



W.P.No.33001 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2022

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

W.P.No.33001 of 2014

&

M.P.Nos.1 & 2 of 2014

1.S.Govindarasu

2.S.Dhivya

3.D.Srinivasan

4.G.Prabakaran

...Petitioners

..Vs..

1.The State of Tamil Nadu,
Rep by its Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by first respondent in Letter No.38449/C.C.1(3)/2013-4 dated 01.10.2014 and to quash the same and consequently directing the respondents to regularize the services of the petitioners with regular time scale of pay



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in the post of Vocational instructor based on the length of service rendered by them as it was done in all similarly placed persons as per G.O.Ms.No.35, School Education Department dated 09.02.2007 with all consequential and other attendant benefits.

[Prayer amended vide Order dated 08.04.2022 made in M.P.No.1/2015 in W.P.No.33001/2014]

For Petitioner : Mr.S.Nedunchezhiyan

For Respondent : Mr.M.Bindran
Additional Government Pleader

ORDER

The order impugned dated 01.10.2014 rejecting the claim of the writ petitioners for regularization and permanent absorption in the sanctioned post of Vocational Instructor is under challenge in the present Writ petition.

2. The writ petitioners were appointed as part time vocational instructors in Government Schools through Parent Teacher Association (herein after referred to as 'PTA') on consolidated pay. The grievance of the writ petitioners is that they are continuing as part time vocational instructors for several years and therefore they are entitled to be regularized in the sanctioned post in the regular time scale of pay.

3. The petitioners submitted their representations to grant the



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benefit of regularization based on the Government Order issued in G.O.Ms.No.35, School Education Department, dated 09.02.2007. The said Government Order issued in G.O.Ms.No.35 dated 09.02.2007 was issued for the purpose of filling up of the sanctioned post from amongst the eligible temporary part time vocational instructors on priority basis. However, such appointment on permanent basis in a sanctioned post based on the said Government Order cannot be granted as a matter of right. The Government Order unambiguously stipulates that the person who is fully qualified, must be given priority for appointment.

4. The validity of the said Government Order at this length of time is questionable, in view of the principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***State of Karnataka Vs. Uma Devi*** reported in **2004 (4) SCC 1** which became the law on the subject of regularization and permanent absorption. The Government Orders issued years back cannot be implemented. 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 subsequent judgments of the Apex



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Court.

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5. 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. 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 were pending before the Government for regularization. Such one time measure granted cannot be continued for an 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



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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.

6. 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.

7. Thus, any judgment running counter to the principles settled by the Constitution Bench of the Hon'ble Supreme Court cannot be followed as 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



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regularized by granting relaxation or otherwise.

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8. 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.

9. 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.



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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.

10. 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 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.



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11. All appointments are to be made strictly in accordance with the recruitment Rules in force. Thus, the back door appointments, at no circumstances be regularized and the persons who were appointed through back door must be allowed to go out from the door through which they have entered into public service.

12. In the present case, admittedly, the petitioners were appointed as part time vocational instructors through PTA. PTA is a private association which is not a part of the Government Department. The PTA is appointing such part time vocational instructors in order to assist the School administration in the absence of any Teachers. The salary is being paid from the funds of the PTA, which is private fund maintained by the Association. Therefore, admittedly, the petitioners were not appointed by the competent appointing authority of the Education Department. Thus, the initial appointment of the writ petitioners are not by the Education Department but by the PTA. Therefore, they cannot seek any appointment in the Education Department on the ground that they are serving as a part time vocational instructors by getting salary from the PTA.

13. Regarding the part time employment, again the Hon'ble



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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.*'



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14. In the present case, the petitioners were not even appointed by the competent authorities of the Education Department. They were admittedly appointed by the President of the PTA and were receiving the salary from the funds maintained by the PTA. Therefore, their appointments are not made in accordance with the recruitment rules as applicable to the Education Department and thus the petitioners have not established even a semblance of legal right for the purpose of securing regularization or permanent absorption. No doubt the PTA, out of concern, engaged certain Teachers to impart education by paying from their own funds. However, the Government on earlier occasions granted preference or absorption of those teachers, such preference cannot be continued, in view of the principles settled by the Constitutional Bench of the Hon'ble Supreme Court of India which was reiterated through the subsequent judgments more specifically in the case **R.Govindaswamy** cited supra.

15. In view of the legal principles settled by the Hon'ble Supreme Court of India in the cases cited above, the relief of regularization or permanent absorption cannot be granted and the writ petitioners are not entitled for regularization or permanent absorption in the Education Department. However, there is no impediment for the



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PTA to continue the employment of the petitioners at their instance.

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16. With these observations the Writ petition stands dismissed.

No costs. Connected miscellaneous petitions stand closed.

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Index: Yes/No
Internet: Yes/No
Speaking Order

To

1. Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.



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S.M.SUBRAMANIAM., J

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