



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION NOS.1719 TO 1723 OF 2014
AND M.P.NO. 1 OF 2014 [IN ALL CASES]

P.M.Anbarasi
D/o.A. Mayakrishnan

.. Petitioner in W.P.No.1719/2014

T.T.Sekar
S/o.Thaiyan

.. Petitioner in W.P.No.1720/2014

S.Senthil Kumar
S/o.Sachithanantham

.. Petitioner in W.P.No.1721/2014

K.Devadoss
S/o.Kannuswamy

.. Petitioner in W.P.No.1722/2014

Mr.Parthiban
S/o.Raju

.. Petitioner in W.P.No.1723/2014

Vs.

1. The Secretary to Government,
Public Works Department,
Fort St. George,
Secretariat, Chennai.
2. The Engineer in Chief,
Public Works Department,
Chepauk, Chennai.
3. The Chief Engineer,
Public Works Department (W.R.O),
Trichy.

.. Respondents in all W.Ps.



COMMON PRAYER in WP.Nos.1719 of 2014 to 1722 of 2014:

Writ Petitions 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 proceedings of the 1st respondent vide in his proceedings No.16325/C2/2012-11 dated 21.11.2013 and quash the same and consequently direct the 1st respondent herein to regular the service the petitioner with effect from his date of joining duty as Nominal Muster Roll employee and pay all the back wages with interest.

Prayer in WP.No.1723 of 2014:

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 proceedings of the 1st respondent vide in his proceedings No.13258/ C2/ 2012-7 dated 21.11.2013 and quash the same and consequently direct the 1st respondent herein to regular the service of the petitioner with effect from his date of joining duty as Nominal Muster Roll Employee and pay all the back wages with interest.

For Petitioners : Mr.M.Rajkumar
[in all W.Ps.] for Mr.T.Muruganantham

For Respondents : Mr. S.Prabhakaran
[in all W.Ps.] Government Advocate

COMMON ORDER

The order impugned dated 21.11.2013 declining the claim of the writ petitioners for grant of regularization and permanent absorption is under challenge in the present writ petitions.

2. The petitioners were engaged as Nominal Muster Roll (NMR) in the Public Works Department. The petitioners state that they were served about 2612 days, 3580 days, 3006 days, 1930 days and 2482 days respectively as NMR till 31.12.2011. In view of the fact that the petitioners have served for longer period, they were eligible for regularization. It is contended that name of the writ petitioners were recommended however, the benefit of regularization was not granted. The writ petitioners have filed W.P.Nos.11370, 11369, 11371, 11372 of 2012 and W.P.No.10083 of 2012 and this Court passed orders on 24.04.2012 and 17.04.2012 respectively directing the first respondent therein to consider the representation submitted by the writ petitioners and pass orders on merits within a period of three months. Pursuant to the said orders, the respondents have issued the impugned order rejecting the claim of the writ petitioners for regularization. Thus, the writ petitioners are constrained to move the present



writ petitions.

3. The learned counsel for the petitioners mainly contended that the petitioners have served for more than 10 years and therefore they were entitled to regularization in the sanctioned post.

4. The practice of grant of regularization was prevailing prior to the judgment of the Constitution Bench of Hon'ble Supreme Court of India in the case of Secretary, State of Karnataka Vs. Uma devi [2006 4 SCC 1] . During the relevant point of time, the Government also issued G.O.Ms.No.202, Public Works (C2), dated 01.08.2012 to regularize the service of the temporary employees, who have been completed 10 years of service. However, after the principles are settled by the Constitution Bench of the Hon'ble Supreme Court of India, the Courts are not empowered to issue any such direction to regularize the service of the writ petitioners in violation of the recruitment rules in force.

5. Regularization and permanent absorption are to be granted strictly in accordance with the Rules in force. Equal opportunity in public employment is the constitutional mandate. All appointments are to be made by providing equal opportunity to the eligible candidates, who all are aspiring to secure public employment through open competition process. The persons, who all are appointed through back door must be sent out from the door through which they entered into service. This being the authoritative pronouncement of the Hon'ble Supreme Court of India, the High Courts cannot issue a direction to regularize the service in violation of the recruitment rules and in violation of the principles settled by the Hon'ble Supreme Court of India in the matter of regularization and permanent absorption.

6. Even the Constitution Bench in paragraph 54 in Uma Devi's case (cited supra) in unequivocal terms held that any judgment delivered subsequent to Uma Devi's case (cited supra) countering the principles are denuded to be the precedent and the Courts need not follow those judgments decided based on certain peculiar facts and circumstances. Thus, certain judgments granting regularization rendered after Uma Devi's case based on certain particular facts and circumstances cannot be followed as precedent by the High Courts.

7. As far as the present case is concerned, admittedly the petitioners were engaged as NMR with breakin service. The Hon'ble Supreme Court of India in the case of Secretary to Government School Education Department, Chennai vs. R.Govindaswamy and others reported in [2014 [4] SCC 769[,



relying on the earlier judgment of the High Court rendered in State of Rajasthan & Ors. Vs. Daya Lal reported in [2011 (2) SCC 429], wherein, principles are settled as "High Courts in exercising power under Article 226 of the Constitution of India will not issue direction for regularization, permanent absorption or 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 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 volatile 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.

8. Mere continuation of service by a temporary or adhoc or daily-wage employee under a cover of some interim orders of the Courts would not confer upon any right for absorption. The scope of regularization and permanent absorption are now settled by the Constitutional Courts across the country based on the judgment of the Constitution Bench in Uma Devi's case (cited supra). Thus, any subsequent judgment running contrary to the principles laid down by the Constitution Bench denuded to loose its status as precedent and the same cannot be followed and those judgments are constrained to its facts and circumstances alone.

9. This Court is of the considered opinion that the petitioners admittedly were engaged as NMR for different spells and their services were discontinued from the year 2011 onwards and now they were not serving as NMR for past about 10 years. This being the factum established, the benefit of regularization or permanent absorption cannot be granted and the order impugned is inconsonance with the principles settled.

Accordingly, this writ petitions stand dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

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Sub Assistant Registrar



To

1. The Secretary to Government,
Public Works Department,
Fort St. George,
Secretariat, Chennai.
2. The Engineer in Chief,
Public Works Department,
Chepauk, Chennai.
3. The Chief Engineer,
Public Works Department (W.R.O),
Trichy.

+1cc to the Government Pleader, S.R.No.33038

Writ Petition Nos.1719 to 1723 of 2014

AJB (CO)
PM/24/06/2022