involve financial implications to the State exchequer and the Courts are also expected to be cautious while dealing with such nature of cases. In the event of grant of retrospective regularization, all those employees are entitled for retrospective benefits, which they are otherwise not entitled as their initial appointment was irregular or illegal.

14. In the present case, the petitioners have approached this court after a lapse of six years from the date of passing of the Government order and further more, the benefit of regularization was granted as concession by the Government, more so, by relaxing the relevant service rules relating to age and reservation and therefore, the petitioners are not entitled for any further concession for the purpose of grant of retrospective regularization and for grant of monetary benefits. This being the facts and circumstances, the petitioners are not entitled for the relief as such sought for in the present writ petitions.

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

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary to Government,
Labour and Employment (E2) Department,
Chennai - 9.
2. The Commissioner of Labour,
Chennai - 6.

+4ccs to Mr.K.Sanjay, Advocate SR. No. 37128
+1cc to Government Pleader SR. No. 37657

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AD (CO)
PR (04/07/2022)