



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 04.02.2022

Orders Pronounced on : 15.03.2022

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Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.29068, 29072, 29074, 29078, 29081, 29084 & 29087 of 2019
and

W.M.P.Nos.28847, 28850, 28852, 28856, 28857, 28859, 28861 &
28862 of 2019

W.P.No.29068 of 2019

R. DHANAKUMAR

.. Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Director of Municipal Administration,
Chepauk, Chennai-600 005.
3. The Director of Town Panchayat,
Directorate of Town Panchayat,
Kuralagam, Chennai-600 104.
4. The Executive Officer,
Vaniputhur Town Panchayat,
Erode District.

..Respondents

Petition No.29068 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent, vide his proceedings in Na.Ka.No.466/2016, dated 13.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 16.09.2010 as Tractor Driver under the 4th respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.



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For petitioner

: Mr.Arun Anbumani
for Mr.G.Thalaimutharasu

For respondents

: Mr.G.Nanmaran,
Special Government Pleader
for R1 to R4

W.P.No.29072 of 2019

G.P. MANI SEKARAN

.. Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Director of Municipal Administration,
Chepauk, Chennai-600 005.
3. The Director of Town Panchayat,
Directorate of Town Panchayat,
Kuralagam, Chennai-600 104.
4. The Executive Officer,
Appakoodal Town Panchayat,
Erode District.

..Respondents

Petition No.29072 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent, vide his proceedings in Na.Ka.No.164/2011, dated 13.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 10.05.2012 as Tractor Driver under the 4th respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

For petitioner : Mr.Arun Anbumani
for Mr.G.Thalaimutharasu

For respondents: Mr.G.Nanmaran,
Special Government Pleader
for R1 to R4

W.P.No.29074 of 2019



V. PAUL SAMPATH

.. Petitioner

Vs.

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1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
 2. The Director of Municipal Administration,
Chepauk, Chennai-600 005.
 3. The Director of Town Panchayat,
Directorate of Town Panchayat,
Kuralagam, Chennai-600 104.
 4. The Executive Officer,
Chenna Samuthiram Town Panchayat,
Erode District.
- ..Respondents in W.P.No.29074/2019

Petition No.29074 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent, vide his proceedings in Na.Ka.No.85/2019, dated 16.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 16.07.2010 as Tractor Driver under the 4th respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

For petitioner : Mr.Arun Anbumani
for Mr.G.Thalaimutharasu

For respondents : Mr.G.Nanmaran,
Special Government Pleader
for R1 to R4

W.P.No.29078 of 2019

P. KUMAR

.. Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.



2. The Director of Municipal Administration,
Chepauk, Chennai-600 005.

3. The Director of Town Panchayat,
Directorate of Town Panchayat,
Kuralagam, Chennai-600 104.

4. The Executive Officer,
P.Mettupalayam Town Panchayat,
Erode District.

..Respondents

Petition No.29078 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent, vide his proceedings in Na.Ka.No.142/2018, dated 16.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 28.02.2011 as Tractor Driver under the 4th respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

For petitioner : Mr.Arun Anbumani
for Mr.G.Thalaimutharasu

For respondents : Mr.G.Nanmaran,
Special Government Pleader
for R1 to R4

W.P.No.29081 of 2019

S. MAYILSAMY

.. Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

2. The Director of Municipal Administration,
Chepauk, Chennai-600 005.

3. The Director of Town Panchayat,
Directorate of Town Panchayat,
Kuralagam, Chennai-600 104.



4. The Executive Officer,
Kanjikovil Town Panchayat,
Erode District.

..Respondents

Petition No.29081 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent, vide his proceedings in Na.Ka.No.334/2018, dated 16.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 04.06.2009 as Tractor Driver under the 4th respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

For petitioner : Mr.Arun Anbumani
for Mr.G.Thalaimutharasu

For respondents: Mr.G.Nanmaran,
Special Government Pleader
for R1 to R4

W.P.No.29084 of 2019

T.S. JAGADEESH

.. Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Director of Municipal Administration,
Chepauk, Chennai-600 005.
3. The Director of Town Panchayat,
Directorate of Town Panchayat,
Kuralagam, Chennai-600 104.
4. The Executive Officer,
Koogalur Town Panchayat,
Erode District.

