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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2022

PRONOUNCED ON : 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.14199, 26778 & 27296 of 2017
and W.M.P.No.15389 of 2017

W.P.No.14199 of 2017

G.Arjunan

..Petitioner

..vs.

1. The Secretart of TamilNadu,
Rep.by the Secretary to Government,
School Education Department,
Secretariat, Chennai-9.

2. The Director of School Education,
College Road, Chennai-6.

3. The District Educational Officer,
Erode District, Erode.

4. Magajhana Higher Secondary School,
Erode District, Erode.

..Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for records pertaining to the proceedings of the 1st respondent in Government letter No.26873/Ne.Va.3(2)/2015-5 dated 10.03.2017 and quash the same as illegal, incompetent and ultravires and to direct the respondents to regularize the petitioner service with effect from the date of completion of 10 years of service as done in the case of the other petitioners in W.P.No.29412 of 2010 dated 23.12.2010 with all monetary and service benefits or in the light of the order in Rev.Appl.281 of 2014 in W.P.No.13162 of 2013 dated 08.12.2014 and G.O.Ms.No.653 dated 07.08.2009 and G.O.Ms.No.385 dated 01.10.2010 .



W.P.No.26778 of 2017

P.Muthukumaran

..Petitioner

vs.

1. The Secretart of TamilNadu,
Rep.by the Secretary to Government,
School Education Department, (R1)
Secretariat, Chennai-9.
2. The Director of Elementary Education,
College Road, Chennai-06.
3. The District Elementary Educational Officer,
Villupuram District,Villupuram.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for records pertaining to the proceedings in Na.Ka.No.2909/A1/2013 dated 08.08.2017 on the file of the 3rd respondent and quash the same and consequently direct the respondents to regularize the petitioner's service with all monetary benefits.

W.P.No.27296 of 2017

Kaliammal @ Kalia

..Petitioner

vs.

1. The Secretart of TamilNadu,
Rep.by the Secretary to Government,
School Education Department,
Secretariat, Chennai-9.
2. The Director of School Education,
College Road, Chennai-6.
3. The District Educational Officer,
Erode District, Erode.

..Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for records pertaining to the proceedings of the 3rd Respondent in Na.Ka.No.3179/A3/2015 dated 24.08.2017 and quash the same as illegal, incompetent and ultravirus and to direct the respondents to regularize the petitioner service as done in the case of the other petitioners in W.P.No.29412 of 2010 dated 23.12.2010 with all monetary and service benefits in the light of the order in Rev.Appl.281 of 2014 in W.P.No.13162



of 2013 datd 08.12.2014 and G.O.Ms.No.653 dated 07.08.2009 and G.O.Ms.No.385 dated 01.10.2010.

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For Petitioners : Mr.R.Singaravelan, SC for
Mr.R.Jayaprakash (in all W.Ps.)

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.
(in all W.Ps.)

C O M M O N O R D E R

By this common order, all these Writ Petitions are being disposed. These Writ Petitions have been filed by the respective petitioners for the following relief :-

W.P.No.14199 of 2017	W.P.No.26778 of 2017	W.P.No.27296 of 2017
Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for records pertaining to the proceedings of the 1 st respondent in Government letter No.26873/Ne.Va.392)/2005-5 dated 10.03.2017 and quash the same and to direct the respondents to regularize the petitioner service with effect from the date of completion of 10 years of service as done in the case of the other petitioners in W.P.No.29412 of 2010 dated 23.12.2010 with all monetary and service benefits or in the light of the order in Rev.Appl.281 of 2014 in W.P.No.13162 of 2013 dated 08.12.2014 and G.O.Ms.No.653 dated 07.08.2009 and G.O.Ms.No.385 dated 01.10.2010.	Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for records pertaining to the proceedings in Na.Ka.No.2909/A1/2013 dated 08.08.2017 on the file of the 3 rd respondent and quash the same and consequently direct the respondents to regularize the petitioner's service with all monetary benefits.	Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for records pertaining to the proceedings in Na.Ka.No.3179/A3/2015 dated 24.08.2017 and quash the same and to direct the respondents to regularize the petitioner service as done in the case of the other petitioners in W.P.No.29412 of 2010 dated 23.12.2010 with all monetary and service benefits in the light of the order in Rev.Appl.281 of 2014 in W.P.No.13162 of 2013 datd 08.12.2014 and G.O.Ms.No.653 dated 07.08.2009 and G.O.Ms.No.385 dated 01.10.2010.



2. These petitioners were appointed on various dates as Part Time Scavengers and as Part Time Sweeper by the Appointing Authority of the schools as detailed below:-

SI.No.	W.P.No	Name	Date of Appointment	Appointing Authority	Approving Authority	Post
1	14199/17	G.Arjunan	01.07.1993		District Educational Officer (3 rd Respondent)	Part Time Scavenger
2	26778/17	P.Muthukumar	13.12.1993	Head Master	Assistant Educational Officer	Part Time Sweeper
3	27296/17	Kaliammal @ Kalia	01.04.1995	School Committee	District Educational Officer (3 rd Respondent)	Part Time Scavenger

3. The petitioner in W.P.No.26778 of 2017 along with four other persons had earlier filed W.P.No.15406 of 2015. The petitioner was the fourth petitioner in the said Writ Petition. In the said Writ Petition, it was stated that the petitioner was appointed as a Part Time Sweeper in Panchayat Union Middle School, Andarayanallur, Thiruvannainallur Panchayat Union, Thirukovilur Taluk, Villupuram District.

4. The said Writ Petition was disposed by directing the respondents to grant the benefit of G.O.Ms.No.385, Finance Department, dated 01.10.2010 to the petitioners in the light of the order passed in W.P.No.33950 of 2014, within a period of twelve weeks from the date of receipt of a copy of the said order. In the said Writ Petition, it was held as follows:-

"3. Initially, the petitioners sought full time scale of pay based on G.O.Ms.No.22 dated 28.02.2006. The issue was taken before the Hon'ble Supreme Court. The Supreme Court held



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that part time employees cannot seek full time scale of pay.

