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W.P.Nos.6815 & 6816 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.6815 & 6816 of 2014

P.Murugesan

...Petitioner in W.P.No.6815 of 2014

P.Pandiyarajan

...Petitioner in W.P.No.6816 of 2014

Vs.

1.Tamil Nadu Pollution Control Board,
Rep.by its Chairman,
No.76, Mount Salai,
Guindy, Chennai – 600 032.

2.Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy, Chennai – 600 032.

..Respondents in both W.Ps

Common Prayer : Writ Petitions filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the concerned records from the 2nd respondent, quash the order of the 2nd respondent bearing Memo No.TNPCB/Per/P7/24001/2013 dated 31.10.2013 in so far as the petitioner is concerned and consequently direct the respondents to regularize the services of the petitioner from 22.11.1996 being the date of initial engagement in the post of Field Assistant as done in the case of J.Balakumaran and five others vide proceedings No.TNPCB/P7/002970/2011 dated 28.01.2012.



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For Petitioners : Mr.Balan Haridas
[in both W.Ps]

For Respondents : M/s.Vijayakumari Natarajan
[For R1 and R2] [For Tamil Nadu Pollution Control
Board]
[in both W.Ps]

COMMON ORDER

The orders impugned dated 31.10.2013, rejecting the claim of the writ petitioners for regularization are under challenge in the present writ petitions.

2. The petitioners state that their names were sponsored by the District Employment Exchange office for selection to the Post of Field Assistant in the Tamil Nadu Pollution Control Board. The petitioners were engaged on consolidated pay wages and they joined on 05.02.1997 and 09.10.1996 respectively. The petitioners state that they are working continuously and similarly, many other employees were also kept under daily wages / consolidated pay wages for the purpose of performing regular works.



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3. The Respondent-Board was regularizing the services of those temporary employees in a phased manner. Thus, the petitioners also submitted representations repeatedly to consider their case for regularization and permanent absorption. Accordingly, the services of the writ petitioners were regularized in order dated 28.10.1999 with effect from 03.11.1999. The monetary benefits were granted with effect from the date of regularization i.e., on 03.11.1999. The petitioners state that they had been working from 05.02.1997 and 09.10.1996 respectively and therefore, regularization of their services with effect from 03.11.1999 is not justified. In respect of the similarly placed persons, the respondent-Board has given the benefit of regularization with effect from the date of initial appointment. Therefore, the Board cannot discriminate the petitioners for the purpose of grant of retrospective regularization from the date, on which, the writ petitioners were engaged temporarily on consolidated pay.

4. The petitioners have stated that the writ petitioners were appointed as Field Assistants on NMR basis, not exceeding 89 days from the date of joining duty. Subsequently, the benefit of regularization was granted in



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proceedings dated 28.10.1999. But the services of the writ petitioners were not regularized from the date of their initial appointment.

5. The learned counsel for the petitioners made a submission that the other similarly placed persons obtained the orders of the High Court and their services were regularized with retrospective effect. One such order dated 28.01.2012, reveals that the High Court passed an order on 30.03.2011 in W.P.No.27128 of 2009 and based on the said order, retrospective regularization was granted to those employees. Similar such orders were passed even on 17.02.2012, 18.02.2012. Citing all these orders, the learned counsel for the petitioners contended that the case of the writ petitioners are to be considered for retrospective regularization.

6. The learned counsel for the respondents objected the said contention by stating that the writ petitioners were appointed as daily wage employees (NMR) from 05.02.1997 to 02.11.1999 and 09.10.1996 to 02.11.1999 respectively. The petitioners were not engaged continuously and they were engaged only on need basis. Further, in supersession of the orders issued in G.O.Ms.No.22 dated 28.02.2006, the revised order was passed by



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the Government in G.O.Ms.No.74 dated 27.06.2013, wherein, it has been mentioned that proposals for regularizing the services of full time daily wage employees should be sent to the Government for approval even in cases, where, regularization and rules are not involved. Therefore, unless and until, the same is approved by the Government, the question of regularizing the petitioners services may not be legal. Therefore, the representations of the writ petitioners were rejected.

