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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.3.2022

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.16948 of 2020

1 S.Mathammal  
2 P.Tamizharasi  
3 C.Kaliyammal ...Petitioner

Vs.

1. The State of Tamil Nadu  
Rep. by Secretary to Government,  
Social Welfare Department,  
Fort St.Geroge, Chennai-9

2. The Director of Social Welfare,  
Social Welfare Department,  
No.58/70, Arunachalam Street,  
Chindadripet, Chennai 600002.

3. The District Social Welfare Officer,  
Dharmapuri District, Dharmapuri. ...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records pertaining to the impugned order Cha.Mu.Na.Ka.No.5335/Ni.6(3)2012 dated 13.11.2017 issued by the 2nd respondent and quash the same and consequently direct the respondent to regularize the service of the petitioners from 07.07.1992 15.06.1993 and 09.08.1995 respectively from the date of their initial appointments with time scale of pay from the said dates.

For Petitioner : Mr.G.Mutharasu

For Respondents : Mrs.S.Anitha, Spl. G.P.

O R D E R

According to the petitioners, they were appointed as Helpers by the third respondent on consolidated pay of Rs.170/- only and at the time of filing earlier writ petition, they received a total sum of Rs.1,165/-, Rs.1,165/- and Rs.1,065/- per month respectively. The petitioners have filed W.P.No.24368 of 2013 for regularization of their services from the date of initial



appointment. Pendency of the above writ petition, the impugned order dated 3.11.2017 has been passed stating that the petitioners were appointed under regular time scale of pay, however, with effect from 14.11.2017 on temporary basis without assigning any reason and therefore, the petitioners have filed amendment petition in the aforesaid writ petition. The aforesaid writ petition was dismissed granting liberty to the petitioners to challenge the impugned order. Now, the petitioners seeks regularization from the date of their initial appointments viz., 07.07.1992 15.06.1993 and 09.08.1995 respectively with regular time scale of pay from the said dates in the present writ petition.

2. Counter affidavit has been filed by the respondent stating that their appointment is purely temporary on consolidated pay through District Employment Office. The Government passed G.O. No.115, Social Welfare and Nutritious Meal (SW-1 (2) department, dated 1.6.2010 as a special case appointed the petitioners in the vacant posts of Helpers, Assistant Cook, Cook and Sweepers available in the Government Working Women Hostel and in Government Orphanage in regular time scale of pay and the service of the petitioners were regularized from the date on which the proceedings No.5335/Admn 7(3)/2012, dated 13.11.2017 issued by the Government. The respondent also relied upon the decision of the Hon'ble Supreme court in State of Karnataka and others vs. Uma Devi and others [AIR 2006 SC 1806].

3. Following the decision of the Hon'ble Supreme Court in Govindaswamy case (cited supra), this Court also had an occasion to deal with a similar matter in the case of Saraswathy v. State of Tamil Nadu [W.P.No.5529 of 2015 dated 18.12.2019] wherein this Court held as follows:

"5. In the case of Secretary to Government, School Education Dept., Chennai, v. R. Govindaswamy and Others, reported in (2014) 4 SCC 769, the Hon'ble Apex Court has allowed the appeal filed by the Government.

6. In yet another decision rendered by the Hon'ble Apex Court in Secretary to Government, Commercial Taxes and Registration Department, Secretariat and Another v. A. Singamuthu, reported in CDJ 2017 SCC 239, it has been held in paragraph Nos.16, 17 and 18 are extracted hereunder:

"16. The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said G.O.Ms.No.22 dated 28.02.2006 and directed the



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appellants to grant regularization of respondent's service from the date of completion of ten years of service with salary and other benefits. The learned Judge failed to take note of the fact that as per G.O.Ms.No.22, dated 28.02.2006, the services of employees working in various government departments on full time daily wage basis, who have completed more than ten years of continuous service as on 01.01.2006 will be regularized and not part time Masalchis like the respondent herein. In G.O.Ms.No.84, dated 18.06.2012, the Government made it clear that G.O.Ms.No.22, dated 28.02.2006 is applicable only to full time daily wagers and not to part time daily wagers. Respondent was temporarily appointed part time worker as per Tamil Nadu Finance Code Volume (2) Appendix (5) and his appointment was completely temporary. The respondent being appointed as part time Masalchi, cannot compare himself to full time daily wagers and seek benefit of G.O.Ms.No.22 dated 28.02.2006. The Single Judge also failed to consider that the Government did not grant regularization of services of any part time employee on completion of ten years of his service as envisaged under the G.O.Ms.No.22, dated 28.02.2006.