4. In such circumstances, the petitioners have come up with a plea to grant them scale of pay as applicable to part time employees as provided in G.O.Ms.No.234 Finance (Pay Cell) Department, dated 01.06.2009, G.O.Ms.No.653 Home Department, dated 07.08.2009 and G.O.Ms.No.385 Finance Department, dated 01.10.2010. In the said Government Orders, the Government granted time scale of pay of Rs.1300- 3000+Rs.300/- to Part Time Sweepers.

5. The learned counsel for the petitioners would submit that the same benefit should also be extended to the petitioners. The learned counsel also brought to the notice of this Court the order dated 19.12.2014 made in W.P.No.33950 of 2014 granting similar benefit to the petitioner therein.

6. In view of the above, the writ petition is disposed of by directing the respondents to grant the benefit to the petitioners as provided in G.O.Ms.No.385 Finance Department, dated 01.10.2010 and in the light of the order dated 19.12.2014 passed in W.P.No.33950 of 2014, within a period of 12 weeks from the date of receipt of a copy of this order. No costs."

5. The aforesaid order was passed in the light of the order dated 08.12.2014 in Rev.Appln.No.281 of 2014 in W.P.No.13162 of 2013. The operative portion of the said order reads as under:-

"4. As contended by the learned counsel for the review petitioners, the periodical increase in pay as contemplated under G.O.Ms.No.234, Finance(Pay Cell) Department, dated 01.06.2009 relates to the part time employees on consolidated pay and that would redress the grievance of the Part Time employees to some extent. It is now well settled that a part time employee cannot claim the scale of the full time employee. But the part time employee is entitled for the benefit of periodical increase in pay as given by the Government on par with others in those categories. Therefore, they are entitled to the benefit of increase in pay periodically as provided in G.O.Ms.No.234, Finance (Pay Cell) Department dated 01.06.2009.



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5.If the matter rests there, then, there will be no difficulty. But the Government issued another order in G.O.Ms.No.385, Finance (Salary) Department, dated 01.10.2010 granting certain benefits to the part time employees. It is relevant to note that G.O.Ms.No.234, Finance (Salary) Department, is referred to therein. G.O.Ms.No.385 states that the part time employees will be given a time scale of pay of Rs.1300-3000 + Rs.300 Grade Pay and also the corresponding Dearness Allowance. It is also stated that whenever there is an increase in Dearness Allowance, the same will also be given to these employees. It also contemplates, annual increment at certain percentage of the basic pay and grade pay.

6.In view of the said Government Order, I am of the view that the writ petitioner is entitled to the benefit of pay fixation and other benefits as given in G.O.Ms.No.385, Finance (Salary) Department, dated 01.10.2010. Hence, the Review Petitioners are bound to pay the benefits as provided in G.O.Ms.No.385.

7.At this stage, the learned counsel for the writ petitioner has submitted that unless the Government has passed appropriate order granting the benefit as provided under G.O.Ms.No.385, the respondents 2 to 4 in the Education Department cannot give the benefit straight away basing on G.O.Ms.No.385.

8.Therefore, the District Educational Officer, Vellore District, third petitioner in the Review Petition is directed to send proposal granting scale of pay to the writ petitioner as per G.O.Ms.No.385 referred to above to the first respondent, namely, Principal Secretary to Government, School Education Department, through the second respondent, to grant the benefit as per G.O.Ms.No.385, within a period of one month from the date of receipt of a copy of this order, so far as the writ petitioner is concerned and on receipt of such proposal, the first petitioner in the review petition is directed to pass appropriate orders granting the scale of 1300-3000 + Rs.300/- Grade Pay, if necessary after getting concurrence from other departments, with



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arrears, within a period of three months thereafter.

9. At this stage, the learned counsel for the writ petitioner has also brought to my notice G.O.Ms.No.653, Home Department, dated 07.08.2009, wherein all the part-time sweepers numbering 1149 in Home Department were granted the time scale of pay i.e. Rs.1300- 3000 + Rs.300/- Grade Pay.

10. If it is so, I am of the view that the sweepers employed in other departments cannot be denied the similar benefit, otherwise, it would amount to violation of Article 14 of the Constitution of India.

6. As far as the petitioner in W.P.No.27296 of 2017 and the petitioner in W.P.No.14199 of 2017 are concerned, these petitioners had earlier filed W.P.No.29412 of 2010.

7. These petitioners were at Sl.No.58 & 64 respectively. The aforesaid Writ Petition was filed by above 74 different persons. The said Writ Petition was allowed by this Court by an order dated 23.12.2010. The relevant portion of the said order, reads as under:-

"The petitioners are all sweepers / sanitary workers working in the Educational Department on daily wages for the past 20 years. According to them, they are entitled to regularization of services by virtue of G.O.Ms.No.505, Finance (Ka.Ka.2) Department, dated 14.10.2009 and other government orders.

2. It is seen that various individuals similarly placed as that of the petitioners have also moved this Court by filing various writ petitions, including W.P.No.18126 of 2008 (M.Kumar v. The Director of School Education and others), wherein N.PaulVasanthakumar J., by order dated 29.7.2008, has ultimately held as follows:

"5. In view of the above, this writ petition is allowed with a direction to the 2nd respondent to regularise the services of the petitioner on her completion of ten years of service with time scale of pay. The regularisation order is directed to be passed by the 2nd respondent within four weeks from the



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date of receipt of a copy of this order and arrears of salary payable to the petitioner, pursuant to the regularisation shall be paid to the petitioner within four weeks thereafter."

thereby directing the respondents to regularise the services of the petitioner therein by passing appropriate orders, after verifying whether the petitioner therein has worked for more than ten years.

3. When a similar case was taken up on appeal by the education authorities in W.A.No.1520 of 2010 (The Director of School Education and others v. P.Subramani, in the judgment dated 25.10.2010, a Division Bench consisting of Eliphe Dharma Rao and K.K.Sasitharan, JJ., while dismissing the appeal, have held that in G.O.Ms.No.22, dated 28.2.2006, there is no clause stating that the regularisation should be from the date of completion of ten years and therefore, the respondent therein, who was the writ petitioner, was entitled to regularisation of services and dismissed the writ appeal.

