



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2022

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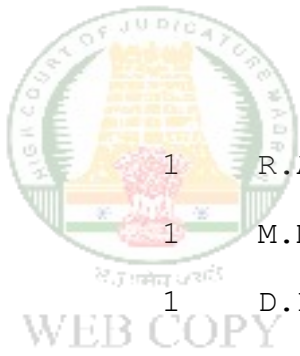
THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.Nos.18329, 18362, 18344, 18339, 18354, 18336, 18335, 18357,
18359, 18332, 18364, 18367, 18368, 18371, 18372, 18374,
18375, 18377, 18380 of 2020

and

WMP.Nos.22707, 22752, 22727, 22721, 22743, 22717, 22715, 22746,
22750, 22711, 22755, 22757, 22759, 22761, 22764, 22766, 22768,
22770, 22773 of 2020

S.Sathishkumar	... PETITIONER in WP No.18329 of 2020
1 K.THIRUMALAI	... PETITIONER in WP No.18362 of 2020
1 D.YESU RATHINAM	... PETITIONER in WP No.18344 of 2020
1 M.LOGANATHAN	... PETITIONER in WP No.18339 of 2020
1 P.LOGANATHAN	... PETITIONER in WP No.18354 of 2020
1 V.JEYAKUMAR	... PETITIONER in WP No.18336 of 2020
1 S.BALASUBRAMANIAM	... PETITIONER in WP No.18335 of 2020
1 V.KUMAR	... PETITIONER in WP No.18357 of 2020
1 K.AYYAVU	... PETITIONER in WP No.18359 of 2020
1 R.KRISHNAN	... PETITIONER in WP No.18332 of 2020
1 G.THIRUMURUGAN	... PETITIONER in WP No.18364 of 2020
1 V.ANANDHAN	... PETITIONER in WP No.18367 of 2020
1 V.VELUSAMY	... PETITIONER in WP No.18368 of 2020
1 M.AYYAPPAN	... PETITIONER in WP No.18371 of 2020
1 M.ARUMUGASAMY	... PETITIONER in WP No.18372 of 2020
1 T.PARAMASIVAN	... PETITIONER in WP No.18374 of 2020



1 R.ANANDHA KUMAR ... PETITIONER in WP No.18375 of 2020
1 M.MANIKANDAN ... PETITIONER in WP No.18377 of 2020
1 D.DHANASEKAR ... PETITIONER in WP No.18380 of 2020

vs.

1. The Government of Tamilnadu,
Rep. By its Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St.George,
Chennai-600 009.

2. The Commissioner,
Tiruppur City Municipal Corporation,
Tiruppur.

.. Respondents

Prayer:

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus calling for the entire records connected with the services of the petitioner as Driver in the second respondent - Municipal Corporation since 23.04.2012 and consequently, direct the second respondent to regularize the services of the petitioner as Driver in Tiruppur City Municipal Corporation with effect from the date of his appointment with all consequent monetary and other service benefits on the basis of the petitioner's representation dated 19.10.2020.

In all W.Ps.

For Petitioner : Mr.C.Rajaguru

For Respondents : Mr.P.Balathandayutham
Special Government Pleader for R1

Mr.S.Silambanan,
Additional Advocate General
Assisted by Mrs.P.Shanthi for R2

COMMON ORDER

By consent, these writ petitions are taken up for final disposal.

2. The petitioners applied for the post of Driver in the respondent Corporations in pursuant to the advertisement for filling up of vacancies in the posts of drivers and submitted



application on 20.01.2012 and attended interview on 03.02.2012 and appointment orders were issued by the second respondent, vide proceedings dated 23.04.2012 and as per G.O.Ms.No.207, Municipal Administration and Water Supply Department dated 22.10.2008, the existing posts of driver in Division-3 and the petitioners were directed to be continued and in the event of any excess requirement of drivers, the same was permitted by way of contractual employment. Based on the aforesaid recruitment, the petitioners were appointed on outsourcing basis. While so, in 2017, the petitioner along with other drivers, who were appointed as contractual or outsourcing drivers approached the second respondent Corporation requesting for regularization of their service. However, to their shock and surprise, the second respondent Corporation issued an oral order in which the services of all drivers have been terminated on the ground of non-obedience of the oral order of the second respondent. However, all of a sudden, their services were disengaged since October, 2020 by way of impugned order passed by the second respondent.

