

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM

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

W.P.NOS.25343 TO 25347 OF 2014

AND

M.P.NOS.1 & 2 OF 2014 AND M.P.NO.1 OF 2015

W.P.No.25343/2014

K.Palanisamy

...Petitioner

Vs

1.The Secretary to Government,
Animal Husbandry and Fisheries Dept.,
Secretariat, Chennai - 9.

2.The Director of Animal Husbandry &
Veterinary Services,
Central Administrative Buildings,
(DMS Campus) Chennai.

3.The Regional Joint Director,
Animal Husbandry Dept.,
Thiruvarur District,
Thiruvarur.

4.The Assistant Director,
Animal Husbandry Dept.,
Mannargudi, Thiruvarur District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent herein culminating in letter No. 704/AH6/2013-6 on the file of the first respondent dated 11.10.2013 and to quash the same and consequently directing the respondents to absorb the petitioner in the regular vacancy of Animal Husbandry Assistant in Animal Husbandry Department.

W.P.No.25344/2014

S.Sellaiyan

...Petitioner

Vs

1.The Secretary to Government,
Animal Husbandry and Fisheries Dept.,
Secretariat, Chennai - 9.

2.The Director of Animal Husbandry &
Veterinary Services,
Central Administrative Buildings,
(DMS Campus) Chennai.

3.The Regional Joint Director,
Animal Husbandry Dept.,
Thiruvarur District,
Thiruvarur.

4.The Assistant Director,
Animal Husbandry Dept.,
Mannargudi,
Thiruvarur District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent herein culminating in letter No. 704/AH6/2013-6 on the file of the first respondent herein dated 11.10.2013 and to quash the same and consequently directing the respondents to absorb the petitioner in the regular vacancy of Animal Husbandry Assistant in Animal Husbandry Department.

W.P.No.25345/2014

T.Mani

...Petitioner

Vs

1.The Secretary to Government,
Animal Husbandry and Fisheries Dept.,
Secretariat, Chennai - 9.

2.The Director of Animal Husbandry &
Veterinary Services,
Central Administrative Buildings,
(DMS Campus) Chennai.

3.The Regional Joint Director,
Animal Husbandry Dept.,
Thiruvarur District,
Thiruvarur.

4.The Assistant Director,
Animal Husbandry Dept.,
Mannargudi,
Thiruvarur District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent herein culminating in letter No. 704/AH6/2013-6 on the file of the first respondent herein dated 11.10.2013 and to quash the same and consequently directing the respondents to absorb the petitioner in the regular vacancy of Animal Husbandry Assistant in Animal Husbandry Department.

W.P.No.25346/2014

S.K.Dhandayuthabani

...Petitioner

Vs

1.The Secretary to Government,
Animal Husbandry and Fisheries Dept.,
Secretariat, Chennai - 9.

2.The Director of Animal Husbandry &
Veterinary Services,
Central Administrative Buildings,
(DMS Campus) Chennai.

3.The Regional Joint Director,
Animal Husbandry Dept.,
Thiruvarur District,
Thiruvarur.

4.The Assistant Director,
Animal Husbandry Dept.,
Mannargudi,
Thiruvarur District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent herein culminating in letter No. 704/AH6/2013-6 on the file of the first respondent herein dated 11.10.2013 and to quash the same and consequently directing the respondents to absorb the petitioner in the regular vacancy of Animal Husbandry Assistant in Animal Husbandry Department.

W.P.No.25347/2014

P.Rajarethinam

...Petitioner

Vs

1.The Secretary to Government,
Animal Husbandry and Fisheries Dept.,
Secretariat, Chennai - 9.

2.The Director of Animal Husbandry &
Veterinary Services,
Central Administrative Buildings,
(DMS Campus) Chennai.

3.The Regional Joint Director,
Animal Husbandry Dept.,
Nagapattinam District.

4.The Assistant Director,
Animal Husbandry Dept.,
Nagapattinam District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent herein culminating in letter No. Na.Ka.No.4667/B1/06 on the file of the third respondent herein dated 21.02.2014 and to quash the same and consequently directing the respondents to absorb the petitioner in the regular vacancy of Animal Husbandry Assistant in Animal Husbandry Department.

(In all WPs)

For Petitioner : Mr.M.Santhanaraman

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

COMMON ORDER

The orders of rejection, rejecting the claim of the writ petitioners for grant of permanent absorption in the sanctioned post in the time scale of pay, are under challenge in the present writ petitions.

2. The writ petitioners state that they were appointed as Helpers on part-time basis in the Animal Husbandry Department. The petitioners state that they were continuously working in the

Department without any break in service and therefore, they are entitled to be absorbed on permanent basis in the sanctioned post.

3. The learned counsel for the petitioners made a submission that the case of the similarly placed persons were considered by the Tamil Nadu Administrative Tribunal and by the High Court and those persons were absorbed on permanent basis in the regular time scale of pay. Thus, the said benefit is to be extended to the petitioners herein for grant of regularization and permanent absorption.

4. The learned counsel for the petitioners relied on a judgement of the Hon'ble Division Bench of this Court dated 26.06.2018 in W.A.No.765 of 2016. Several other orders of the Administrative Tribunal and the learned Single Judges of this Court have been referred to in the affidavit filed by the writ petitioners. The learned counsel reiterated that based on these judgements, the case of the petitioners is to be considered for grant of regularization and permanent absorption with all consequential service benefits.

