



WP(MD)No.3425 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.3425 of 2019
and W.M.P.(MD)No.2694 of 2019

- 1.T.Rajendran
- 2.M.Veerambal
- 3.A.Sankar
- 4.S.Muthuramalingam
- 5.P.Duraiaraj
- 6.C.Arumugam
- 7.M.Rayappan
- 8.P.Piraveenkumar
- 9.M.Peter
- 10.A.Rajendran

... Petitioners

/vs./

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary
to Government,
Rural Development and Panchayat
Raj Department,
Fort St. George, Chennai – 600 009.
- 2.The District Collector cum Chairman,
District Rural Development Agency,
Collectorate, Sivagangai,
Sivaganga District.



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3. The Project Director,
Sivaganga District Rural Development Agency,
Collectorate, Sivagangai,
Sivaganga District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to absorb the petitioners in regular establishment in regular time scale of pay with all consequential service benefits in the District Rural Development Agency or in alternate to absorb the petitioners in their respective Panchayat Union Office is concerned in Sivaganga District.

For Petitioners : Mr.M.Saravanakumar

For Respondents : Mr.A.Sivanupandian,
Government Advocate.

ORDER

All the petitioners herein claim to have been engaged as a Block Coordinators under the third respondent for the considerable years of service. The prayer sought for by them in the present writ petition is for absorption in a regular time scale of pay as Block level Coordinators.



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2. When similarly placed persons like that of the petitioners herein, had earlier approached this Court seeking for permanent absorption, this Court in a batch of writ petition passed in W.P.No.12887 of 2016, etc., dated 22.04.2022 had directed the State Government to formulate a scheme for safeguarding the employment of such persons and consider them on preferential basis and in the meantime, their services were directed to be continued. It would be apposite to consider the entire order, which reads as follows:

“These writ petitioners have been appointed as Block Level Coordinator on various dates under the control of the Department of Rural Development. The duties attached to the Block Level Coordinators are coordinating of sanitary work in all the Block Development Units in the District concerned, creating awareness on sanitation, coordinating various voluntary organizations to conduct awareness programmes in the schools, coordinating with Poverty reduction committee to conduct awareness programmes about various schemes implemented by both the Central and State Governments. The duties include monitoring and overseeing of hundred day employment guarantee scheme.

2. These petitioners have been originally appointed in various projects introduced by the Central Government like Swachh Bharat Mission principally with a view to maintain clean



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and healthy environment. The Block Level Coordinators are appointed by the State Government and funded by both Central and State Governments towards payment of the consolidated salaries every month. Originally, consolidated amount of Rs.3,000/~ was paid to them, but progressively, the same was increased to Rs. 8,000/~ as of now .

3. According to the petitioners, in terms of the Swachh Bharath Mission scheme, the State Government has an obligation to set up a Block Programme Management Unit which shall work as bridge between the District Experts and various other agencies to provide continuous support towards awareness generation, motivation, mobilisation, training and handling of village communities. The range of work entrusted to these Coordinators would engage them as a full time employee of Government, though they are employed only in projects. Several of the petitioners have been working for more than 10 years and some of them, 5 to 8 years continuously in various projects relating to the sanitation up keeping at the Block Levels in every District. Over a period of time, the Central Government has divested itself of the responsibility of funding the project and today, the responsibility is entirely entrusted to the State Government, which is in~charge of the projects and it is also the responsibility of the State Government not only funding the projects but also payment of monthly wages to the employees.



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4. *Ever since the appointment of these petitioners in October, 2003 and subsequent dates, all of them have been continuously engaged. After introduction of Solid Waste Management Rules, there is a continuous requirement of such Block Level Coordinators in every District for implementation of the rules effectively from the grass root levels. The very fact that these persons had been continuously employed in various projects for advancing the sanitation objectives of the Government to make the State clean and pollution free as part of the national initiative, their services are indispensably required throughout the year towards meaningful and purposeful implementation of the various projects/schemes connected with the objectives.*

5. *The legitimate grievance of the petitioners herein is that despite being engaged continuously for several years now, none of the benefits that is admissible and payable to the regular employees manning similar positions for similar work has been extended to them. These petitioners have always been paid consolidated pay with marginal increase periodically, without any kind of guarantee for their absorption in their posts. According to the petitioners, at the time when they were originally recruited at the District Level, a selection was conducted and the Collectors of the Districts concerned on assessment of suitability made appointments. The selected candidates have also been imparted with necessary training in order to equip themselves for the job. In view of the fact that the petitioners are labelled as project employees and their*



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services are terminable on completion of the projects, the Government has not sanctioned regular posts, notwithstanding the fact their services are very much essential to keep the project afloat.

6. In these circumstances, petitioners have been making representations for regularization of their services by sanction of regular posts. According to them, they are all trained Block Level Co-ordinators and well experienced and hence, permanent utilisation of their services, would benefit the public at large. The periodical representations have since not evoked any response, the petitioners are before this Court, seeking issuance of writ of mandamus for their regularisation.