..Respondents

Petition No.29084 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent, vide his proceedings in Na.Ka.No.522/2018, dated 16.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the



date of initial appointment i.e. 27.12.2010 as Tractor Driver under the 4th respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

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For petitioner : Mr.Arun Anbumani
for Mr.G.Thalaimutharasu

For respondents: Mr.G.Nanmaran,
Special Government Pleader
for R1 to R4

W.P.No.29087 of 2019

N. KUPPUSAMY

.. Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Director of Municipal Administration,
Chepauk, Chennai-600 005.
3. The Director of Town Panchayat,
Directorate of Town Panchayat,
Kuralagam, Chennai-600 104.
4. The Executive Officer,
Arachalur Town Panchayat,
Erode District.

..Respondents

Petition No.29087 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent, vide his proceedings in Na.Ka.No.98/2018, dated 02.05.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 28.05.2010 as Tractor Driver under the 4th respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

For petitioner : Mr.Arun Anbumani
for Mr.G.Thalaimutharasu

For respondents: Mr.G.Nanmaran,
Special Government Pleader
for R1 to R4



COMMON ORDER

The prayers in all these Writ Petitions are as follows:

(a) Writ Petition No.29068 of 2019 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the fourth respondent, vide his proceedings in Na.Ka.No.466/2016, dated 13.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 16.09.2010 as Tractor Driver under the fourth respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

(b) Writ Petition No.29072 of 2019 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the fourth respondent, vide his proceedings in Na.Ka.No.164/2011, dated 13.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 10.05.2012 as Tractor Driver under the fourth respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

(c) Writ Petition No.29074 of 2019 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the fourth respondent, vide his proceedings in Na.Ka.No.85/2019, dated 16.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 16.07.2010 as Tractor Driver under the fourth respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

(d) Writ Petition No.29078 of 2019 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the fourth respondent, vide his proceedings in Na.Ka.No.142/2018, dated 16.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 28.02.2011 as Tractor Driver under the fourth respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

(e) Writ Petition No.29081 of 2019 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent, vide his proceedings in Na.Ka.No.334/2018, dated 16.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e.



(f) Writ Petition No.29084 of 2019 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent, vide his proceedings in Na.Ka.No.522/2018, dated 16.09.2019 and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondents to regularise the service of the petitioner from the date of initial appointment i.e. 27.12.2010 as Tractor Driver under the 4th respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time.

2. The collective and the projected grievance of the petitioners in essence in these writ petitions is that they are working presently as Tractor Drivers under the control of the fourth respondent-Panchayat having been appointed in the years 2010, 2012, 2010, 2011, 2009, 2010 and 2010 respectively. Despite being continuously employed as Tractor Drivers all these years, their services have not been regularised as yet, notwithstanding their eligibility and qualification to hold the posts on a regular basis. According to the petitioners, they have valid heavy motor vehicle licence issued by the competent authority. They had been sponsored by the Employment Exchange at the time when they were recruited initially. According to them, they were subjected to regular selection rigour and only thereafter, they were selected and appointed. Unfortunately, when the appointments were made they were employed on daily wage basis and continued for years together denying them the regular benefits as enjoyed by their counterparts working on a regular basis in similar posts.

3. The post of Tractor Driver is classified as Class-VI, Category-1 in the Tamil Nadu Town Panchayat (Establishment) Rules, 1988. The post as on date can be filled up by both direct recruitment and also by promotion by appointing persons working as NMRs or on daily wages. The qualification prescribed for regular appointment is possession of Heavy Transport Vehicle Licence and experience of driving for atleast three



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years. As stated above, the petitioners are fully qualified to be considered for appointment on regular basis. According to them, regularising their service would be beneficial to the administration, as they are sufficiently experienced in handling the post, discharging their duties diligently and efficiently.

4. According to the petitioners, the first respondent has already sanctioned several posts in all categories in respect of the 4th respondent Panchayat and as far as the post of Tractor Driver is concerned, sanctioned posts are available. After introduction of Solid Waste Management Scheme in all the Panchayat in the State, the requirement of Tractor drivers has considerably increased which led to the sanctioning of the posts. There is always shortage of permanent man power in the posts. In the said circumstances, the petitioners have made representations seeking regularisation of their services having admittedly served the Panchayat continuously for several years. The writ petitioners, as a matter of fact, had earlier approached this court in W.P.No.22738 to 22743, 22739 to 22744, 22748 & 22449 of 2018 etc. batch seeking a direction to regularise their service. The writ petition came to be disposed of by this Court on 30.01.2019, wherein it was observed as follows:

Though a broader relief is sought for in this writ petition, learned counsel for the petitioner submits that the ends of justice would be met if the respondents are directed to consider the case of the petitioner on merits and pass orders accordingly.

