



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.21150 of 2021

1.K.Sekar
2.S.Arivazhagan
3.C.Boopalan
4.V.Rukkumanathan

.. Petitioners

vs.

1. The Government of Tamil Nadu,
Rep. By the Principal Secretary,
Municipal Admn. & Water Supply Department,
Secretariat, Chennai-600 009.

2. The Director of Town Panchayats,
Chennai-600 028.

3. The District Collector,
Inspector of Panchayats,
Tiruvallur District, Tiruvallur.

4. The Assistant Director of Town Panchayats,
Tiruvallur District,
Tiruvallur.

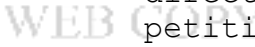
5. The Executive Officer,
Tirunindravur Town Panchayat,
Tirunindravur, Tiruvallur District,
Pincode-602 024.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the first respondent to consider the claim of the petitioners for regularization of their service from the respective dates of their initial appointment, with consequential benefits of placement in the Time Scale of Pay and other attendant benefits and pass orders in the light of their representation dated 12.07.2021.

For Petitioners: M/s.J.Muthukumaran

For Respondents: Mr.P.Balathandayutham,
Special Government Pleader for R1 to R4
Dr.S.Suriya, Government Advocate for R5





arrangements to manage the water supply to the Town Panchayats for few hours in a day, for 3 to 4 hours only and hence, there is no question of continuous or uninterrupted service or regularization of service arises and prays for dismissal of this writ petition.

5. The issue involved in the present writ petition is whether the services of the petitioners, who are working as Part Time Over Head Tank Operator and Head House Pumping Operators, are entitled for regularization ?

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 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



WEB COPY

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.



WEB COPY

(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



WEB COPY

28.02.2006 is 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



WEB COPY

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 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 petitioners are working as Overhead Tank Operators and Head House Pumping Operators on a consolidated monthly wages of Rs.8,500/- in a non-sanctioned post and since the petitioners have not satisfied the criteria for regularization, as stipulated in G.O.Ms.No.74 P&AR (F) Department dated 27.06.2013, the respondents have rejected the claim of the petitioners 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.

9. However, taking into sympathetic consideration of the fact that the petitioners had put in 20 years of service as Overhead Tank Operators and Head House Pumping Operators and though it is stated by the respondents that their working hours is only for 3 to 4 hours daily, they are paid consolidated pay of Rs.8,500/- per month, which on the present economic conditions, appears to be very minimal. Therefore, this Court permits the petitioners to submit a fresh representation to the first respondent seeking enhancement of wages within a period of two weeks from the date of receipt of a copy of this order and on such representation being filed, the first respondent is directed to consider the claim of the petitioners and similarly placed persons for enhancement of wages and pass orders in accordance with law, as expeditiously as possible, within a period of six months thereafter.



WEB COPY

10. With the above directions, this Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Principal Secretary,
The Government of Tamil Nadu,
Municipal Admn. & Water Supply Department,
Secretariat, Chennai-600 009.
2. The Director of Town Panchayats,
Chennai-600 028.
3. The District Collector,
Inspector of Panchayats,
Tiruvallur District, Tiruvallur.
4. The Assistant Director of Town Panchayats,
Tiruvallur District, Tiruvallur.
5. The Executive Officer,
Tirunindravur Town Panchayat,
Tirunindravur, Tiruvallur District, Pincode-602 024.

+1cc to Mr.J.Muthu Kumaran, Advocate, S.R.No.11703

+1cc to the Government Pleader, S.R.No.12005

W.P.No.21150 of 2021

NK(CO)
SU(03/03/2022)