7. The counter affidavit filed by the respondents reveal that they have relied on the orders of the Hon'ble Supreme Court dated 21.02.2014 in C.A.Nos.2726-2729/2014, which reads as follows:

“Mere continuation of service by a temporary or ad hoc or daily wages 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 wages service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization if he is not working against a sanctioned post. Sympathy and Sentiment cannot be grounds by passing any order of regularization in the absence of legal right.”



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8. The learned counsel for the petitioners made a submission that in similar circumstances, this Court passed an order on 22.06.2016 in W.P.Nos.15301 to 15315 of 2014 in respect of the other employees. The said judgment was implemented in respect of the petitioners therein and the writ petitioners are also similarly placed and therefore, the same benefit of retrospective regularization is to be extended to the writ petitioners from their initial date of appointment with all consequential service and monetary benefits. In this regard, the petitioners have filed a reply affidavit to the counter statement by stating that the respondents cannot discriminate the case of the writ petitioners. No doubt, the petitioners accepted the order of regularization without protest and that after 14 years, the petitioners have chosen to question the regularization from 03.11.1999 instead of their initial engagement. However, the respondent-Board in respect of several other employees, engaged them on NMR basis and later regularized their services retrospectively and those employees submitted their representation and consequently their services were regularized with effect from the initial date of appointment. Therefore, the respondents cannot reject the case of the writ petitioners alone and the petitioners were making request continuously,



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which was rejected finally only on 31.10.2013. Thus, the petitioners filed the present writ petitions thereafter.

9. The learned counsel for the respondents objected the said contention by stating that there are orders of the Hon'ble Supreme Court in several other cases of the daily wage employees. The respondents referred the order passed by the High Court on 04.06.2013 in W.P.Nos.12109 to 12113 of 2013, wherein, a direction was issued to pass orders on the representations.

10. The Government issued a letter dated 24.06.2013, stating as follows:

“I am directed to inform that a review meeting was held on 21.06.2013 by Hon'ble Chief Minister and other Officers on the above subject with Advocate General of Tamil Nadu, Chief Secretary to Government, Principal Secretary to Government, Finance Department and Secretary, Law Department and it was decided that in case where judicial finalities is not reached and scope of appeal is available on such cases even in contempt cases, the concerned Department shall file appeal and pursue the case.

2. In view of this, it is hereby instructed that in cases



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where judicial finalities is not reached and scope of appeal is available even in contempt cases, the concerned Department shall file appeal petition to pursue notion. It is further instructed that in pending cases, where Personnel and Administrative Reforms Department / Finance Department have already cleared the files subject to appeal, the concerned Department may coordinate with respective Department so as to ensure the appeal petition filed before 27.06.2013 in consultation with the Advocate General of Tamil Nadu.

3. I am therefore to request you to follow the above instructions scrupulously and to send your report to Government immediately in this regard on or before 26.06.2013.”

11. The learned counsel for the respondents submitted that the Government issued G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013. In the said Government Order, it is stated that “all the proposals for regularization of the services of full time daily wage employees should be sent to the Government even in cases, where, relaxation of rules are not involved”. Therefore, the Government has issued direction to all the Departments, Government Undertakings etc., that regularization or permanent absorption cannot be granted and the proposals



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are to be sent to the Government alone. Such a decision was taken to avoid inconsistencies in the matter of grant of regularization.

12. The respondents have further relied on their own order issued in memo dated 03.10.2013, wherein, they have considered the orders of the Madras High Court dated 04.06.2013 in W.P.Nos.12109/2013 to W.P.No.12113/2013 and the proposal for regularization of services of those petitioners were also rejected as per G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013 and letter dated 24.06.2013.

13. In the present cases, the benefit of regularization was granted, before the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of *the Secretary, State of Karnataka and others vs. Umadevi and others reported in (2006) 4 Supreme Court Cases 1*. Subsequently, the grant of regularization and permanent absorption are regulated through the principles settled by the Hon'ble Supreme Court of India.