2. Mr.A.N.Thambidurai, learned Special Government Pleader, appearing on behalf of the first and second respondents, would submit that, necessary orders, on merits and in accordance with law, would be passed within the time stipulated by this Court. Mr.N.Srinivasan, learned counsel appearing on behalf of the third respondent would submit that the petitioner has not made any representation in this regard and if any such representation is made, the same shall be considered on merits and in accordance with law.

3. In view of the submissions made by the learned counsel on either side, without going into the merits of the matter, the petitioner is directed to make a representation along with a copy of this order, within two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondents are directed to consider the same on merits and in accordance with law, and pass necessary orders, after affording an opportunity of personal hearing to the petitioner, within a period of eight weeks thereafter.



The writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

5. Thereafter, the representations were submitted on behalf of the petitioners on various dates and in response to the same, the petitioners were called upon to produce all the relevant documents by communications dated 10.02.2011, 02.05.2012, 01.07.2010, 22.02.2011, 11.03.2009, 10.12.2010 & 21.05.2010 respectively. Subsequently, by communications dated 13.09.2019, 13.09.2019, 16.09.2019, 16.09.2019, 16.09.2019, 19.09.2019 & 02.05.2019 respectively, the 4th respondent rejected the request of the petitioners on the ground that the petitioners have not been appointed originally through Employment Exchange. This statement has been factually refuted by the petitioners stating that they were indeed sponsored by the Employment Exchange as could be seen from the call letter for interview and their appointment orders. Challenging the rejection order, the petitioners are before this Court.

6. Mr. Arun Anubmani, the learned counsel for the petitioners would submit that the issue of regularisation, which gave rise to the similar claims was favourably considered by this Court in numerous decisions. According to him, the basis for rejection in the impugned proceedings is that no tractor driver post has been created by the Government, which is untenable and contrary to the G.O.Ms.No.23 Municipal Administration and Water Supply Department, dated 03.03.1998, which directs and empowers the Municipal Commissioner to establish /create the driver post. The learned counsel in this regard would rely on the decisions of the learned single Judges as well as the Division Bench in support of the claim of the petitioners herein, which shall be referred to infra.

7. In response to the notice in the writ petitions, counter affidavit has been filed by the 4th respondent. In the counter affidavit, it is stated that these drivers are engaged on contract basis and the Tamil Nadu Town Panchayat Establishment Rules, 1988 applicable only to sanctioned post and not applicable to any contractual arrangements. According to the counter affidavit, these contract drivers were engaged for Solid Waste Disposal only for particular hours and therefore, they cannot seek regularisation at all.

8. The learned counsel appearing for the respondents would submit that these employees who were essentially engaged on contract basis, cannot take advantage of the orders passed by this Court as the employees therein enjoyed a different status. According to the learned counsel, those employees were regularly selected and appointed on temporary basis and were subsequently



regularised on the basis of the directions of this Court, whereas these persons have been appointed on contract basis only for limited hours a day and therefore, they cannot seek parity and seek regularisation of their service as that of the temporary employees, covered under various orders of this Court. Being engaged purely on contract basis, the petitioners herein are not entitled to the benefits as envisaged in any of the scheme of the Government towards their regularisation. He would therefore, submit that there is no merit in the writ petitions and are liable to be dismissed.

9. By way of reply, the learned counsel for the petitioners would submit that the above contentions of the respondents are not to be countenanced both in law and on facts. This Court while allowing similar writ petitions was faced with similar status of employees, employed for a long duration continuously. Therefore, it is too late in the day for the respondents to oppose grant of the relief to the petitioners in these writ petitions, as if these employees stand on a different footing.

10. The learned counsel would then proceed to rely on 2013 (14) SCC 65 (Nihal Singh and others vs. State of Punjab and others). This Court's attention has been drawn to paragraph Nos. 36 to 39 which are extracted hereunder.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is—the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks.