4. The case of the petitioners in this writ petition is that they are also entitled to the benefits conferred by this Court in the writ petition and the writ appeal. However, the learned Government Advocate would submit that even though they are entitled to the benefit of the said order of this Court, if the petitioners make individual representations, the same would be considered by the respondents in the light of the judgment of the Division Bench of this Court and the various government orders.

In such view of the matter, the writ petition is disposed with a direction against the petitioners to send individual representations to the second respondent within one week from the date of receipt of a copy of this order and



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thereafter, the second respondent shall consider the representations of the petitioners in the light of the judgment of the Division Bench of this Court in The Director of School Education and others v. P.Subramani, Supra; the order of this Court in M.Kumar v. The Director of School Education and others supra; and taking note of the government orders which enable the regularisation of services where the person has been in employment for long period, and pass appropriate orders within eight weeks. No costs. Consequently, M.P.No.1 of 2010 is closed.

8.After the aforesaid orders came to be passed, the respective petitioners have sent their representations to the second respondent. Meanwhile, G.O.(Ms.) No.111, School Education (R-1) Department, dated 09.05.2012 was issued.

9.By a communication dated 15.03.2013, the request of the petitioner in W.P.No.27296 of 2021 was rejected by the second respondent stating that as there was no acceptance of full time employment in the school in which the petitioner was working but as a part time employer and the G.Os., Order dated 23.12.2010 of this Court in W.P.No.29412 of 2010 and Rules and regulations cannot be implemented to the case of the petitioner.

10.Under these circumstances, a representation dated 11.06.2014 was sent by the petitioner in W.P.No.14199 of 2017 to the first respondent. During the interregnum, an order came to be passed by this Court on 08.12.2014 in Rev.Appl.No.281 of 2014 in W.P.No.13162 of 2013. Relevant portion of the said order has been already extracted above.

11.In the light of the above, petitioners in W.P.Nos.14199 & 27296 of 2017 have sent their representation dated 15.04.2015, 19.05.2016 respectively. The petitioner in W.P.No.14199 of 2017 had thereafter filed W.P.No.18114 of 2015 to consider his representation dated 15.04.2015 which was disposed by an order dated 24.06.2015 by directing the respondents to consider the representation of the petitioner.

12.Pursuant to the above direction, the impugned order dated 10.03.2017 has been passed which is impugned in W.P.No.14199 of 2017.

13.Similarly, the petitioner in W.P.No.27296 of 2017 had filed W.P.No.11627 of 2015 against the order dated 15.03.2013



passed by the second respondent. The representation of the said petitioner which was also disposed by an order dated 26.05.2016 by directing the respondents to consider his representation dated 19.05.2016.

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14. Pursuant to the above direction, the impugned order dated 24.08.2017 has been passed which is impugned in W.P.No.27296 of 2017. In these writ petitions, these petitioners have sought for regularization of their services in the light of the G.O.Ms.No.505, Finance (Ka.Ka.2) Department, dated 14.10.2009.

15. As far as the petitioner in W.P.No.26778 of 2017 is concerned, the petitioner along with other four persons had filed W.P.No.15406 of 2015 for a direction to the respondents to regularise the service of him in the light of G.O.Ms.No.653, dated 07.08.2009 and the order dated 08.12.2014 of this Court in Rev.Appln.No.281 of 2014 in W.P.No.13162 of 2013. The petitioner was at Sl.No.4.

16. The said Writ Petition was disposed by an order dated 02.06.2015 by directing the respondents to grant the benefit to the petitioner as provided in G.O.Ms.No.385, Finance Department, dated 01.10.2010 and in the light of the order dated 19.12.2014 passed in W.P.No.33950 of 2014, within a period of twelve weeks from the date of receipt of a copy of this order. Thereafter, the impugned order dated 08.08.2017 has been passed which is impugned in W.P.No.26778 of 2017 rejecting the request of the petitioner for regularizing his services.

17. In all the impugned orders, the reasons given for rejecting the request of the petitioners is in the light of the decision of the Hon'ble Supreme Court in Secretary to Government, School Education Department, Chennai Vs. Govindasamy and Others, (2014) 4 SCC 769. The Hon'ble Supreme Court in the above case referred to the earlier decision in State of Rajasthan Vs. Daya Lal, (2011) 2 SCC 429, wherein, certain guidelines were issued which read as under:-

12. We may at the outset refer to the following well-settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(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



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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



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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.

[See State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753], M. Raja v. CEERI Educational Society [(2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334], S.C. Chandra v. State of Jharkhand [(2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897], Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [(2007) 15 SCC 680 : (2010) 1 SCC (L&S) 742] and Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .]

18. Ultimately, the Hon'ble Supreme Court in Govindasamy case referred to supra has held that the cases are covered by the above Clauses (ii), (iv) and (v) to Paragraph 12 of the Judgment in Daya Lal case referred to supra.

19. Appearing on behalf of the petitioners in the respective Writ Petitions, the learned Senior Counsel Mr. R. Singaravelan has referred to Paragraph Nos. 32 & 33 from the decision of the Hon'ble Supreme Court in Delhi Jal Board Vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers, (2011) 8 SCC 568.

20. The learned Senior Counsel for the petitioner submits that these petitioners were appointed as Scavengers and Sweeper by the Head Master and the Parent Teachers Association who are the members of the School Committee or Appointing Authority under the Recruitment Rules and Regulations and the Government Orders passed by the Government of Tamil Nadu.

21. It is submitted that in the State of Tamil Nadu, the Parent Teachers Association is one of the member of the School Committee of a Private School as per Rule 12 of the Tamil Nadu Recognition of Private Schools (Regulations) Rules, 1974.

22. It is also submitted that though the petitioners were



appointed as part time Scavengers and Sweeper in the schools, the work carried out by these petitioners is for the entire day. It is submitted that these petitioners are required to report to the school long before normal school hours and keep the school premises including toilet clean and in sanitized condition. It is submitted that the toilets in the schools are put to constant use and therefore the duty is performed right through the day.

