

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2022

CORAM

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

W.P.No.29924 of 2014 &
M.P.Nos.1 of 2014

T.Murugan

...Petitioner

..Vs..

1. The Secretary to Government,
School Education Department,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The District Educational Officer,
Nagarcoil, Kanyakumari District.
4. The Correspondent,
Carmel Higher Secondary School,
Nagercoil, Kanyakumari District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents forthwith to regularize the petitioner's service as a sweeper in time scale of pay from the date of completion of 10 years of service i.e., on 20.01.2008 and disburse all monetary benefits to the petitioner.

For Petitioner : Mr.L.Chandrakumar

For Respondent : Mr.M.Bindran
Additional Government Pleader
(for R.1 to R.3)
Mr.Abisha Isaac (for R.4)
for M/s.Isaac Chambers

ORDER

The relief sought for in the present writ petition is to direct the respondents forthwith to regularize the service of the writ petitioner as Sweeper in the time scale of pay from the

date of completion of 10 years of service i.e., on 20.01.2008 and disburse all monetary benefits to the petitioner.

2. The Writ petitioner was appointed as part time sweeper by the fourth respondent by proceedings dated 20.01.1998. The learned counsel for the petitioner made a submission that the petitioner was continuously working for more than 20 years and therefore he is entitled to be regularized in the sanctioned post. That apart, the vacancy in which the petitioner was appointed was a sanctioned post during the relevant point of time and therefore the petitioner is entitled to be regularized. The vacancy arose on account of the retirement of one Mr. John Baskar who was relieved from the said post on his own request on 31.08.1997.

3. Admittedly the petitioner was appointed as part time sweeper by the fourth respondent / District Educational Officer and a question arises where the benefit of regularization or permanent absorption can be granted to the employees who were appointed on part time basis. The issues in this regard are no more res integra and settled by the Hon'ble Supreme Court of India in the case of Department of School Education, Chennai Vs. R.Govindasamy reported in (2014) 4 SCC 769, The relevant paragraph 8 of the order is extracted hereunder;

8. This Court in *State of Rajasthan & Ors. v. Daya Lal & Ors.*, AIR 2011 SC 1193, has considered the scope of regularization of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularization 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 regularization, absorption or permanent 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 vacant 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 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible

candidates cannot be regularized.

(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 regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization 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 regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization 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.

(Emphasis added)

4. In the judgment cited supra, the principles are settled based on the Constitution Bench Judgment of the Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Umadevi and others reported in (2006) 4 SCC Page 1 and the earlier judgments of the Hon'ble Supreme Court of India in the case of Union of India Vs. A.S. Pillai and others reported in (2010) 13 SCC 448 and in the case of State of Rajasthan and others Vs. Daya Lal and others reported in (2011) 2 SCC 429.

5. The Hon'ble Apex Court of India in unequivocal terms held that the High Courts in exercise of its power under Article 226 of Constitution of India will not issue directions for regularization, absorption or permanent 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 vacant post.

6.In the present case, the writ petitioner was appointed as part time Sweeper on a consolidated pay. Therefore, the benefit of regularization or permanent absorption cannot be granted. However, there is no impediment for the continuance of the writ petitioner as part time employee if the management permits.

7.With the above observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mrm/psa

To

1. The Secretary to Government,
School Education Department,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
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3. The District Educational Officer,
Nagarcoil, Kanyakumari District.
4. The Correspondent,
Carmel Higher Secondary School,
Nagercoil, Kanyakumari District.

+1cc to M/s.L.Chandrakumar, Advocate, S.R.No.41582

+1cc to the Government Pleader, S.R.No.42076

W.P.No.29924 of 2014

PMK(CO)
RGA(26/07/2022)