



W.P.(MD)No.5543 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)No.5543 of 2020
and
W.M.P.(MD)No.4843 of 2020**

M.Dhanalakshmi

... Petitioner

Vs.

1. The Principal Secretary of Government of Tamil Nadu,
Department of School Education,
Secretariat,
Chennai.
2. The Director of School Education,
Chennai.
3. The Chief Educational Officer,
Pudukkottai.
4. The District Educational Officer,
Aranthangi Post and Taluk,
Pudukkottai District.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned order in Na.Ka.No.2834/A1/2019 dated 24.07.2019 passed by the fourth respondent and quash the same as illegal and arbitrary and direct the respondents to regularise the service of the petitioner with effect from the date of her initial appointment.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

This Writ Petition has been filed to call for the records of the impugned order passed by the fourth respondent in Na.Ka.No. 2834/A1/2019, dated 24.07.2019, quash the same and direct the respondents to regularise the services of the petitioner with effect from the date of her initial appointment.

2. The case of the petitioner is that the petitioner was appointed as Sweeper in the Government Boys Higher Secondary School, Alangudi on



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05.07.1998 by the Headmaster of the School. Till 21.12.2000, the salary was paid to the petitioner from the Parent Teachers Association Fund. However, the petitioner's name was sponsored from the Employment Exchange, Pudukkottai and she was appointed as Sweeper on 22.12.2000 in the same School, viz., Government Boys Higher Secondary School, Alangudi and paid wages from the Government Funds. For the past 18 years, she has been rendering her services on daily wages basis. Hence, the petitioner has filed a Writ Petition before this Court in W.P.(MD)No.11267 of 2019 and this Court, by order, dated 30.04.2019, directed the respondents to consider the representation of the petitioner, dated 13.12.2018 in the light of the order passed by the Principal Seat of this Court in W.P.No.29806 of 2010 dated 23.12.2010 and pass appropriate orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of the order, after affording an opportunity of hearing to the petitioner. The fourth respondent passed the impugned order, dated 24.07.2019 rejecting the representation of the petitioner for regularising her services. Challenging the same, the present Writ Petition.



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3. The learned counsel appearing for the petitioner would submit that the petitioner was appointed as Sweeper in the Government Boys Higher Secondary School on 05.07.1998 and till 21.12.2000, the salary was paid to her from the Parent Teachers Association Fund. Thereafter, her name was sponsored from the Employment Exchange and she was appointed as Sweeper on 22.12.2000 in the same School and was paid wages from the Government Funds. Till date, the petitioner rendered her services as daily wages basis in the said School. Hence, she is entitled for regularisation of services and accordingly, she prayed for appropriate orders.

4. Per contra, the learned Special Government Pleader appearing for the respondents would submit that the petitioner's service could be regularised only in terms of of the Government Order in G.O.(Ms)No.22 P&AR Department, dated 28.02.2006. The said Government Order prescribed for regularisation that the persons who have completed more than ten years of continuous service as on 01.01.2006, are entitled to be regularised. However, in the present case, the petitioner was appointed in the year 2000 and hence, she is not entitled for regularisation and the claim



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of the petitioner for the said regularisation is contrary to the decision of the Hon'ble Apex Court in the case of ***State of Karnataka Vs. V.Umadevi and others*** reported in ***(2006) 4 SCC 1*** and the same was reiterated by the Hon'ble Apex Court in the case of ***2Ec.To Government, School Education Department, Chennai vs. Thiru R.Govindaswamy and others*** reported in ***(2014) 4 SCC 769***. The relevant portion of the judgment reported in ***(2014) 4 SCC 769*** reads as under:

"5. The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularized. The issue is no more res integra.

In State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806, this Court held as under:

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those



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who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.”

6. *In Union of India & Ors. v. A.S. Pillai & Ors.*, (2010) 13 SCC 448, this Court dealt with the issue of regularisation of part-time employees and the court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

7. This Court in *State of Rajasthan & Ors. v. Daya Lal & Ors.*, AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

“8(i) The High Courts, in exercising power under [Article 226](#) of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a



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regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others



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who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.” (Emphasis added)

Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner was appointed as Sweeper in the Government Boys Higher



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Secondary School on 05.07.1998 and till 21.12.2000, the salary was paid to her from the Parent Teachers Association Fund. Thereafter, her name was sponsored from the Employment Exchange and she was appointed as Sweeper on 22.12.2000 in the same School and was paid wages from the Government Funds. However, the fact remains that after Umadevi's judgment reported in **(2006) 4 SCC 1**, wherein the Hon'ble Apex Court held that for one time measurement, the State Government can regularise the NMRs and daily wages employees, however, the persons who are appointed after 2006, are not entitled for regularisation. In the present case, the petitioner was appointed only in the year 2000 and she had not completed ten years of service as on 01.01.2006 and hence, she is not entitled to seek regularisation.

7. Hence, applying the ratio laid down by the Hon'ble Apex Court in the case of ***State of Karnataka Vs. V.Umadevi and others*** reported in **(2006) 4 SCC 1** and subsequent decision in the case of ***2Ec.To Government, School Education Department, Chennai vs. Thiru R.Govindaswamy and others*** reported in **(2014) 4 SCC 769**, the prayer



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sought for in the Writ Petition cannot be granted and this Writ Petition is liable to be dismissed.

8. Accordingly, this Writ Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

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Secretariat,
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