23.It is submitted that the State has to accept the onus of regularizing the services of marginal workers of the society like petitioners who out of compulsion end up joining service on part time / regular basis as sweepers and scavengers and since the services of the petitioners have been used for a considerable period since 1993 and 1995, they were entitled to the benefit of Government Orders where the regularization has been made in the case of other person who were similarity placed as petitioners.

24.It is submitted that further Article 21-A of the Constitution of India has been enacted to ensure the right to primary education up to the age of 14 years and the right to education involves the right to clean the environment and the petitioners clearly have a important role in the above constitutional guarantee given to the children below the age of 14 years.

25.It is further submitted that the schools are required to be kept clean and in a sanitized condition every day and it is misnomer to label the petitioners as part time Scavengers and Sweeper. It is submitted that dignity of labour also requires the petitioners be paid salary on par with those regular employees who services were regularized considering the fact that the petitioners having continued services since 1993 and 1995. It is submitted that the petitioners are entitled to regularize in terms of the Government Orders which has been passed in the past.

26.It is submitted that earlier G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006 was issued, as per which, the Government of Tamil Nadu decided to regularize the service of the employees who have completed more than 10 years of services.

27.It is submitted that the decision of the Hon'ble Supreme Court in State of Karnataka Vs. Umadevi, (2006) 4 SCC 1, does not have an universal application and cannot come into the way of right to be regularized in the services.



28. It is further submitted that the Hon'ble Supreme Court in SheoNarain Nagar Vs. State of U.P., (2018) 13 SCC 432 has distinguished the decision of the Hon'ble Supreme Court in State of Karnataka Vs. Umadevi, (2006) 4 SCC 1 as follows:-

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"7. When we consider the prevailing scenario, it is painful to note that the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new device of making appointment on contract basis has been adopted, employment is offered on daily-wage basis, etc. in exploitative forms. This situation was not envisaged by Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the observation that Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularising the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Articles 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakarav. Union of India [D.S. Nakarav. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : AIR 1983 SC 130] , from cradle to grave. In heydays of



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life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Umadevi (3) [State of Karnataka v.Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . Thus, the time has come to stop the situation where Umadevi (3) [State of Karnataka v.Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Umadevi (3) [State of Karnataka v.Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi (3) [State of Karnataka v.Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] .

8.Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularisation of the appellants. However, regularisation was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2-10-2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time



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when order was passed. Thus, the submission raised by the learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms".

29.It is submitted that the decision of the Hon'ble Supreme Court in Umadevi case referred to supra was distinguished. It is submitted that said decision has no universal application as observed in the Paragraph No.7 of the above decision. It is submitted that the decision of the Hon'ble Supreme Court in Uma Devi case is confined to employment through and the authorities were therefore asked to frame an one time scheme for the regularisation of the existing employees and that the employees who have put in more than 10 years of service should be considered provided that their appointment is not patently illegal.

30.The learned Senior Counsel for the petitioner further distinguished the decision of the Hon'ble Supreme Court in Govindasamy case referred to supra. It is submitted that the said decision is based on the concession given by the learned Senior Counsel who appeared for the State of Tamil Nadu and therefore, the Hon'ble Supreme Court following one of its earlier decision held that part time employees were entitled for regularization and persons who have already been regularized could not be disturbed at all.

31.It is submitted that the petitioners lack literacy and therefore could not approach the Court earlier to regularize their service and therefore the such views cannot be worked out against the petitioners.

32.It is further submitted that even after the Hon'ble Supreme Court rendered the decision in Govindasamy case referred to supra, the decision of this Court was challenged in State of Tamil Nadu and another Vs.A.Singamuth, (2017) 4 SCC 113.

33.The learned Senior Counsel for the petitioners also referred to the decision of the Hon'ble Supreme Court in Jivanlal vs. Pravin Krishna, Principal Secretary and others, (2016) 15 SCC 747 and to another decision of the Division Bench of this Court in Chief Educational Officer and Others Vs. K.Perumal, 2018 SCC OnLine Mad 10093, wherein, the law in the matter of regularization has been detailed considered.

34.The learned Senior Counsel also drawn attention to the following Government Orders:-



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i.G.O.Ms.No.46, School Education (VE) Department, dated 12.09.2006.

ii.G.O.Ms.No.35, School Education Department, dated 09.02.2007.

iii.G.O.Ms.No.247, School Education Department, dated 03.10.2012.

iv.G.O.Ms.No.505, Finance Department, dated 14.10.2009.

v.G.O.Ms.No.22, Personnel and Administrative (Reforms) Department, dated 28.02.2006.

vi. G.O.Ms.No.47, School Education Department, dated 02.03.2012".

35.It is submitted that not only the services of the persons appointed by the Parent Teacher Association were regularized but also the services of these daily wage workers but also contingent employees who completed 10 years of service was regularized by relaxing the following Rules:-

i. Rule 3A - Reservation in the matter of appointment

ii. Rule 4A - Method of Recruitment

iii. Rule 5(1) - Age

iv.Rule 5(2) - Educational Qualifications."

36.It is submitted that this was also considered by the Division Bench of this Court while rendering its decision in Home Secretary, St. George Fort and Others Vs. G.Sugumaran, 2019 SCC OnLine Mad 33544. The learned Senior Counsel also referred to the following decisions of the Hon'ble Supreme Court:-

i.SheoNarain Nagar Vs. State of Uttar Pradesh, (2018) 13 SCC 432.

ii.NetramSahu Vs. State of Chattisgarh, (2018) 5 SCC 430.

iii.Narendra Kumar Towaro and Others Vs. State of Jharkhand, (2018) 8 SCC 238.

iv.Union of India Vs. Sant Lal and others, in Civil Appeal Nos.175 & 176 of 2019.

v.Rajnish Kumar and others Vs. State of U.P., (2019) 17 SCC 648."