7. Mr.C.Kanagaraj learned counsel appearing for the petitioners would submit that these petitioners have been subjected to selection and appointed by the District Collector concerned. The regular appointment letters were issued as it is evident from the appointment letters issued to each of the petitioners. They were also imparted necessary training and a certificate was also issued to them. They were issued with Identity Cards and for all practical purposes, they are incharge at the ground level for implementing the projects meant to serve public purpose. However, unfortunately, these petitioners have been meted out with step motherly treatment, as they continued to be employed only on consolidated wages for years together without the Government



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8. According to the learned counsel, despite the Government coming up with several schemes towards regularization of various categories of employees, who had worked on casual basis initially for some years and regularizing several thousands employees, no such scheme is made available to these petitioners, branding them as project employees. According to the learned counsel these employees, who by virtue of their continuous employment for long years of service have acquired families and in the process, they have assumed multiple liabilities and responsibilities. If these employees are to be sent out in the event of winding up of any project, they will be literally reduced to penury as all of them have become over aged, ineligible to seek any employment either in public or private services. According to the learned counsel, fair play and good conscience demand that the Government is to be directed to formulate a scheme for these employees for their regularization by sanction of regular posts, the Government can consider deploying them wherever any regular vacancies arise in various departments.

9. On behalf of the first and second respondent Mr.Venkatasamy Babu, learned Senior Panel Counsel appeared, on behalf of third and fourth respondents, Mr.G.Ameedius, learned Government Advocate appeared and on behalf of the fifth and sixth respondents, Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appeared and made their submissions.



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10. *The principal contentions opposing the grant of relief is that the employment of these petitioners is always co-terminus with each project in which they are engaged. No regular post has been sanctioned for implementation of the projects. The petitioners have been engaged on a contract basis, based on the requirements of the project for limited period only. These writ petitioners have been primarily engaged on adhoc basis to lend support to the regular District and Block Level Officials involved in the various sanitation programmes after launching of Swachh Bharath Mission (Gramin).*

11. *According to the learned counsel for the respondents in the absence of any sanctioned posts as the nature of projects being temporary, these petitioners request for regularization cannot be considered. According to the learned counsel, a similarly placed person approached this Court earlier in W.P.No.28964 of 2018 seeking regularization of his service as Block Level Co-ordinators. The learned Judge who heard the matter, dismissed the writ petition by order dated 12.03.2019.*

12. *The learned Judge has clearly relied upon Uma Devi-s case reported in 2006(4) SCC 1 (State of Karnataka v. Uma Devi) and held that the writ petitioner therein was not appointed in the sanctioned posts and was only allowed to continue on a consolidated pay under a scheme and hence not entitled to seek regularisation or permanent absorption. The learned Judge went on to hold that the action of the officials providing employment*



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through back door was in violation of Article 14 and 16 of the Constitution and also violation of equal opportunity in employment. The relief that has been prayed for in the writ petition has already been considered and rejected by this Court. In that view of the matter, these writ petitions have to be dismissed as not maintainable.

13. This Court considered the submissions of the learned counsel for the petitioners, the learned counsel for the respondents, perused the materials and the pleadings placed on record.

14. Before going into the larger aspect as to whether these petitioners are entitled to claim regularisation by being primarily engaged in the projects, this Court is inclined to deal with the ruling of the learned Judge with reference to an identical claim, as relied upon by the respondents.

15. As far as the decision of the learned Judge dismissing the claim of regularisation of Block Level Coordinator is concerned, it was entirely based on the decision in Uma Devi-s case rendered by the Hon-ble Supreme Court of India. The learned Judge, while placing heavy reliance on the said judgement has reasoned, public employment gained through back door must be discountenanced and to be set aside and the officials who facilitated such appointments are to be taken into task.



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16. *The above reasoning of the learned Judge may hold good in respect of certain other appointments which qualify the expression -back door entry-. But as far as the present writ petitioners are concerned, the appointments are issued by none other than the District Collectors concerned. When a District Collector makes an appointment, obviously some kind of criteria had been evolved and selection was put in place before final appointment was issued. Therefore, the claim of these petitioners cannot be summarily rejected on the erroneous reasoning that they have gained employment in the projects through back door. When a competent authority/Government is involved in selection and appointment towards implementation of the sanitary programme at the District and Block levels, to say that they have no right at all and to be considered as illegal occupants of the posts is unfair, unjust, opposed to justice. In the said circumstances, the grievance of the petitioner herein need not be brushed aside brusquely and summarily as not maintainable.*

17. *Be that as it may, as far as the issuance of Writ of Mandamus towards regularisation of petitioners- services, this Court-s power to issue such command in the face of the fact that the petitioners have been engaged as project workers, is not legally available. But at the same time, these petitioners who have been engaged for a public purpose for years together cannot be left in the cold and be told that being project employees, no law in the country would support your cause. Such a stand if it were to be*



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taken in the facts and circumstances of the case, it is opposed to the concept of welfare state. A State cannot employ scores of persons for years together on an exploitative terms of engagement and be allowed to simply take refuge behind the contention that the petitioners are project employees simplicitor and have therefore no rights whatsoever.