5. The learned Additional Government Pleader appearing for the respondents objected the said contention by stating that the writ petitioners were admittedly appointed as part-time Helpers in the Animal Husbandry Department and therefore, they are not entitled for regularization even as per G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated 27.06.2013. The respondents state that the Government Order issued in G.O.Ms.No.22, dated 28.02.2006 was superseded by issuing G.O.Ms.No.74. Even as per the said order, a person must be qualified and the initial appointment made should not be an irregular or illegal appointment. Further, terms and conditions are also stipulated for grant of regularization and permanent absorption. More so, the services of part-time employees cannot be regularized based on the said order issued in G.O.Ms.No.74.

6. The learned Additional Government Pleader, in this regard, relied upon a judgement of the Hon'ble Supreme Court in the case of Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and others reported in (2014) 4 SCC 769, wherein the Hon'ble Supreme Court has issued a direction that the High Courts are not empowered to issue a direction to regularize the services of employees who were not appointed in accordance with the Recruitment Rules in force and also regarding the part-time employees.

7. This Court is of the considered opinion that the practice of regularizing the irregular or illegal appointments has been settled by the Hon'ble Supreme Court in the case of State of

Karnataka Vs. Uma Devi and Others reported in (2006) 4 SCC 1. After the said judgement, the State Government also followed the principles and superseded certain Government Orders issued for grant of regularization in violation of the Recruitment Rules in force. Thus, back door appointments can never be regularized and such persons entered into public services through back door must be allowed to go from the door through which they entered into.

8. Equal opportunity in public employment is the Constitutional mandate and the candidates, who are aspiring to secure public employment, are to be provided with an opportunity to participate in the process of selection. In the event of back door entry, the rights of eligible candidates, who all are longing to secure employment, are infringed.

9. Therefore, the Hon'ble Supreme Court, in the case of Uma Devi (cited supra), has settled the principles by stating that the Constitutional mandates in the matter of public appointments are to be scrupulously followed and the back door appointments can never be regularized. However, in paragraph No.53 of the said judgement, the Hon'ble Supreme Court has given a relief as an one time measure in respect of the employees whose proposals were pending before the competent authorities. Such one time measure cannot be extended for an indefinite period, so as to dilute the principles settled by the Constitution Bench in the matter of irregular and illegal appointments and to grant regularization and permanent absorption.

10. The Constitution Bench in paragraph No.54 of the judgement in Uma Devi's case, had held in unequivocal terms 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, any other judgement running counter, even if rendered by the two Judges Bench of the Hon'ble Supreme Court cannot be followed as a precedent.

11. No doubt, in certain cases, relief of regularization was subsequently granted by the Hon'ble Supreme Court and by various High Courts, based on certain peculiar facts and circumstances, and those judgements cannot be followed as a precedent as the Constitution Bench is the law prevailing, which is to be construed as a binding precedent. The principles for binding precedents have again be settled by another Constitution Bench of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in (2017) 16 SCC 680. Therefore, the Constitution Bench judgement will prevail over all other judgements, which is the binding precedent as per the Courts across the country are concerned.

12. In the present case, those judgements which were issued contrary to the principles settled by the Constitution Bench of the Hon'ble Supreme Court in the matter of regularization and permanent absorption, cannot be followed. Subsequently, even in the case of R.Govindaswamy (cited supra), the Apex Court in clear terms held that "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."

13. The above principles are considered in the case of State of Rajasthan and others Vs. Daya Lal and others reported in (2011) 2 SCC 429 and also in the case of Union of India and others Vs. A.S.Pillai and others reported in (2010) 13 SCC 448. Thus, the Hon'ble Supreme Court subsequently considered the principles laid down by the Constitution Bench in Uma Devi's case (cited supra) and the principles followed in earlier judgements by the Apex Court.

14. More specifically, the case of R.Govindaswamy (cited supra) is relating to the regularization of part-time employees. In the present case, admittedly, the petitioners were appointed as part-time Helpers and therefore, the benefit of regularization or permanent absorption cannot be granted, nor the High Court can issue directions to regularize the services of the petitioners, in view of the principles settled by the Hon'ble Supreme Court of India.

15. Thus, the Writ Petitions are devoid of merits and accordingly, all the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

hvk

To

- 1.The Secretary to Government,
Animal Husbandry and Fisheries Dept.,
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- 2.The Director of Animal Husbandry &
Veterinary Services,
Central Administrative Buildings,
(DMS Campus) Chennai.
- 3.The Regional Joint Director,
Animal Husbandry Dept.,
Thiruvarur District,
Thiruvarur.
- 4.The Assistant Director,
Animal Husbandry Dept.,
Mannargudi,
Thiruvarur District.
- 5.The Regional Joint Director,
Animal Husbandry Dept.,
Nagapattinam District.
- 6.The Assistant Director,
Animal Husbandry Dept.,
Nagapattinam District.

+1cc to the Government Pleader Sr.No.41422

W.P.Nos.25343 to 25347 of 2014

GSM(CO)
RVM(18/07/2022)