

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11820 of 2014

and

M.P.No.1 of 2014

1.S.Malarkodi

2.M.Chinna Anthony

... Petitioners

Vs.

1. Tamil Nadu Civil Supplies Corporation
Represented by its Managing Director
Old No. 42, New No,12
Thampusamy Road,
Kilpauk - Chennai - 600010.

2. The General Manager (Administration),
Tamil Nadu Civil Supplies Corporation
Head Office
Old No. 42, New No. 12,
Thampusamy Road,
Kilpauk - Chennai - 600010.

3. Government of Tamil Nadu rep. By
The Principal Secretary to Government
Cooperation, Food and Consumer Protection Dept.
Fort St. George - Chennai - 600009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the Government of Tamil Nadu, the third respondent herein to consider and pass orders by accepting the proposal of the respondent Corporation to absorb us as permanent Sweeper and Scavenger within such time as stipulated by this Court and further direct the respondent Corporation not to deny work and wages to us in the manner done.

For Petitioners : Mr.V.Prakash
Senior Advocate
For Mr.K.Sudalai Kannu

For Respondents : Mr.C.Selva Raj
[R1 to R3] Additional Government Pleader

ORDER

The relief sought for in the present writ petition is to direct the Tamil Nadu Civil Supplies Corporation / 3rd respondent to consider and pass orders by accepting the proposal of the respondent Corporation to absorb as permanent Sweeper and Scavenger within such time as stipulated by this Court and further, direct the respondent Corporation not to deny work and wages to the writ petitioners.

2. The writ petitioners were recruited as Sweeper and Scavenger in respondent Corporation on 01.01.2008. The petitioners are continuing in service and the nature of the work is full time.

3. The learned Senior Counsel appearing on behalf of the writ petitioners mainly contended that the petitioners are working without any break in service and the respondent Corporation is not issuing any wage slips and they are maintaining the writ petitioners as employees of the private contractors. The petitioners are kept as temporary employees all along and they are receiving a meagre salary. It is contended that the petitioners are continuously working and the posts are also available in the respondent Civil Supplies Corporation and in spite of these facts, the services of the writ petitioners are not regularised in the sanctioned post in time scale of pay.

4. The respondent Civil Supplies Corporation considered the nature of job performed by the petitioners and considering necessity for permanent employment in the establishment, submitted proposals to the Government on 12.01.2007, seeking regularisation of casual labourers, who have rendered 10 years of service as on 01.01.2006. The said proposals are kept pending without any progress. While so, suddenly on 28.02.2014, the petitioners were informed from henceforth the petitioners will be paid through a contractor and they will be required to work only under the Contractor by name Mr.T.V.Vijaya Kumar.

5. The learned Senior Counsel appearing on behalf of the petitioners made a submission that such an arrangement is in violation of the provisions of the Industries Dispute Act. Suddenly, on 17th March 2014 onwards, the petitioners were denied

work and no prior notice was issued for such denial of work. No termination orders were served to the writ petitioners and therefore, denial of work without any order of termination is illegal and arbitrary and under those circumstances, the petitioners are constrained to move the present writ petition.

6. The learned Senior Counsel appearing on behalf of the petitioners mainly contended that the petitioners are working under Class-IV employees and they are continuously engaged by the respondent Corporation on temporary basis and a proposal was also submitted to the Government for want of regularisation. Under these circumstances, the case of the writ petitioners are to be considered for grant of regularisation and permanent absorption.

7. The learned counsel for the respondent objected the said contentions by stating that the petitioners were not recruited by the Corporation into the Corporation service as per recruitment rules and regulations. The petitioners, at no point of time, has been directly recruited by the respondent/Corporation. But they were working under the various registered Contractors for a limited period and on certain terms and conditions. The petitioners had not been paid any wages directly by the respondent Corporation and their contention that they worked continuously also incorrect. The nature of job carried out by the writ petitioners were purely temporary and they were engaged temporarily and renewal of contract time and again wherever the necessity arises.

8. The respondents have stated that the petitioners might have worked through outsourcing and the Corporation have not paid any wages directly to these petitioners. The Corporation used to pay the contractors as per PWD scheduled rates and as per the agreement made between the Contractor and the Corporation. No doubt, the proposal contains the names of the writ petitioners and the proposal was submitted by collecting the names of the employees worked even under the Contractor and therefore, the said inclusion of the names of the writ petitioners would not confer any right for grant of regularisation.

9. Considering the arguments of the learned Senior Counsel appearing on behalf of the petitioners and learned counsel for the respondents, question arises, whether regularisation and permanent absorption can be granted in respect of the irregular, illegal and contractual appointments made through private contractors with whom the State entered into an agreement for executing certain jobs in the establishment.

10. Regularisation or permanent absorption cannot be granted in violation of the recruitment rules in force. Equal opportunity in public employment is the Constitutional mandate. Lakhs and Lakhs youth of our great Nation are longing to secure public employment through open competitive process and they are working hard for the purpose of succeeding in the competitive process. While so, back door appointments or illegal or irregular appointments, if regularised, undoubtedly, the fundamental rights of those candidates, who all are aspiring to secure public employment through open competitive process are infringed. The equality clause enunciated under the Constitution must be implemented in its real spirit. Thus, the back door appointments are to be stopped forthwith in order to ensure that equal opportunity in public employment is provided to all the eligible candidates through open competitive process by implementing the rule of reservation.

