



W.P.No.28736 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.28736 of 2018

D.Belavendran

... Petitioner

Vs.

1. The Secretary to Government,
Education Department,
Fort St.George,
Chennai – 600 009.
2. The Director,
School Education Department,
DPI Complex College Road,
Chennai – 600 006.
3. The District Education Officer,
Vellore,
Vellore District.
4. The Correspondence,
Don Bosco Higher Secondary School,
Gandhi Nagar,
Vellore + 632 006.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, directing the Respondent Nos. 1 and 2 to consider and pass order on the proposal dated 19.11.2014 sent by the third respondent with regard to bring the petitioners service from contingent service to regular establishment on 09.08.1988.

For Petitioner : Mr.T.R.Rajgajenthran
For Respondents :
For R1 to R3 : Mrs.S.Mythreye Chandru
Special Government Pleader
For R4 : No Appearance

ORDER

The relief sought for in the present writ petition is to direct the first and second respondent to consider the proposal dated 19.11.2014, sent by the third respondent to regularize services of the writ petitioner with effect from 09.08.1998.

2. The petitioner is a retired employee served in the Education Department. Even at the time of filing of writ petition, he was aged about 59 years. The petitioner states that he was appointed as waterman initially on temporary basis with effect from 09.08.1983, in a private aided school / 4th



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respondent school. Subsequently, based on the Government Order issued in G.O.(Ms)No.944, Education (D2) Department dated 12.10.1992, the petitioner was brought under the regular establishment and his services were regularized with effect from 12.10.1992.

3. The claim of the writ petitioner is that he is entitled to be regularized with effect from 1988, based on the Government Order issued in G.O.(Ms)No.542, Education (D2) Department dated 10.05.1991.

4. The learned Special Government Pleader appearing on behalf of the first to third respondents made a submission that the Government Order issued in G.O.(Ms)No.542, Education (D2) Department dated 10.05.1991, is inapplicable to the case of the writ petitioner, since, it was issued in respect of contingency employee and bringing them under regular establishment.

5. In the present case, the petitioner is benefited from and out of the Government Order issued in G.O.(Ms)No.944, Education (D2) Department dated 12.10.1992 and therefore, the case of the petitioner need not be revised for grant of retrospective regularization.



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6. In the present case, the initial appointment of the petitioner was not in accordance with the provisions of the Acts and Rules. The petitioner's initial appointment was irregular. Thus, the benefit of regularization granted to him himself was a concession and based on the Government Order, the petitioner was brought under the regular establishment with effect from 12.10.1992.

7. Now, the present writ petition has been filed after his retirement. If at all, the petitioner was aggrieved from and out with the order of regularization considered with effect from 12.10.1992, the petitioner ought to have challenged the same during the relevant point of time. However, he had accepted regularization and served in the aided school for several years and now after retirement, he cannot turn around and claim retrospective regularization, which is impermissible and liable to be rejected on the ground of laches. Even otherwise, as per the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of *The Secretary, State of Karnataka and others vs. Umadevi and others reported in [(2006) 4 Supreme Court Cases 1]*, retrospective regularization cannot be granted in violation of rules. The regularization initially granted to the petitioner itself was a concession



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extended, pursuant to the decision of the government and therefore, the petitioner is not entitled for any such retrospective regularization.

8. Beyond the Government orders, the principles settled for appointment, regularization and permanent absorption by the Constitution Bench of the Hon'ble Supreme Court of India in the case of *The Secretary, State of Karnataka and others vs. Umadevi and others reported in [(2006) 4 Supreme Court Cases 1]* are to be considered. All appointments are to be made strictly in accordance with the rules in force. Equal opportunity in public employment is the constitutional mandate. The equality clause enunciated in the Constitution at no circumstances be diluted, infringing the Fundamental Rights of all other citizen, who all are aspiring to secure public employment through open competitive process. The Hon'ble Supreme Court has emphatically held that irregular and illegal appointments cannot be regularized nor persons, who were appointed through backdoor cannot seek the benefit of regular appointment, regularization or permanent absorption. In the event of regularizing the irregular and illegal appointments, or appointing persons in violation of the recruitment rules, the same would result in infringement of the Constitutional rights of lakh and lakh of youth of this great Nation and thus, the



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unconstitutionality in the matter of public employments must be stopped forthwith. In the context of the principles laid down by the Constitution Bench, in paragraph 53 of the judgment in '*Uma Devi's case*' (*cited supra*), the Constitution Bench granted permission to complete the process in respect of the pending proposals during the relevant point of time. However, the Hon'ble Supreme Court of India has never allowed that the irregularity in this regard must be continued in perpetuity. The one time permission granted by the Hon'ble Supreme Court is restricted only in respect of the proposals, which were pending during the relevant point of time, when the judgment was delivered and after the judgment, the principles laid down by the Constitution Bench became the Law of the land and binding on all the authorities and the Courts across the country.

9. In paragraph 54 of the judgment in '*Uma Devi's case*' (*cited supra*), the Constitution Bench in unequivocal terms held that any judgment of any Court or the Government or its orders running counter to the principles laid down by the Constitution Bench have denuded to loose its status as precedent and those judgments or Government orders cannot be followed for the purpose of appointment, regularization or permanent absorption. Thus, any Government



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order in the matter of regularization, permanent absorption or appointment is to be tested with reference to the principles laid down by the Constitution Bench of the Hon'ble Supreme Court of India in the case of '*Uma Devi*' (*cited supra*)

10. In the case of *State of Rajasthan and others Vs. Daya Lal and others* reported in (2011) 2 SCC 429, the Hon'ble Supreme Court held that “*the High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularization of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.*”



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11. Even in the case of Medical Department they have approached the Hon'ble Supreme Court of India against the order passed by the High Court granting the benefit of regularisation. The Hon'ble Supreme Court set aside the order passed by the learned Single Judge as well as the Division Bench of this Court was set aside in Special Leave Petition (C) No.21285 of 2021 dated 30.09.2022.

12. The very principles laid down indicates that back door appointments are to be stopped forthwith. The practice of entering into public services through back door and thereafter, claiming appointment in a sanctioned post or regularization or permanent absorption if allowed, the repercussion would be disastrous and the equality clause enunciated is directly violated. The Courts in this regard are not expected to show any misplaced sympathy merely based on the services rendered by these employees as daily wage employees. Such misplaced sympathy would result in violation of equality clause enunciated under Article 14 of the Constitution of India. Thus, the Government orders if at all issued, which all are running counter to the principles laid down by the Constitution Bench in *Uma devi's case (cited supra)*, such Government orders cannot be followed by the authorities



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competent and the law laid down by the Constitution Bench became binding on all the authorities and the Courts. Thus, the Government orders issued are also to be implemented with reference to the principles settled by the Hon'ble Supreme Court of India.

13. Mere continuance of service of 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 absorption would result in violation of the recruitment rules in force and therefore, all appointments are to be made only by following the procedures as contemplated under the recruitment rules in force.

14. Accordingly, the writ petition stands dismissed. No costs.

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Index: Yes/No
Speaking order/Non-speaking order
rgm/mrn



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S.M.SUBRAMANIAM, J.

rgm/mrn

To

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