37. We are of the opinion that neither the Government of Punjab nor these public sector banks



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can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] judgment cannot become a licence for exploitation by the State and its instrumentalities.

38. For all the abovementioned reasons, we are of the opinion that the appellants are entitled to be absorbed in the services of the State. The appeals are accordingly allowed. The judgments under appeal are set aside.

39. We direct the State of Punjab to regularise the services of the appellants by creating necessary posts within a period of three months from today. Upon such regularisation, the appellants would be entitled to all the benefits of services attached to the post which are similar in nature already in the cadre of the police services of the State. We are of the opinion that the appellants are entitled to the costs throughout. In the circumstances, we quantify the costs to Rs 10,000 to be paid to each of the appellants.

11. After referring to the above Supreme Court decision, this Court's series of decisions has been referred to as under.

(i) W.P.(MD).No.11106 of 2013 dated 01.12.2016. This Court's attention has been drawn to paragraph Nos. 7 to 9 which are extracted as under:

7.The primary and core issue is that whether the petitioner is entitled to regularisation or not ? The petitioner is been inducted into service on 15.10.1997 and still discharging his duty which is not denied by the Respondents which will prove that the Petitioner is in continuous employment and his service is essential and un-dispensable one. The second respondent while sending the proposal has categorically held that the petitioner has put in 13 years and 8 months of service and also sought for relaxation of rules in order to regularise his service. But, the first respondent has rejected the proposal on the sole ground that they have not completed 10 years of service as on 01.01.2006 vide G.O.Ms.No.22, P & A.R. Department dated 28.02.2006 but there is no reply or refusal in regard to the extension of the benefit given to others by the Government Advocate.

8.After utilising the Petitioner's service for more than 13 years and still



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utilising as on date is shocking the conscious of this Court. Further, the respondents are liable as they have extracted the service of the Petitioner and based on principles of promissory estoppel and legitimate expectation, the impugned order is liable to be quashed in so far as the Petitioner is concerned. Further the Petitioner is not entitled to the regularisation from the date of initial appointment but only from the date of completion of 10 years of service.

9. In the result:

(a) the writ petition is allowed by setting aside the impugned order passed by the 1st respondent in his proceedings in Letter No.15393/tdk;-2/2012-9 dated 09.05.2013, so far as the petitioner is concerned;

(b) the respondents are hereby directed to regularize the service of the petitioner from the date of completion of 10 years service and pay back all the service and monetary benefits to the petitioner;

(c) the respondents are directed to complete the said exercise within a period of three months from the date of receipt of a copy of this order. No costs.

12. The above decision of the single Judge was appealed against, but the Division Bench confirmed the decision of the learned single Judge in W.A.(MD).No.686 of 2017 dated 12.07.2017 as under.

3. Even though the appellant is right in contending that as on 01 January 2006, the writ petitioner had not completed 10 years and therefore he cannot avail the benefit in terms of G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28 February 2006, we are still not inclined to interfere with the order passed by the learned Single Judge. We note that in similar cases, the Government had granted relaxation and regularized such services. For instance in G.O.Ms.No.3, Environment and Forest Department, 2013, dated 10 January 2013, the services of as many as 14 persons who were working in the appellant department were regularized. In fact the said 14 persons had completed 10 years only as on 01 January 2011. It is not the case of the appellant that the writ



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petitioner had gained back door entry.

4. Admittedly, he had been in service right from 15 October 1997. There is no break in service. To deny the benefit of the regularization to an employee, who had completed 19 years as on date would not be just or equitable. Taking into account the special circumstances obtaining in this case, we do not wish to interfere with the order of regularization made in favour of the respondent herein.

5. Thus, the appeal is therefore dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

13. The learned counsel would also submit that the order of the Division Bench has also been confirmed by the Honb'le Supreme Court of India in S.L.P.(Civil) Diary Nos. 29276 of 2018 dated 04.09.2018.