11. The learned Senior Counsel for the petitioners made a submission that these petitioners are poor people working in Class-IV category and therefore, they are to be protected. 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 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 meritoriously 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 employment. Thus, the Constitutional Courts are bound to protect the interest of those meritorious candidates, who all are not before the Courts.

13. The principles for grant of regularisation and permanent absorption are no more res integra and the Constitutional Bench of Hon'ble Supreme Court of India settled the issues in the case of Secretary, State of Karnataka Vs. Uma

Devi and others reported in (2006) 4 SCC 1. Any decisions, which are running counter to the principles laid down by the Hon'ble Constitution Bench of India cannot be followed at this length of time and in the event of any such consideration, the Courts are violating the principles settled by the Constitution Bench and by the Hon'ble Apex Court in subsequent judgments.

14. Once the Constitution Bench has settled the principles regarding the regularization and permanent absorption, any Government Order running counter to the principles, cannot be implemented and based on such Government Orders, benefits cannot be conferred by the Courts. The said position also has been unambiguously stipulated by the Constitution Bench of Hon'ble Supreme Court of India in Paragraph 54 of the Judgment cited supra. In Paragraph 53 of the Judgment, the Hon'ble Supreme Court of India has given one time measure for the purpose of regularizing the services for the purpose of clearing the proposals, which all are pending before the Government for regularization. Such one time measure or benefit granted cannot be continued for a indefinite period. In Paragraph 54 of the said judgment, the Hon'ble Supreme Court in unambiguous terms held that 'It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.' Therefore all the judgments and Government Orders running counter to the principles laid down by the Constitution Bench of the Hon'ble Supreme Court of India stands denuded of their status as precedents and the said Government Orders or the judgments by the High Courts or even by two Judges' Bench of the Hon'ble Supreme Court of India cannot be followed. Those judgments are to be read in the context of the particular facts and circumstances of the case.

15. However, the principles settled by the Constitution Bench is to be followed as precedent. In the matter of following the precedents, again another Constitution Bench of the Hon'ble Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (6) SCC 680 held that the hierarchy in this aspect is to be maintained by all Courts scrupulously.

16. Thus, any judgment running counter to the principles settled by the Constitution Bench of the Hon'ble Supreme Court cannot be followed as a precedent for the purpose of considering the relief. All such judgments are to be confined only with reference to the facts of that particular case and cannot be followed as precedent. The Government has passed several such orders, granting the benefit of regularization or permanent absorption on various circumstances for many years by granting

relaxation of Rules. Such relaxation of Rules cannot be now granted in a routine manner, even by the Government. The appointments made in an irregular or illegal manner cannot be regularized by granting regularization or otherwise.

17. Regarding the part time employment, again the Hon'ble Supreme Court following the Constitution Bench judgment, reiterated in the case of Secretary to Government School Education Department, Chennai Vs. R.Govindaswamy and others reported in 2014 (4) SCC 769. The Hon'ble Supreme Court again relied on the earlier cases decided by the Hon'ble Supreme Court of India in the case of Union of India Vs. A.S.Pillai and others reported in (2010) 13 SCC 448 and in the case of State of Rajasthan and others Vs. Daya Lal and others reported in (2011) 2 SCC 429. The Hon'ble Supreme Court of India held that 'the High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularization of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.'

18. In the present case, the writ petitioners admittedly engaged as temporary employees. They have no proof to establish that they were appointed directly by the respondent / Tamil Nadu Civil Supplies Corporation. However, there is no document to establish that they have received salary directly from the Corporation. The petitioners themselves in their affidavit filed in support of the writ petitions have stated that they had been denied work from 17th March 2014 onwards. Further, they have admitted the fact that the Corporation has asked them to work under the Contractor by name Mr.T.V.Vijaya Kumar.

19. Looking into these facts and circumstances, this Court is of the considered opinion that the writ petitioners could not able to establish that they were directly engaged by the respondent / Tamil Nadu Civil Supplies Corporation in a permanent basis or their initial appointments were made in accordance with the recruitment rules applicable to the respondent Corporation. Under these circumstances, this Court has no hesitation in forming an opinion that the petitioners

have not established any acceptable ground for the purpose of granting the relief of regularisation or permanent absorption.

20. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Jeni/Kak

To

1. The Managing Director
Tamil Nadu Civil Supplies Corporation
Old No. 42, New No,12 Thampusamy Road,
Kilpauk - Chennai - 600010.
2. The General Manager (Administration),
Tamil Nadu Civil Supplies Corporation, Head Office,
Old No. 42, New No. 12, Thampusamy Road,
Kilpauk - Chennai - 600010.
3. The Principal Secretary to Government
Government of Tamil Nadu
Cooperation, Food and Consumer Protection Dept.
Fort St. George - Chennai - 600009.

+1cc to Mr.C.Selva Raj, Advocate, S.R.No.44163

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