37.Defending the impugned order rejecting the request of the petitioner, the learned Government Advocate appearing for the respondents referred to few passages from the counter affidavit



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filed in W.P.No.26778 of 2017 which was being adopted in the other Writ Petitions also. In the said counter affidavit, the respondents have stated as under:-

"The petitioner Mr.P.Muthukumaran was a resident of Andarayanallur Village and employed as a part time sweeper in the Panchayat Union Middle School, Andarayanallur in Tiruvennainallur Block in Villupuram District. The petitioner was appointed by the Assistant Elementary Educational Officer, Thiruvannainallur in Block in Villupuram District. The petitioner was appointed by the Assistant Elementary Educational Officer, Thiruvannainallur in the year 1993. But the appointment was not got approved by the District Elementary Educational Officer, Villupuram. It is further submitted that the appointment of the petitioner was not properly following the rules and got approved by the competent authority. Therefore G.O.Ms.No.385 Finance (Pay Cell) Department dated 01.10.2010 could not be applied in favour of the petitioner.

It is further stated that the appointment of the petitioner was only a part -time sweeper and it cannot be treated on par with full time worker. He was not paid the admissible salary to the part- time sweepers then and there. He had filed W.P.No.8577 of 2014 before this Court to regularize his service. In the mean time, the petitioner along with four others filed W.P.No.15406 of 2016 and it was disposed on 02.06.2015 has directed the respondents to grant the benefit to the petitioners as provided in G.O.Ms.No.385 Finance Department dated 19.12.2014 passed in W.P.No.33950 of 2014, within a period of twelve weeks from the date of receipt of that order. The abovesaid W.P.No.8577 of 2014 and the same was dismissed on 10.03.2016. The 2nd respondent had issued proceedings to the 3rd respondent dated 03.08.2017 to pass orders in accordance with the orders of this Court to the petitioner. The third respondent had passed the following orders in his proceedings dated 07.08.2017:-

6.The Government Order No.385 Finance dated 01.10.2010 mentioned in the said Order of this



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Court clearly states that the special regular scale of pay is applicable only to those who were appointed under daily wages basis and consolidated pay. As the petitioner had served only as Part- time sweeper, hence the orders issued in that Government is not applicable to the petitioner. Further, the orders issued in G.O.Ms.No.653 Police Department dated 07.08.2009 is applicable to the Part-time Sweepers employed in the Police Department only. The said G.O could not applied to the part time sweepers employed in other departments. Further, W.P.No.33950 of 2014 dated 19.12.2014 in respect of one Tmt.N.Karuppayee, Part time Sweeper, the District Educational Officer, Sankagiri has passed orders rejecting the claim of the said person vide letter Na.Ka.No.5468/A3/2014 dated 09.03.2015. It is stated in the said order of the 3rd respondent that the conditions stipulated in the Government Orders G.O.Ms.No.22 Personnel and Administrative Reforms Department dated 27.06.2013 are applicable only the full time employees getting daily wages and consolidated pay and it could not be applied in respect of the part time sweepers. Further, the Hon'ble Supreme Court has passed the orders in SLP.Nos.5681-5684 of 2013 dated 21.02.2014, it is not feasible for the regularization of the part time sweepers and they have no right to claim the wages of the full time employees. Therefore, the claim of the petitioner is rejected".

38.I have considered the arguments advanced by the Senior Counsel for the petitioner and the Learned Government Advocate for the respondent. I have also produced the impugned order and government orders issued from time.

39.The respondents cannot be said to have satisfied its constitutional goal the impugned decision.These decisions militates against the Directive Principles of State Policy under Articles 38, Article 39 ,Article 41, Article 42 and 43 of the Constitution of India. They are reproduced below:



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Article 38

State to secure a social order for the promotion of welfare of the people.—

1. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

2 The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]

Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

[(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]



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Article 39

Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

[(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

Article 41

Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42

Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief.



Article 43

Article 43

Living wage, etc., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

40.The State has to be strived to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

41.The State also has to endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

42.Article 21 of the Constitution of India also assures right to life including right of dignity. To make right to life meaningful and effective, expansive interpretation has to be given to bring right to education, health, equal wages for equal work as fundamental rights.

43.Providing adequate means of livelihood for all the citizens and distribution of the material resources of the community for common welfare, enable the poor and marginalised section of the society is the constitutional duty of the State and to fulfil this basic needs of the citizen the state has to bring a Equality of opportunity and status.

44.This was the view expressed by the Division Bench of this Court in State of Tamil Nadu, Home Secretary St. George Fort and Others vs. G. Sugumaran,(2019)SCC Online 33544 The Division Bench of this Court held as under:-

79.True that the Hon'ble Supreme Court has laid down the above principle of law in the matter of employment, but at the same time, arbitrariness in applying the same yardstick, as done in the



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case of Vocational Instructors, is per se apparent. We are of the view that there is yet another aspect to consider, Social Justice, which the Government is constitutionally mandated to consider. On the aspect of social justice, let us consider what the Hon'ble Supreme Court, in DS. Nakarav.Union of India reported in(1983) 1 SCC 305 has observed in para 33 of the judgement:

"33. Recall at this stage the Preamble, the flood light illuminating the path to be pursued by the State to set up a Sovereign Socialist Secular Democratic Republic. Expression "socialist" was intentionally introduced in the Preamble by the Constitution (Forty-second amendment) Act, 1976. In the objects and reasons for amendment amongst other things, ushering in of socio-economic revolution was promised. The clarion call may be extracted:

"The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the public for some time....

It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism ... to make the directive principles more comprehensive..."