14. Subsequently, in another batch of writ appeals (W.A.Nos. 391 & 393 to 401 of 2020) the First Bench of this Court disposed of the appeals on 13.03.2020 confirming the decision of the learned Single Judge, directing regularisation. As a matter of fact on behalf of the Government, it is submitted before the Bench that Special Leave Petition had been filed against the decisions rendered in W.A.No.1842/2012 batch dated 10.01.2019, that the issue in the appeal before the Supreme Court was in relation to the date of applicability of regularisation and not regularisation per se. After taking note of the submission made by the learned Additional Advocate General as above, the First Division bench disposed of the appeal as under.

6. His contention, therefore, is that the issue as to from which date will they get the benefit of regularisation, is the issue engaging the attention of the Apex Court.

7. We have considered the submissions raised and we find no reasons to differ from the view taken by the Division Bench while confirming the judgment of the learned Single Judge, issuing directions for regularization. But insofar as the date from which such regularization will be given effect to being sub-judice before the Apex Court, we direct that the respondents/petitioners shall be regularized and so far as the date of regularization is concerned, the same will be governed by the outcome of the judgment of the Apex Court.

8. The learned Additional Advocate General,



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on instructions, states that the respondents/petitioners will be regularized and the regularization orders will be issued within four weeks from the date of production of a copy of this order. We record this and direct accordingly.

9. The Writ Appeals stand disposed of. No costs. Connected civil miscellaneous petitions are closed.

15. In W.P.No.32145 of 2019, this Court vide order dated 12.07.2021, while relying upon earlier decisions on the subject matter has allowed the writ petition and given a direction to regularise the service as driver who was engaged on a daily wage basis in one of the Departments of the Government as under.

8. In the light of the above observations, the impugned order dated 04.04.2016, is hereby quashed. Consequently, the respondents herein are called upon to pass appropriate orders, regularizing the services of the petitioner herein, as a driver on permanent basis, within a period of three months from the date of receipt of a copy of this order. It is made clear that the petitioner herein would not be entitled to any monetary or service benefits till the date of regularisation. The Writ Petition Stands allowed accordingly. There shall be no orders as to costs.

16. It transpired further that SLP(C) Nos.28359 to 28361 of 2019 filed against W.A.Nos. 1842 to 1844 of 2018 came to be dismissed by the Hon'ble Supreme Court on 14.09.2021.

17. In addition to the above decisions on the issue of regularisation, the learned counsel has also relied on the orders passed by various Division Bench of this Court on the issue of creation of post of Drivers. Starting from 26.03.2018 order in W.A.No.587,287 of 2018 etc. batch, W.A.No.637/2018 on 27.03.2018 W.A.No.1332 of 2018 on 03.09.2018 and W.A.No.1070 of 2019 on 09.11.2020 were disposed of confirming the directions of the Single Judge for sanction of the posts of Drivers. The observation of the Division Bench in the first of its order passed on 26.03.2018 followed by the other Division bench decisions is extracted hereunder.

3. Though notice was issued and the respondent is represented by a counsel, so far, no counter is filed. The order passed by the learned Single Judge is to the effect that since already a proposal has been forwarded by the fourth respondent therein, one post of Driver for one vehicle has to be created



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so as to regularize the services of the writ petitioners. So far as the direction is concerned, it appears that it is totally uncalled for because of the fact that nature of appointment has not been examined and it is only contractual in nature. Moreover, a mandamus cannot be issued in case of appointment and to regularization of services. However, the authorities may consider, if they find that it so warrants and do the needful in accordance with law. The order passed by the learned Single Judge is modified with the above observation and the writ appeals are disposed of. No costs. The connected miscellaneous petitions are closed.

The learned counsel would therefore submit that the relief as prayed for is no more res integra and implore this Court to allow these writ petitions.

18. In the light of the repeated decisions of this Court, no further perspective needed to be added by this Court on the subject matter of consideration. This Court is in complete agreement with the submissions made by the learned counsel for the petitioners. The decisions as cited above have taken consistent view both by the learned single Judge as well as the Division Bench is that the NMR, adhoc or temporary employees engaged for a longer period of time continuously are to be regularised by sanctioning of posts, if there are no sanctioned posts available. This Court even considered the case of adhoc employees, not sponsored by employment exchange, directed the Government to regularise their service on the premise, their services having been extracted continuously for long years.