18. If the Courts cannot give direction for their regularisation of service, in the constrained legal scenario what other remedies that are available to these unfortunate employees, who have been engaged in service for public purpose, without having any definite future to hold on? These petitioners cannot be kept on the tenterhooks of their employment for years together, by brushing aside and discarding their concerned yearning for a definite future, with unresponsive indifference.

19. A welfare State grounded on constitutional values, cannot come up with apathetic and callous stand that despite continued employment of these petitioners for years together, no semblance of right is available to them. Such stand by the State is opposed to constitutional values as enshrined in Article 21 of the Constitution of India. The Courts of course have held that equal opportunity must be provided in public employment and entry through back door should be discountenanced. When Article 21 being violated by the State action towards its servants, the consideration of the Government must primarily be focussed on



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alleviating legitimate grievances of its employees. Even assuming that the recruitment of these writ petitioners had not been fully in consonance with the procedure for appointment in Government services, the fact remained that these persons have been consciously appointed by the Government for implementing public projects and the work has been extracted from them continuously for several years. It is therefore, not open to the Government after a period of time to turn around and contend that these writ petitioners have no right at all to seek any kind of guarantee for their future.

20. In the opinion of this Court, continued employment for several years, even on a projects meant to serve the State as a whole, certain rights would definitely accrue to them, atleast to the extent of making a claim for formulation of a scheme towards their absorption. This Court is quite conscious of the fact that the Government has been benevolent and had come up with several schemes in the past and directed regularisation of services of thousands of employees over a period of time. Such benevolence ought to permeate to the lowest levels to take within its sweep the desperate cry of the petitioners as well. As in the sublime words of the father of nation, Mahatma Gandhi, “A nation-s greatness is measured by how it treats its weakest members“. Merely because these writ petitioners have been employed in the projects, the policy makers may not shut their mind and close their eyes to their precarious plight having to serve public purpose but left in the



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lurch and unprotected, at the end of the day.

21. The State Government which is now responsible for their engagement ought to consider the pitiable state of employment of these employees, hanging precariously by a thread and initiate all necessary and earnest steps towards addressing their grievance. The Government as a reflection of its commiserate understanding ought to first remove its fixated and unconscionable stand that the petitioners are project employees and therefore their grievance is not even worth consideration. Such pachydermatous stand is opposed to equity, good conscience and justice.

22. The Government cannot shut the doors of hope to the petitioners and still would expect them to work effectively in implementation of the projects, serving public purpose. It is a constitutional imperative and also a moral obligation too on the part of the Government to come up with some kind of a comprehensive scheme to address the claim of these employees for regularisation. The Government may graciously consider, taking into account the long period of employment and requirement of their experienced service for serving the larger interest of public in the State.

23. For all the above stated reasons, the State Government is directed to formulate a comprehensive scheme for providing guarantee of employment to these writ petitioners, either by redeploying them in any suitable post on a preferential basis



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against regular vacancies that may arise in various Departments of the Government or may sanction regular posts in the sanitation programmes that are being implemented by the State Government for their eventual regularisation.

24. Any such action as indicated above may be taken as expeditiously as possible.

25. In the meanwhile, as far as the present employment of these writ petitioners is concerned, the same may be continued and wherever there is any possibility of extending of their employment, the same may be extended to these petitioners, as far as possible.

26. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed."

3. In the light of the decision rendered in the batch of cases in which the petitioners therein are similarly placed as that of the petitioners in the present writ petition, the first respondent herein shall comply with the directions issued in the case of ***N.Karunanidhi Vs. The Union of India, Ministry of Urban Development, Nirman Bhawan, NewDehi*** in ***W.P.No.12887 of 2016, etc., dated 22.04.2022***. In the meantime, the present employment of the writ petitioners



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herein shall be continued and whenever there is any possibility of extending of their employment, the same should be extended as far as possible.

4. This writ petition is disposed of with the aforesaid directions. No costs.

Consequently, connected miscellaneous petition is closed.

28.06.2022

Index : Yes / No

Internet : Yes / No

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To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Rural Development and Panchayat
Raj Department,
Fort St. George, Chennai – 600 009.

2.The District Collector cum Chairman,
District Rural Development Agency,
Collectorate, Sivagangai,
Sivaganga District.

3.The Project Director,
Sivaganga District Rural Development Agency,
Collectorate, Sivagangai,
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M.S.RAMESH, J.

vsm

Order made in
W.P.(MD) No.3425 of 2019
and W.M.P.(MD)No.2694 of 2019

Dated:
28.06.2022