14. Considering the entire facts and circumstances, this Court is of the

considered opinion that on earlier occasions, in certain cases, regularizations were granted from the date of initial appointment by some authorities and another set of authorities rejected regularization based on the Government orders passed. The Government issued instructions on 22.07.2013 itself, stating that appeal is to be filed in such cases. That apart, the Government order issued in G.O.(Ms).No.74, also states that all the regularization proposals are to be sent to the Government for consideration. Such a decision was taken in view of the principles settled by the Constitution Bench of the Hon'ble Supreme Court of India and to avoid further inconsistencies in the matter of dealing with the regularization cases. No doubt, the Courts also have passed certain orders, granting the benefit of regularization, which is running counter to the principles settled by the Constitution Bench of the Apex Court of India in *“Uma Devi”* case (*cited supra*). However, those judgments cannot be followed as a precedent in view of Paragraph 54 of the Constitution Bench judgment (*cited supra*). All such judgments running counter to the principles have denuded to loose its status as precedent. Back door appointments were heavily condemned by the Apex Court of India. Making backdoor appointments and regularizing



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the services would cause infringement of the Constitutional rights of all other eligible candidates, who all are aspiring to secure public employment through open competitive process. Equal opportunity in public employment is the constitutional mandate. Thus, the Courts cannot encourage any such backdoor appointments and the Constitution Bench also in unambiguous terms held that such backdoor appointments can never be regularized. That apart, the employees, who were engaged on daily wage basis, joined the services by accepting the terms and conditions of the daily wage employee. Therefore, they cannot turn around and seek regularization merely based on their length of services or otherwise. Such method of regular appointments through backdoor method would cause serious injury to the Constitutional principles and many meritorious candidates are deprived of their fundamental right to secure public employment. These principles are seriously considered by the Constitutional Courts across the country. Therefore, it is not as if the High Court can take a lenient view or show misplaced sympathy for the purpose of grant of regularization or permanent absorption, which is otherwise not in accordance with the Service Rules in force.



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15. 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 not show 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.

16. 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



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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.

17. 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. So also, in the present case, the very same respondents rejected the few cases on the ground that they are not entitled for regularization as per G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department



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dated 27.06.2013. When the authorities have taken a decision then and there based on certain Court orders or otherwise and thereafter, they have maintained consistency in the matter of grant of regularization and permanent absorption, those judgments, which were lost its status as precedent cannot be applied for the purpose of grant of regularization or retrospective regularization.

18. This Court is of the considered opinion that the initial appointment of the writ petitioners were not made in accordance with the recruitment rules in force. The writ petitioners were initially engaged as daily wage employees (NMR) and they were provided work on need basis. Considering their long services, the benefit of regularization and permanent absorption was granted to these petitioners. Thus, the regularization itself is a concession provided to these petitioners as their initial appointments were irregular and not in accordance with the recruitment rules in force. When the respondents had extended the benefit of regularization by way of concession, Courts cannot further extend the concession for the purpose of granting retrospective regularization. Regularizations are to be granted only in a sanctioned post and by following the rules in force. Therefore, grant of



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retrospective regularization would result in financial burden to the public establishments. That apart, an employee, who was engaged on daily wage basis, is aware of the fact that his services are not permanent and accepting the terms and conditions of the daily wage employment, he joined in service and performing his duties on daily basis. While so, grant of regularization, considering the services of the petitioners itself is no doubt a concession granted to the daily wage employees.

19. This being the factum, the retrospective regularization cannot be granted as the initial appointment were not in accordance with the recruitment rules in force. Regularizing the back door appointments are in violation of the constitutional principles. It is also in violation of the principles of equality enunciated under Article 14 of the Constitution of India. Thus, any such concession granted by regularizing the services cannot be granted retrospectively, so as to regularize the irregular appointments.



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20. Thus, the petitioners are not entitled for the relief as such sought for in these writ petitions and accordingly, both the writ petitions stand dismissed. No costs.

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Index : Yes

Speaking order: Yes

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To

1. The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy, Chennai – 600 032.

2. The Member Secretary,
Tamil Nadu Pollution Control Board,
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S.M.SUBRAMANIAM, J.

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