17. The learned Single Judge erred in extending the benefit of G.O.Ms.No.22, dated 28.02.2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned Senior Counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is from 01.04.1999 till the date of his regularization that is 18.06.2012, the financial commitment to the State would be around Rs.10,85,113/-(approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned Senior Counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularized under various G.Os. and if



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the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularization of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

18. It is pertinent to note that even the regularization of services of part time employees vide G.O.(Rt.) No.505 Finance (AA-2) Department dated 14.10.2009 and G.O.(2D) No.32 Finance (T.A. 2) Department dated 26.03.2010 was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of Government Orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that G.O.Ms.No.22 P & AR Department, dated 28.02.2006 is applicable only to full time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part time employees. As per G.O. (Rt.) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside".

7. In the light of the decision cited supra, there is no merit in the writ petition. Hence, the writ petition is liable to be dismissed and accordingly it is dismissed. No order as to costs in this writ petition."

4. The Hon'ble Supreme Court in Registrar General of India V. Thippa Setty [(1998) 8 SCC 690] has held as under:

'2. We have heard counsel for both sides and perused the orders of the Tribunal dated 16-12-1991 and 19-2-1993. By the previous order, the Tribunal's direction was to regularise the respondents with effect from the date of promulgation of the recruitment



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rules or from the date of their appointment, depending on the seniority list. That was a direction which was a flexible one leaving it to the management to consider from what date regularisation should take effect. In pursuance of the said direction, on the new recruitment rules being promulgated on 11-5-1985, the regularisation was given effect from that date. However, in the subsequent order passed by the Tribunal on 19-2-1993, the Tribunal has directed that they should be treated as having been conferred regular status with effect from 5-2-1981, that is, the date of their entry into service as Investigators. It must be remembered that they had entered as ad hoc appointees and the question was whether they should be regularised in service since they had worked as ad hoc employees for a sufficiently long time. If the ad hoc service is regularised from the back date in this manner, it will disturb the seniority of regularly appointed employees in the cadre and, therefore, ordinarily the regularisation must take effect prospectively and not retrospectively. It must also be borne in mind that ad hoc appointees, casual labour and daily-rated persons are not subject to strict discipline of service and it is a matter of common experience that their attendance is very often not regular and at times they do not even meet the qualification for appointment since they are taken on ad hoc basis. These deficiencies are overlooked by way of granting of relaxation and, therefore, care must be taken to see that they do not upset the seniorities of regular appointees. Whether they qualify in a given case or not is not relevant but what is relevant is that regularisation should be prospective and not retrospective as the chances of their upsetting the seniorities cannot be overlooked. The Tribunal must take care to see that when they pass orders of regularisation from retrospective dates, those who are likely to be affected on account of that order are not before that court and unwittingly their careers are not adversely affected. Ordinarily, therefore, the regularisation must be prospective.

3. For the above reasons, we set aside



the impugned order of the Tribunal and restore the order of regularisation passed by the appellant. We allow the appeal accordingly with no order as to costs''

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5. In the light of the ratio laid down by the Hon'ble Supreme Court in the decisions cited supra, and in view of the fact that the petitioners were not appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts, the petitioners cannot claim regularisation of their services from the date of initial appointment. Therefore, the writ petition is liable to be dismissed.

6. Accordingly, the writ petition stands dismissed. No Costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Secretary to Government,  
State of Tamil Nadu,  
Social Welfare Department,  
Fort St.Geroge, Chennai-9
2. The Director Of Social Welfare,  
Social Welfare Department,  
No.58/70, Arunachalam Street,  
Chindadripet, Chennai 600002.
3. The District Social Welfare Officer,  
Dharmapuri District, Dharmapuri.

+3cc to M/s.G.Mutharasu, Advocate, S.R.No.19957

+1cc to the Government Pleader, S.R.No.19882

W.P.No.16948 of 2020

RSI (CO)  
RGA (05/05/2022)