What does a Socialist Republic imply? Socialism is a much misunderstood word. Values determine contemporary socialism pure and simple. But it is not necessary at this stage to go into all its ramifications. The principal aim of a socialist State is to eliminate inequality in income and status and standards of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian socialism. During the formative years, socialism aims at providing all opportunities for pursuing the educational activity. For want of wherewithal or financial equipment the opportunity to be fully educated shall not be denied. Ordinarily, therefore, a



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socialist State provides for free education from primary to PhD but the pursuit must be by those who have the necessary intelligence quotient and not as in our society where a brainy young man coming from a poor family will not be able to prosecute the education for want of wherewithal while the ill equipped son or daughter of a well-to-do father will enter the portals of higher education and contribute to national wastage. After the education is completed, socialism aims at equality in pursuit of excellence in the chosen avocation without let or hindrance of caste, colour, sex or religion and with full opportunity to reach the top not thwarted by any considerations of status, social or otherwise. But even here the less equipped person shall be assured a decent minimum standard of life and exploitation in any form shall be eschewed. There will be equitable distribution of national cake and the worst off shall be treated in such a manner as to push them up the ladder. Then comes the old age in the life of everyone, be he a monarch or a mahatma, a worker or a pariah. The old age overtakes each one, death being the fulfilment of life providing freedom from bondage. But here socialism aims at providing an economic security to those who have rendered unto society what they were capable of doing when they were fully equipped with their mental and physical prowess. In the fall of life the State shall ensure to the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure, relieving the boredom and the humility of dependence in old age. This is what Article 41 aims when it enjoins the State to secure public assistance in old age, sickness and disablement. It was such a socialist State which the Preamble directs the centres of power - Legislative, Executive and Judiciary - to strive to set up. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society is a long march but during this journey to the fulfilment of goal every State action whenever taken must be directed, and must be so interpreted, as to take the society one step towards the goal."

80. In *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Bardere* reported in 1995 Supp (2) SCC 549 at



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paragraphs 12 and 14 the Hon'ble Supreme Court held as follows:

"Article 21 of the Constitution assures right to life. To make right to life meaningful and effective, this Court put up expansive interpretation and brought within its ambit right to education, health, speedy trial, equal wages for equal work as fundamental rights. Articles 14, 15 and 16 prohibit discrimination and accord equality. The Preamble to the Constitution as a socialist republic visualises to remove economic inequalities and to provide facilities and opportunities for decent standard of living and to protect the economic interests of the weaker segments of the society, in particular, Scheduled Castes i.e. Dalits and the Scheduled Tribes i.e. Tribes and to protect them from 'all forms of exploitations'. Many a day have come and gone after 26-1-1950 but no leaf is turned in the lives of the poor and the gap between the rich and the poor is gradually widening on the brink of being unbridgeable.

Providing adequate means of livelihood for all the citizens and distribution of the material resources of the community for common welfare, enable the poor, the Dalits and Tribes, to fulfil the basic needs to bring about a fundamental change in the structure of the Indian society which was divided by erecting impregnable walls of separation between the people on grounds of caste, sub-caste, creed, religion, race, language and sex. Equality of opportunity and status thereby would become the bedrocks for social integration. Economic empowerment thereby is the foundation to make equality of status, dignity of person and equal opportunity a truism. The core of the commitment of the Constitution to the social revolution through rule of law lies in effectuation of the fundamental rights and directive principles as supplementary and complementary to each other. The Preamble, fundamental rights and directive principles - the trinity - are the conscience of the Constitution. Political democracy has to be stable. Socio-economic democracy must take strong roots and should become a way of life. The State, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker



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Served for long years of service with meagre salary, and how they can be discriminated? Present Government which claims that they are following the mandate of the former Hon'ble Chief Minister has not explained in clear terms, as to why the sweepers, watchmen, attendants vis-a-vis teachers appointed by the Parent Teachers Association, should be discriminated.

95. Being a welfare State, to achieve the constitutional goals of Justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation, Government cannot discriminate sweepers, watchmen and other basic servants, for appointment, as against the sanctioned full time posts, in basic service.

96. Appellants have a duty to consider the grievance of the serving sweepers, watchmen, etc. working for a long time in schools, with their knowledge, by granting exemption from the applicability of the rules such as mode of recruitment, communal roster etc. as done in the case of Vocational Teachers, appointed by the Parents Teacher Association and appoint them in the sanctioned non-teaching posts on completion of 10 years of service, by applying G.O. Ms. No. 47 School Education (R1) Department, dated 2.3.2012 and the said exercise, shall be completed within two months from today. With the above directions, all the writ appeals and WASRs are dismissed. No costs. Consequently, the connected civil miscellaneous petitions are closed."

46. Though, the Hon'ble Supreme Court recently on 07.10.2021 in Union of India & Others v. IlmoDevi and another [2021 SCC OnLine SC 899] observed that part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and that there cannot be any permanent continuance of part-time temporary employees it has to be recalled that these part time employees have worked since the beginning of 1990s. Almost three decades have gone by.

47. To deny regularisation to these petitioners would be to



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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.

28. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

48. The Hon'ble Supreme Court while passing the above order however has not noted its earlier decision in *SheoNarain Nagar & Ors. v. State of Uttar Pradesh & Ors.*, [(2018) 13 SCC 432].

49. In *SheoNarain Nagar & Ors. v. State of Uttar Pradesh & Ors.*, [(2018) 13 SCC 432], the Hon'ble Supreme Court took note of 39(1)(d) of the Constitution of India and observed that as if they have no constitutional protection as envisaged in *D.S. Nakara v. Union of India* [D.S. Nakara v. Union of India, observed that "In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them



equals they require protection and cannot be dealt with arbitrarily.

50. The Hon'ble Supreme Court held that this kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. This passage is applicable to the facts of the present case with full force.

51. The Hon'ble Supreme Court has in SheoNarain Case has distinguished decision of the, Hon'ble Supreme Court in Uma Devi's case. This view was followed by the Hon'ble Supreme Court in Rajnish Kumar Mishra & Others vs. State of UP (2019) 17 SCC 648. In Para Nos.15, 18 and 19, it was observed as under:-

15. It is further to be noted that similarly circumstanced employees in the employment of the State of Uttar Pradesh, who were appointed on daily wages/contractual basis had approached the Allahabad High Court praying for regularisation of their services. The Single Judge had dismissed [Sarvesh Chandra Chaudhary v. State of U.P., 2017 SCC OnLine All 2911] the writ petitions which orders were affirmed by the Division Bench [Ravindra Pratap Singh v. State of U.P., 2018 SCC OnLine All 4013]. The said employees therein had approached this Court by way of Civil Appeal No. 18510 of 2017 [arising out of Special Leave Petition (Civil) No. 6183 of 2015] in SheoNarain Nagar [SheoNarain Nagar v. State of U.P., (2018) 13 SCC 432 : (2018) 2 SCC (L&S) 524]. It will be relevant to refer to the following observations of this Court in SheoNarain Nagar [SheoNarain Nagar v. State of U.P., (2018) 13 SCC 432 : (2018) 2 SCC (L&S) 524]: (SCC pp.436-37, para 9)

"9. ... The appellants were required to be appointed on regular basis as a one-time measure, as laid down in para 53 of Umadevi [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect from 2-10-2002, we direct that the services of the appellants be regularised from the said date i.e. 2-10-2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today."