3. The petitioners were informed by the fellow drivers working in Velandipalayam Zone-I in the second respondent Corporation that some of their services were disengaged on 31.08.2013 by way of impugned order passed by the second respondent. Aggrieved by the said order, the similarly placed persons approached this Court by filing W.P.No.30702 of 2013 and this Court has passed an interim order directing the second respondent to engage the services of the petitioners, till the disposal of the writ petition. On 22.07.2020, this Court directs the respondents 1 and 2 to consider the representation of the petitioners dated 30.09.2013 and however, the second respondent without considering the petitioner's request dated 09.09.2020, passed an order by which the services of all the drivers have been terminated. Aggrieved by the same, similarly placed persons filed W.P.Nos.13428 of 2020 etc., batch and got interim orders directing the second respondent Corporation to engage their services as driver in the second respondent/Municipal Corporation and since the petitioners are similarly placed, they pray that they are also entitled for the same benefit.

4. The learned counsel for the petitioners submits that the though the petitioners prays for larger relief, they now seek for the relief of continuity of service on consolidated basis till the regular recruitment process takes place by the respondent Corporation and further submitted that the respondent has taken a stand that the petitioners were appointed through outsourcing and they have no legs to stand and therefore, prays that the petitioners may be ;permitted to continue as Drivers on contractual basis in the respondent Corporation, till the fresh



recruitment process is made by the respondent Corporation.

5. The learned Additional Advocate General for the respondents submitted that the petitioner cannot have any legal right seeking regularization of services, since they were recruited through outsourcing on consolidated wages and since the posts is not a sanctioned post, such a direction cannot be granted by this Court.

6. This Court has considered the submissions made and also perused the materials placed on record.

7. The fact remains that the petitioners were appointed on consolidated basis as Drivers in the second respondent Corporation through outsourcing and the same has been admitted by the petitioners in their respective affidavits and the respondents have now terminated their services, after allowing them to serve for nearly 8 to 9 years.

8. 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.



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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 question of giving them equal pay for equal work or 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



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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."

9. In the light of the aforesaid decision of the Hon'ble Supreme Court, the petitioners, who are working as Drivers in the second respondent Corporation on consolidated pay in a non-sanctioned post, cannot seek regularization as a matter of right. However, the learned counsel for the petitioners fairly submitted before this Court that the petitioners are not seeking regularization at this juncture and they only seek for continuous engagement of their services as drivers in some other departments / Corporations and in case of future vacancies, if any appointment is made on contract basis, the respondents Corporation shall give preference to the petitioners, if they are found eligible and after getting undertaking from the petitioners that they will not seek for regularization of service.

10. In view of the above, this Court permits the petitioners to make appropriate application before the respondent Corporation seeking engagement of their services on consolidated basis and on receipt of such representation, the respondents shall consider the request of the petitioners sympathetically and pass appropriate orders at the earliest, after obtaining undertaking from the petitioners that they would not seek any claim for regularization and it is open to the respondents to give preferential treatment to the petitioners in the appointment on regular vacancies in future, if they are otherwise eligible.



11. with the above directions, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Government of Tamilnadu,
Rep. By its Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St.George,
Chennai-600 009.
2. The Commissioner,
Tiruppur City Municipal Corporation,
Tiruppur.

+19ccs to Mr.C.Rajaguru, Advocate, S.R.No.16451 to 16469
+1cc to Mrs.P.Shanthi, Advocate, S.R.No.16608
+1cc to the Government Pleader, S.R.No.16269

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JP(CO)
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