19. It is not the case of the respondents herein that the petitioners services were not required at all. The very fact their services have been engaged for more than a decade continuously is a reflective of the fact of the need of their services by the respondent panchayat. Moreover, after introduction of the modern Solid Waste Management Scheme all over the State from the Panchayat level, there will be more need of Tractor Drivers for proper implementation of the Scheme. In such circumstances, it is unfair and inequitable for the respondents to plead the nature of employment of the petitioners being contractual and therefore, they are not entitled to the benefit of regularisation.

20. It is needles to mention that the Government have benevolently come up with several schemes for regularisation of employees in various Departments and issued Orders in that regard from time to time acceding to the request of regularisation of several hundred NMRs adhoc employees. When



such benevolence and grace has been shown to the employees in the other wings of the Department, as these petitioners have also been employed for more than a decade and whose hard toil has been extracted by the respondents, it may not be fair on the part of the respondents to oppose the grant of relief to these petitioners.

21. Moreover, engaging the petitioners on contract basis for an indefinite period of time continuously and then repudiate their claim for regularisation is a reflection of barren mindset on the part of the jaded administration. The fall out of such mindset invariably result in putting up stereo-type opposition to the grant of relief of regularisation to the poor employees, who eke out their measly livelihood, forced to live on the edge for years together in not knowing their future, has in store for them. To put the employment of scores of employees for years together on the tenterhooks is opposed to the constitutional values namely fair play, equity, good conscience and justice. The Government being a model employer, cannot be allowed to justify its exploitation of the despairing employees, on the ground their employment is irregular or temporary, adhoc etc. Such negative plea is not particularly available after employing them continuously for longer duration. If such plea were to be entertained, it would be a tacit approval of the exploitative nature of employment resorted to by the Government for decades under one pretext or the other.

22. At the end of the day, whatever be the reasons, the fact of the matter is that these petitioners have been continuously employed for more than a decade and by that very fact, the claim of the petitioners is to be considered favourably, without any reservation from the respondents. No doubt that as stated above, the Government had been benevolent in the past by regularising scores of NMR, adhoc employees though its policy decision ameliorating the working conditions of its employees. But the Government must ensure that such affirmative policy action ought to permeate to all levels of employment and administration, so that some section of despairing employees agonising wait for their employment security attains its fruition forthwith.

23. Besides the ratio laid down in all the decisions as stated supra and the directions given therein squarely apply to the factual matrix of this case and denial of the claim of the petitioners would only result in hostile discrimination, thus, would amount to offending Articles 14 and 16 of the Constitution of India.

24. For the above reasons, these Writ Petitions are allowed and the impugned orders passed by the 4th respondent in Na.Ka.No.466/2016 dated 13.09.2019, Na.Ka.No.164/2011 dated



13.09.2019, Na.Ka.No.85/2019 dated 16.09.2019, Na.Ka.No.142/2018 dated 16.09.2019, Na.Ka.No.334/2018 dated 16.09.2019, Na.Ka.No.522/2018 dated 16.09.2019 & Na.Ka.No.98/2018 dated 02.05.2019 respectively are set aside.

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25. The respondents are directed to initiate suitable action towards regularisation of the services of the petitioners herein by sanctioning of regular posts, if not already sanctioned as Tractor Drivers from the date of their initial appointment, in the 4th respondent Panchayat.

26. The respondents/ competent authority are directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order.

27. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Director of Municipal Administration,
Chepauk, Chennai-600 005.
3. The Executive Officer,
Jambai Town Panchayat,
Erode District.
4. The Executive Officer,
Vaniputhur Town Panchayat,
Erode District.
5. The Executive Officer,
Appakoodal Town Panchayat,
Erode District.



6. The Executive Officer,
Chenna Samuthiram Town Panchayat,
Erode District.

7. The Executive Officer,
P.Mettupalayam Town Panchayat,
Erode District.

8. The Executive Officer,
Kanjikovil Town Panchayat,
Erode District.

9. The Executive Officer,
Koogalur Town Panchayat,
Erode District.

10. The Executive Officer,
Arachalur Town Panchayat, Erode District.

11. The Director of Town Panchayats
Directorate of Town Panchayats,
Kuralagam
Chennai.

+7cc to Mr.G.Thalalmutharasu, Advocate, S.R.No.17662
+1cc to the Government Pleader, S.R.No.18148

W.P.Nos.29068, 29072, 29074, 29078,
29081, 29084 & 29087 of 2019

MP(CO)
SB(28/03/2022)