18. In any case, we find that in view of the exception carved out in Umadevi [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] providing for one-time regularisation of



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employees who have completed 10 years or above; the parity of similarly circumstanced employees who have been granted benefit in SheoNarain Nagar [SheoNarain Nagar v. State of U.P., (2018) 13 SCC 432 : (2018) 2 SCC (L&S) 524] and the Rules amended in 2016 which provide a cut-off date of 31-12-2001, the appellants are also entitled for regularisation of their services.

19. In the result:

19.1. The appeals are allowed.

19.2. The judgment and order dated 14-9-2017 passed by the Single Judge of the High Court of Allahabad in Sarvesh Chandra Chaudhary v. State of U.P. [Sarvesh Chandra Chaudhary v. State of U.P., 2017 SCC OnLine All 2911] as well as the Division Bench of the said High Court dated 9-7-2018 in Ravindra Pratap Singh v. State of U.P. [Ravindra Pratap Singh v. State of U.P., 2018 SCC OnLine All 4013] are quashed and set aside.

19.3. The orders dated 16-8-2014 passed by the District Judge, Ambedkar Nagar are quashed and set aside and the consequential order of termination dated 23-9-2017 is also quashed and set aside.

19.4. The order dated 9-11-2012 passed by the District Judge, Ambedkar Nagar regularising the services of the appellants with effect from 1-6-2012 is upheld.

19.5. Consequentially, the termination of the appellants from their services is quashed and set aside and the appellants are directed to be reinstated forthwith with continuity in service for all the purposes including terminal benefits. However, in the facts and circumstance of the case, the appellants would not be entitled for back wages for the period during which they were out of employment.

52. In fact, it will be apt to refer to para 32 and 33 from the decision of the Hon'ble Supreme Court in Delhi Jal Board Vs National Campaign For Dignity and Rights of Sewarage and Allied Workers (2011) 8 SCC 568 wherein the Hon'ble Supreme Court observed as under:-

32. Given the option, no one would like to enter the manhole of sewage system for cleaning purposes, but there are people who are forced to undertake such hazardous jobs with the hope that at the end of the day they will be able to make



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some money and feed their family. They risk their lives for the comfort of others. Unfortunately, for last few decades, a substantial segment of the urban society has become insensitive to the plight of the poor and downtrodden including those, who, on account of sheer economic compulsions, undertake jobs/works which are inherently dangerous to life. People belonging to this segment do not want to understand why a person is made to enter a manhole without safety gears and proper equipments. They look the other way when the body of a worker who dies in the manhole is taken out with the help of ropes and cranes. In this scenario, the courts are not only entitled but are under constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life.

33. It will be a tragic and sad day when the superior courts will shut their doors for those, who without any motive for personal gain or other extraneous reasons, come forward to seek protection and enforcement of the legal and constitutional rights of the poor, downtrodden and disadvantaged sections of the society. If the system can devote hours, days and months to hear the elitist class of eminent advocates who are engaged by those who are accused of evading payment of taxes and duties or otherwise causing loss to public exchequer or who are accused of committing heinous crimes like murder, rape, dowry death, kidnapping, abduction and even acts of terrorism or who come forward with the grievance that their fundamental right to equality has been violated by the State and/or its agencies/instrumentalities in contractual matters, some time can always be devoted for hearing the grievance of vast majority of silent sufferers whose cause is espoused by bodies like Respondent 1.

53. In Narendra Kumar Tiwarai and Others Vs. State of Jharkhand and Others (2018) 8 SCC 238, again the Hon'ble Supreme Court distinguished Uma Devi Case. It was held as under:-

"7. The purpose and intent of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on



those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] and Kesari [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] sought to avoid.

8.If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15-11-2000 and the cut-off date was fixed as 10-4-2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10.Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on



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the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct, etc."

54. In Union of India & Others vs. Sand Lal & ORS. ETC. ETC., Civil Appeal Nos. 175 & 176 of 2019, the Hon'ble Supreme Court held as under:

"10. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in Umadevi, will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/ad hoc/casual 9 (2010) 9 SCC 247 employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi, are so considered.

11. The object behind the said direction in para 53 of Umadevi is two-fold. First is to ensure that those who have put in more than



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ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily- wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi as a one-time measure." (Emphasis supplied) The judgement of this Court in Uma Devi does not preclude the claims of employees who seek regularization after the exercise has been undertaken with respect to some employees, provided that the said employees have completed the years of service as mandated by Uma Devi. The ruling casts an obligation on the State and its instrumentalities to grant a fair opportunity of regularization to all such employees which are entitled according to the mandate under Uma Devi and ensure that the benefit is not conferred on a limited few. The subsequent regularization of employees who have completed the requisite period of service is to be considered as a continuation of the one-time exercise."



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55. Though the Hon'ble Supreme Court in State of Tamil Nadu Through Secretary to Government., Commercial Taxes and Registration Department, Secretary and another vs. A.Singamuthu, (2017) 4 SCC 113, held as under :-

"8. Part-time or casual employment is meant to serve the exigencies of administration. It is a settled principle of law that continuance in service for long period on part-time or temporary basis confers no right to seek regularisation in service. The person who is engaged on temporary or casual basis is well aware of the nature of his employment and he consciously accepted the same at the time of seeking employment. Generally, while directing that temporary or part-time appointments be regularised or made permanent, the courts are swayed by the long period of service rendered by the employees. However, this may not be always a correct approach to adopt especially when the scheme of regularization is missing from the rule book and regularization casts huge financial implications on public exchequer."

