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W.P.No.24570 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24570 of 2019

Elaiyappan

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Highways Department, Chennai.
Fort. St.George, Chennai-9.
2. The Director General,
Highways Department,
No.76 Sardar Vallabaipatel Road,
Guindy, Chennai-25.
3. The Divisional Engineer,
Highways Department,
Erode-638002.
4. The Divisional Engineer,
Highways Department,
Gopichattyapalayam,
Erode District – 368476,
5. The Assistant Divisional Engineer,
Highways Department,
Bhavani, Erode District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the records in letter KU.No.1227/Case/2018/A5 dated 21.05.2019 on the file of the 3rd respondent and quash the same and direct the respondents to appoint the petitioner herein in the existing or future vacancies as Gang Mazdoors in regular time scale of pay in consonance with the orders passed by this Honourable Court in W.P.Nos.911 to 937 of 2009 dated 18.06.2009 which was upheld by the Division Bench of this Honourable Court in Review Application Nos.30/2012 to 37/2012 and 116/2012 to 134/2012 order dated 21.06.2012, 06.08.2012 and confirmed by the Supreme Court in SLP in CC Nos.22523/2012 to 22530/2012 dated 29.07.2013.

For Petitioner : Mr.S.Packiaraj

For Respondents : Mr.S.Balamurugan
Government Advocate

ORDER

The order of rejection rejecting the claim of the writ petitioner for grant of regularisation and permanent absorption is under challenge in the present writ petition.

2. The petitioner was engaged as a Gang Mazdoor (NMR) on a daily wage basis. He was engaged from the year 1987 onwards and



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completed more than 10 years of service. Thus, the petitioner made an appeal to the authorities to regularise his services in the sanctioned post in the time scale of pay.

3. The claim of the writ petitioner was rejected based on the Government Orders issued in G.O.Ms.No.74, Personal and Administrative Reforms Department, dated 27.06.2013. That apart, the authorities have considered the principles laid down by the Supreme Court in a number of judgments for the grant of regularisation and permanent absorption and accordingly, rejected the case.

4. The Government Order relied on by the petitioner issued in G.O.Ms.No.22, of the year 2006, was withdrawn by the Government and the revised order was passed in G.O.Ms.No.74, as a one-time measure, only to regularise the services of the temporary employees who were otherwise appointed in accordance with the rules in force and in compliance with the terms and conditions. Thus, the petitioner cannot claim regularisation based on the Government Order issued in G.O.Ms.No.22.



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5. Regularisation and permanent absorption cannot be granted in violation of the rules in force. A person appointed irregularly or illegally, cannot claim regularisation as a right. The principles regarding the regularization and permanent absorption are also settled by the Constitution Bench of the Hon'ble Supreme Court in the case of ***State of Karnataka Vs. Uma Devi and Others*** reported in **(2006) 4 SCC 1**. Subsequently, the Hon'ble Supreme Court, in the case of ***Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and others*** reported in **(2014) 4 SCC 769**, considered the earlier judgements in the case of ***State of Rajasthan and others Vs. Daya Lal and others*** reported in **(2011) 2 SCC 429** and also in the case of ***Union of India and others Vs. A.S.Pillai and others*** reported in **(2010) 13 SCC 448**, and held as follows:-

"6. 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.

7. 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.” (Emphasis added)”

6. As per the above judgement, the High Court in exercise of powers under Article 226 of the Constitution of India, cannot issue a direction to regularize the services of part time / daily wage employees whose appointments were not made in accordance with the Recruitment



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Rules in force.

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7. In the present case, the writ petitioner was not appointed in accordance with the recruitment rules in force. He was engaged as a daily wage employee on a temporary basis. Thus, the benefit of regularisation cannot be granted since his initial appointment was irregular. The Honb'ble Supreme Court has considered the issues on multiple occasions and held that back-door appointments cannot be regularised depriving the rights of all eligible candidates who all are longing to secure public employment through open competitive process.

8. That apart, the Constitution Bench in *Uma Devi's* case, more specifically in paragraph 54 of the judgement, reiterated that any judgement or Government Orders, running counter to the principles laid down by the Constitution Bench shall be denuded of status as precedent and those judgements cannot be followed by the Courts for the purpose of grant of regularisation and permanent absorption. Thus, the judgments relied on by the writ petitioner cannot be followed as precedent in view of the Constitution Bench Judgement.



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9. Accordingly the writ petition stands **dismissed**. However, there shall be no order as to costs.

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Index : Yes

*Speaking order
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