



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.1.2022

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.34479 of 2014
and W.M.P.Nos.30069 and 30070 of 2021

B.Parimala

... Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
Secretariat, Chennai - 9.
2. The Director of School Education,
College Road, Chennai - 6.
3. The District Educational Officer,
Tirupattur Education District,
Tirupattur, Vellore District.

... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents to regularise the petitioner in service as Sweeper as per G.O.Ms.No.68 dated 18.04.2013 with all attendant service benefits and continuity of service and to pay all the arrears within a time frame that may be fixed by this Court.

For Petitioner : Mr.J.Saravana Vel
For Respondent : Mr.V.Nanmaran, A.G.P. (Edn.)

O R D E R

According to the petitioner, the petitioner was appointed as Part Time Sweeper on 1.6.1998 in the Government Higher Secondary School, Ambalur through District Employment Office. She has been continuously working in the said School as Part Time Sweeper and she completed more than 11 years of service as a Part Time Sweeper in Education department. The Government has considered the names of the Part Time Sweeper for regularisation of their service taking into account of the service rendered by them in the department. Pending the aforesaid proposal, the petitioner was temporarily appointed as Village Assistant in the Revenue department and therefore, she was relieved from the Government Higher Secondary School, Ambalur to join as Village Assistant in the Revenue department. Thereafter, the said regularization proposal



submitted by the Education department was approved by the Government and passed G.O.Ms.No.68 dated 18.4.2013 by the School Education dept. The petitioner came to know that service of the similarly placed employees were regularised. However, the petitioner's name was shown as 'dead person' in the said order. The petitioner made representation to the respondents to include her name as per G.O.Ms.No.68, School Education department, dated 18.4.2013 in the said order and the same is still pending with the respondents. Hence, the petitioner has filed the present writ petition before this Court.

2. According to the learned counsel appearing for the petitioner, the petitioner has rendered more than 11 years of service in the Government Higher Secondary School, Ambalur under the Education department. The service rendered by the petitioner in the education department has to be taken into account along with the service rendered by the petitioner in the revenue department for the purpose of pensionary benefits. Now, the petitioner is working in the revenue department as Village Assistant. In the Annexure of the aforesaid Government order, the petitioner's name was shown at Sl.No.82 with a remark that she died in the year 2004 and as such, the service rendered by the petitioner would not be taken into account along with the service rendered in the revenue department for pensionary benefits. Therefore, the petitioner made representation to the School education department for regularization of her service as per G.O.Ms.No.68 dated 18.4.2013. The Government has to consider her request and issue appropriate orders for regularization of the petitioner's service as per G.O.Ms.No.68 dated 18.4.2013.

3. The learned Additional Government Pleader (Education) appearing for the respondents would submit that the petitioner was relieved from service to join as Village Assistant in the revenue department and therefore, the request of the petitioner cannot be considered.

4. Heard the rival submissions made by the parties and perused the materials available on record.

5. According to the counsel appearing for the petitioner, the Government has considered the proposal for regularization of service of the petitioner and passed G.O.Ms.No.68 dated 18.4.2013. It is also contended by the counsel appearing for the petitioner that the remark made by the respondents is due to mistake. Therefore, the aforesaid mistake has to be rectified by the first respondent. The petitioner already joined as Village Assistant in the revenue department and still working in the revenue department. At this stage, the grievance of the petitioner is that the relevant period of service rendered by the petitioner has to be taken into account and the petitioner is entitled for counting of service rendered by the petitioner in the School education department, Ambalur for pensionary benefits.



6. At the outset, the prayer made in the writ petition for Mandamus, directing the respondents to regularise the petitioner in service as Sweeper as per G.O.Ms.No.68 dated 18.04.2013 with all attendant service benefits and continuity of service and to pay all the arrears within a time frame that may be fixed by this Court. The petitioner was relieved from service in the education department to join as Village Assistant in the revenue department. Thereafter, the Government passed G.O.Ms.No.68 School education department on 18.4.2013 i.e. after the petitioner joined in the revenue department as Village Assistant in the year 2012.

7. This Court while dealing with an identical issue, following the judgment of the Hon'ble Supreme Court and this Court, has held as under:

"6. The issue has already been decided by the Hon'ble Apex Court in the decision in Secretary to Government, School Education Department, Chennai v. Govindaswamy and Others [(2014) 4 SCC 769], wherein the Hon'ble Apex Court has held as follows:

"6. In State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806, this Court held as under:

"48. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

7. In Union of India & Ors. v. A.S. Pillai & Ors., (2010) 13 SCC 448, this Court dealt with the issue of regularisation of part-time employees and the court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the



considering their case for regularisation would not arise.

8. This Court in *State of Rajasthan & Ors. v. Daya Lal & Ors.*, AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation 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 regularisation 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 regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

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

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of



fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

7. 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 Department, 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 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



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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 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



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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."

8. Admittedly, in the case on hand, the petitioner is working as Part Time Sweeper on daily wage basis in a non-sanctioned post and following the subsequent modified Government Orders, the respondents have rejected the claim of the petitioner for regularization. In view of the settled legal position as laid down in the decisions cited supra, this Court does not find any merit in the writ petition.

Therefore, the petitioner being a Part time employee cannot have any legal right to seek for continuity of service. However, considering the fact that the name of the petitioner was shown as 'died person' in the order passed by the Government regularising the similarly placed persons, to that extent, this Court is inclined to direct the first respondent to consider the request of the petitioner.

8. In view of the above, this Court is inclined to pass the following order:

(i) The petitioner shall make fresh representation to the first respondent within a period of two weeks from the date of receipt of copy of this order.

(ii) On such representation being made, the first respondent is directed to consider the same and pass appropriate orders on merit and in accordance with law, as expeditiously as possible preferably within a period of 12 weeks thereafter.

9. The writ petition is disposed of with the above directions. No costs. The miscellaneous petitions filed by the petitioner are not required to be considered at this stage and therefore, closed.

Sd/-

Assistant Registrar(CS VI)

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<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



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To

1. The Secretary to Government,
School Education Department, Secretariat, Chennai - 9.
2. The Director of School Education,
College Road, Chennai - 6.
3. The District Educational Officer,
Tirupattur Education District,
Tirupattur, Vellore District.

+1 cc to Mr.J.Saravanel, Advocate Sr.NO. 2338

+1 cc to Government Pleader Sr.NO. 2747

W.P.No.34479 of 2014
and W.M.P.Nos.30069 and 30070 of 2021

GPL(CO)

A.SK(01.02.2022)