56. It is to be noticed that the Government itself has taken a stand by regularizing the service those who had completed more than ten years of service on consolidated basis.

57. As far as the writ petition in W.P.No.26778 of 2017 is concerned, (Petitioner, P.Muthukumaran), the petitioner had earlier filed W.P.No.15406 of 2015 dated 02.06.2015 which came to be disposed in the light of the order dated 19.12.2014 in W.P.No.33950 of 2014.

58. In the impugned orders, rejecting the request of the said petitioner, the reasons given are that the petitioner was not working in the post recognized by the Government and that the petitioner in W.P.No.33950 of 2014 (Mrs.N.Karupayee) was not entitled to herself to be appointed pursuant to the order dated 19.12.2014.

59. The impugned order dated 08.08.2017, the third respondent (District Elementary Educational Officer) has referred to G.O.Ms.No.385 of 2010 Finance (Salary) Department dated 01.10.2010 further state that the petitioner cannot be appointed by the Government.

60. As far as the petitioner in W.P.No.27296 of 2017 is concerned, the petitioner earlier filed W.P.No.11627 of 2015 which came to be disposed by order dated 26.05.2016. In the impugned order dated 24.08.2017, the respondents has referred to G.O.Ms.No.653, dated 07.08.2009 and G.O.Ms.No.385 dated



01.10.2010 to state that the petitioner is not entitled to benefit of the above G.O. Similarly, it has been held that the order dated 08.12.2014 in Rev.Appl.No.281 of 2014 in W.P.No.11627 of 2015 will not apply.

61.As far as the petitioner in W.P.No.14199 of 2017 is concerned, the petitioner earlier filed which came to be disposed by an order dated 24.06.2015. In the impugned order dated 10.03.2017, the respondents have referred to G.O.Ms.No.653, dated 07.08.2009 and G.O.Ms.No.385 dated 01.10.2010 to state that the petitioner is not entitled to benefit of the above G.O. Similarly, it has been held that the order dated 08.12.2014 in Rev.Appl.No.281 of 2014 in W.P.No.11627 of 2015 will not apply.

62. As per G.O.Ms.No.22, Personnel and Administrative Reforms (F)Department dated 28.02.2006, wherein it is stated that only full time daily wage employees were directed to be regularized on completion of 10 years of continuous service as on 01.01.2006 and G.O.Ms.No.47 School Education (R1) Department, dated 02.03.2012 wherein it is stated that as the surrendered non teaching posts of 5014 of basic service is not been filled up for along time on considering this aspect, now intended to create the posts of Sweeper/watchman and equivalent to 5000 are being dissolved as it has been orders, as there is no other vacant posts.

63.As per the G.O.Ms.No.385 dated 1.10.2010 and G.O.Ms.No.653 dated 7.08.2009, 13162/2013 and this Court has passed the order in Review Appeal No. 281/2014 in W.P.No.13162 of 2013 does not match. Moreover, the petitioner was working as part time employee in Government aided School. As per the judgment of the Hon'ble Supreme Court in Civil Appeal No.2726-2729/2014 "Sirupanmaiylatha Arulneri Thirupani Mandram" Government Aided Higher Secondary school, appointed as Part Time Sweeper from 01.04.1995 for ten years of service and after expiry of the aforesaid period of appointment, the petitioners requesting for Regularising of Service cannot be considered in W.P.Nos.27296 & 14199 of 2017.

64.However, it is noticed that appointment of non teaching as also teaching staffs in private schools are only by the appointing authorities under the provisions of the Tamil Nadu Recognised (Regulation) Private School Act, 1973 and that the Government through the Education Department merely approves the appointment against sanctioned post. Therefore, the defence in the impugned order, the petitioner was not appointed by the Government cannot be countenanced.

65. That apart, vide G.O.Ms.No.385 dated 01.10.2010 and G.O.Ms.No.653 dated 07.08.2019, the same benefit given to the persons who were similarly placed. Therefore, it cannot be said that the petitioners are not entitled for similar relief.



Whether the police department or school, labour, skill, time and age can be allowed to be exploited. This was indeed frowned upon the Hon'ble Supreme Court in SheoNarain Nagar and Others vs. State of Uttar Pradesh and another (2018) 13 SCC 432.

66. The Court further held that the decision in Umadevi case cannot be interpreted manner in which the Hon'ble Supreme Court was interpreting. The spirit of non-discrimination and equity runs through the decisions in State of Karnataka v. Umadevi, (2006) 4 SCC 1 and State of Karnataka vs. M.L.Kesari, (2010) 9 SCC 247 and Narendra Kumar Tiwari vs. State of Jharkhand, (2018) 8 SCC 238. The Hon'ble Supreme Court held that this is nothing but a form of exploitation of the employees by not giving them the benefits of regularization and by placing the sword of Damocles over their head.

67. The decision of the Hon'ble Supreme Court in School Education Deptt., Chennai v. R. Govindaswamy, (2014) 4 SCC 769 relied by the learned Government Advocate for the respondents has to be read out in the light of the decision of the Hon'ble Supreme Court SheoNarain which is later in time. Further, the ruling in School Education Deptt., Chennai v. R. Govindaswamy, (2014) 4 SCC 769 relied by the learned Government Advocate is based on the concession given by the respondents.

68. In the light of the above discussion, I find no merits in the impugned order. These Writ Petitions are thus allowed. The respondents are therefore directed to regularize the service of the petitioners within a period of three months from the date of receipt of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Secretart to Government,
School Education Department,
Secretariat,
Chennai-9.
2. The Director of School Education,
College Road,
Chennai-6.



3. The District Educational Officer,
Erode District,
Erode.

4. Magajhana Higher Secondary School,
Erode District, Erode.

5. The Director of Elementary Education,
College Road,
Chennai-06.

6. The District Elementary Educational Officer,
Villupuram District,
Villupuram.

+3cc to M/s.R.Jayaprakash, Advocate, S.R.No.2788, 2786, 2787

W.P. Nos.14199, 26778
& 27296 of 2017

KSM(CO)
RGA(17/02/2022)