



WEB COPY



W.A.No.2231 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2022

Coram

The Hon'ble Mr. Justice **PARESH UPADHYAY**
and
The Hon'ble Mr. Justice **D.BHARATHA CHAKRAVARTHY**

W.A.No.2231 of 2022
and
C.M.P. No.16795 of 2022

- 1.The Government of Tamil Nadu
rep. By its Secretary to Government,
School Education Department,
Fort St. George, Chennai – 9.
- 2.The Director of School Education,
College Road, Chennai – 6.
- 3.The District Educational Officer,
Erode District, Erode.
- 4.The Headmaster,
Government Boys Higher Secondary School,
Sivagiri, Erode District.

... Appellants

Vs.

A.Perumal

... Respondent

Appeal preferred under Clause XV of Letters Patent against
the order dated 29.10.2021 made in W.P.No.23233 of 2021.

For Appellants : Ms.E.Renganayaki,
Addl. Govt. Pleader

For Respondent : Mr.A.Amalraj



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JUDGMENT

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(Delivered by **D.BHARATHA CHAKRAVARTHY.,J**)

This writ appeal is directed against the order of learned single Judge dated 29.10.2021 passed in W.P.No.23233 of 2021, in and by which, the learned single Judge set aside the order of the third appellant herein dated 19.02.2021 and directed the appellants to pass appropriate orders within a period of four months from the date of receipt of the order, by regularising the services of the respondent/ writ petitioner with consequential relief to the writ petitioner on par with those who have been regularised earlier in terms of G.O.Ms.No.22 Personnel and Administrative Reforms Department dated 28.02.2006, G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013 and G.O.Ms.No.50 School Education (S.E.4(1)) Department dated 08.03.2019.

2. We have heard Ms.E.Renganayaki, learned Additional Government Pleader appearing on behalf of the appellants and Mr.A.Amalraj, learned counsel appearing on behalf of the respondent writ petitioner.



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3. Learned Additional Government Pleader appearing on behalf of the appellants submitted that in this case, there is no proof for the initial appointment being proper. This apart, she would submit that the relevant Government Orders mentioned by the learned single Judge are applicable only in respect of a regular employee and not a part-time employee. She would submit that since the respondent/writ petitioner is designated only as a part-time sweeper, learned single Judge ought not to have ordered regularisation under the said Government Orders. She would also submit that the order of the learned single Judge to regularise the services of the respondent/writ petitioner is directly in contravention to the dictum of Honourable Supreme Court of India in **The Secretary, State of Karnataka and Others Vs. Uma Devi (2006 (4) SCC 1)**.

4. Per contra, learned counsel appearing on behalf of the respondent/writ petitioner would submit that this is a case in which there is no other post of sweeper. The writ petitioner is the only ministerial staff in the entire school. The writ petitioner is appointed as against the said sanctioned vacancy and has been rendering full time service. Merely because artificially the respondent/writ petitioner is termed as a part-time sweeper, that by itself will not



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take away the right conferred on him by the Scheme framed by the Government in the Government Orders mentioned by the learned single Judge. This apart, it is the contention of the learned counsel for the respondent/ writ petitioner that the writ petitioner was appointed in the year 1997 and has continuously put in more than 24 years of service. Therefore, the learned counsel would submit that there is nothing for this Court to interfere with the order passed by the learned single Judge.

5. We have considered the rival submissions made on either side and perused the material records of this case.

6. This writ appeal has been filed mainly on two grounds. The first ground relating to the initial appointment is concerned, it has been the categorical case of the writ petitioner that he was sponsored by the employment exchange. There is absolutely no material on record to refute the said averment. Therefore, the said ground raised in the writ appeal is without any substance. As far as the second ground is concerned, it is seen that the post is approved post. There was a regular vacancy in the post. The writ petitioner is the only person appointed with due approval in the said post. Therefore, once the person is appointed in a regular full-time post



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and has been discharging his duties, merely by terming his service as part-time, it cannot be construed that he is a part-time employee. Therefore, terming the respondent/writ petitioner as part-time sweeper artificially in the post is unsustainable. Once the writ petitioner is found to be a regular full-time employee, the Government Orders mentioned are applicable in full force to the respondent/writ petitioner also and therefore we are unable to interfere with the order passed by the learned single Judge, regularising the service of the respondent/writ petitioner, who has been rendering his service as sweeper from March 1997 onwards.

7. In that view of the matter, finding no merits, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(P.U., J) (D.B.C., J)
30.09.2022

Index:Yes/No
mmi/9



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**PARESH UPADHYAY, J.
and
D.BHARATHA CHAKRAVARTHY, J.**

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