



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2022

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

WP NO.119 OF 2014

AND

M.P.NO.1 OF 2014

1. P. AZHAGESAN
2. A.SIVAPATHY

.. PETITIONERS

Vs

- 1 THE STATE OF TAMIL NADU,
SECRETARY TO GOVERNMENT,
AGRICULTURE DEPARTMENT,
FORT ST. GEORGE, CHENNAI-9.
- 2 THE DIRECTOR OF AGRICULTURE
CHEPAUK, CHENNAI-5.
- 3 THE COMMISSIONER OF AGRICULTURE,
OFFICE OF THE AGRICULTURE COMMISSIONER,
CHEPAUK, CHENNAI-5.
- 4 THE ADDITIONAL DIRECTOR OF AGRICULTURE,
SEMMANDALAM, CUDDALORE-607 001.
- 5 THE JOINT DIRECTOR OF AGRICULTURE,
SEMMANDALAM, CUDDALORE-607 001
- 6 THE AGRICULTURE CHEMIST,
BIO-FERTILIZER PRODUCTION UNIT,
CUDDALORE- 607 001.

.. RESPONDENTS

PRAYER:

This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for entire records connected with the proceedings of the 1st respondent in G.O. (3d) No.141 dated 22.8.2013 and quash the same consequently direct the respondents to regularize the service of the petitioners on par with the co-employees whose services were regularized by the order of the respondents dated 15.6.2013 in G.O.(2d) No.85 with all attendant and consequential benefits.



WEB COPY

For Petitioners : Mr.G.Balamanikandan
For Respondents : Mr.M.Bindran,
Additional Government Pleader.

O R D E R

The Government Order issued in G.O.(3d). No.141, Agriculture Department dated 22.08.2013, declining the request of the writ petitioner, is challenged in the present writ petition.

2. The writ petitioner was engaged as Daily Wages employee in the Agriculture Department. The grievances of the petitioner is that he was continuously working as Daily Wages employee for several years and the services of the similarly placed Daily Wages employees were regularised by the department. While so, the case of the petitioner alone was not considered during the relevant point of time. Some of the persons filed cases before High Court in the year of 2004 and obtained an order and got the benefit of regularization. In those cases also, the department regularized their services. However, the case of the writ petitioner was not considered, despite the fact that the petitioner is also a similarly placed person.

3. The learned counsel for the petitioner mainly contended that Court have also issued directions to regularize the services of such Daily Wages employees and based on the judgments, the Government also implemented the same. Thus, such benefit granted need not be denied to the petitioner, in view of the fact that he was also engaged as Daily Wages employee and was working for about 23years.

4. In this context, the learned counsel for the petitioner referred to the judgment of the learned Single Judge of this Court dated 28.07.2021, passed in WP No.5040 of 2015, wherein a direction was issued to consider the case of the petitioner therein for regularisation.

5. The learned Additional Government Pleader appearing on behalf of the respondents objected the said contention by stating that the impugned order was issued by the Government in G.O.(3d). No.141, Agriculture Department dated 22.08.2013, considering the earlier Government Orders and based on the judgement of the Hon'ble Supreme Court of India. The Government issued orders in G.O.(Ms.) No.22, Personnel and Administrative Reforms Department dated 28.02.2006, to regularize the services of the Daily Wages employees on completion of their ten years of service. However, subsequently, the said Government Order was withdrawn and another Government Order was issued in G.O.(Ms.)



No.74, Personnel and Administrative Reforms Department dated 27.06.2013, imposing certain restrictions and conditions for regularization. The said decision was taken by the Government in view of the principles laid down by the Hon'ble Supreme Court. Thus, the Government has now granted regularization strictly in accordance with the rules and based on the conditions stipulated in the Government Orders and not otherwise.

6. Considering the arguments, this Court is of the opinion that regularization or permanent absorption ought to be granted only in accordance with the rules in force. Equal opportunity in public employment is a constitutional mandate. All appointments are to be made strictly in accordance with the rules and under the constitutional schemes. In the event of allowing such irregular appointments, the rights of the eligible candidates, who are all aspiring to secure public employment through open competitive process is infringed. In such cases, equity is not only violated but deviated. That exactly is the reason why the constitutional Courts have emphasised that the appointments are to be made only through constitutional schemes and by affording equal opportunity to the candidates who are all longing to secure public employment. Lakh and Lakh youth of our great nation are longing and struggling hard to secure public employment. In the event of back door entry, their valuable rights are infringed and deprived. Therefore, the persons who are appointed through back door, must be allowed to go through the door, which they entered.

7. As far as the judgments of the High Court issued in previous occasion are concerned, the Constitution Bench of the Hon'ble Supreme Court of India in unequivocal terms held in para No.53 of the judgment in the State of Karnataka Vs. Uma Devi, reported in 2006 (4) SCC 1, that in respect to pending proposals, the same may be finalized as one time measure, but at para No.54, the Constitution Bench has held that

"It is also clarified that those decisions which run counter to the principle settled in this decision [Uma Devi's case], or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

8. When the Constitution Bench held that any decision running counter to the principles laid down by the Constitution would stand denude of their status as precedents, all subsequent judgments of the Hon'ble Two Judges Bench must be confined with reference to the facts of those cases and that cannot be applied as a precedents in subsequent cases in the matter of regularisation and permanent absorption.



WEB COPY

9. When the Constitution Bench has clearly indicated that any judgment running counter to the principles laid down in Uma Devi's case will stand denude, all subsequent judgments by the other Courts are to be considered with reference to the facts, as the principles are settled by the Constitution Bench.

10. In the case of State of Rajasthan & others Vs. Daya Lal & others, reported in 2011 (2) SCC 429, the Hon'ble Supreme Court 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 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."

The said case was relied on by the Supreme Court again in the case of Secretary to Government, School Education Department, Chennai Vs. Thiru R.Govindasamy and Others, reported in 2014 (4) SCC 769.

11. No doubt there are judgments both by the High Court and by the Hon'ble Supreme Court granting the benefit of regularization with reference to the facts and circumstances and in respect to the principles laid down in the Constitution Bench judgment, binding precedent and that is to be followed in all cases and the exceptional cases cannot be relied as a precedent for the purpose of granting the relief of regularization. In the event of granting the benefit of regularization, all such judgments which are running counter to the Constitution Bench will stand denuded of their status as precedents, as held by the Constitution Bench at paragraph No.54 of the Uma Devi's case.

12. In the case of National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 (16) SCC 680, the another Constitution Bench held that the Constitution Bench judgments are the binding precedents as far as the other Courts are concerned and such judgments will prevail over all other



judgments even in respect of the judgments of the two judges bench of the Hon'ble Supreme Court of India. The principles regarding the precedents of judgments are settled by the Constitution Bench in the case cited supra.

WEB COPY

13. In the present writ petition, admittedly, the writ petitioner was engaged as Daily Wages employee on temporary basis. His initial appointment was not made in accordance with the service rules in force. Therefore, granting of regularization in violation of the services rules would not arise at all. As stated above, High Court cannot issue any such direction to regularize the services in violation of the rules in force.

14. The Government is also following the judgments of the Hon'ble Constitution Bench in respect of granting of regularization and permanent absorption and relevant orders are also passed by authorities competent to scrupulously follow the principles. All appointments now are to be made only through open competitive process and by following the rules.

15. This being the procedures now being adopted by the Government, Courts are not expected to issue direction to regularize the services of the employees who were otherwise not appointed in accordance with the service rules in force. Such a direction would run counter to the principles settled by the Constitution Bench and further lead to an unconstitutionality, as such irregular and illegal appointments are directly in violation of Articles 14 and 16 of the Constitution of India.

16. In view of the facts and circumstances, this Court do not find any infirmity or perversity in respect to the order passed by the respondents. Accordingly, the Writ Petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars



To

1 THE SECRETARY TO GOVERNMENT,
STATE OF TAMIL NADU,
AGRICULTURE DEPARTMENT,
FORT ST. GEORGE, CHENNAI-9.

2 THE DIRECTOR OF AGRICULTURE
CHEPAUK, CHENNAI-5.

3 THE COMMISSIONER OF AGRICULTURE,
OFFICE OF THE AGRICULTURE COMMISSIONER,
CHEPAUK, CHENNAI-5.

4 THE ADDITIONAL DIRECTOR OF AGRICULTURE,
SEMMANDALAM, CUDDALORE-607 001.

5 THE JOINT DIRECTOR OF AGRICULTURE,
SEMMANDALAM, CUDDALORE-607 001

6 THE AGRICULTURE CHEMIST,
BIO-FERTILIZER PRODUCTION UNIT,
CUDDALORE- 607 001.

WP No.119 of 2014

KV(CO)
PM/15/06/2022