



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.5515 of 2019

And

WMP (MD)No.4371 of 2019

K.Karunakaran

... Petitioner

Vs .

1.The Secretary to Government,
Education Department,
Secretariat,
St.George Fort.,
Chennai.

2.The Director of School Education,
College Road,
Nungambakkam,
Chennai - 600 006.

3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.

4.The District Educational Officer,
Thuckalai,
Kanyakumari District.

5.The District Elementary Education Officer,
Kanyakumari District,
Nagercoil.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, call for the records in connection with impugned order in Moo.Mu.No.6186/A1/2013 dated 14.10.2017 of the 4th respondent and quash the same and pass an order to regularize the services of the petitioner from the date of joining service and grant all service benefits and pension benefits with interest from the date of due.

For Petitioner
For R1 To R5

: M/S.S.Titus, Advocate
: Mr.G.V.Vairam Santhosh
Additional Government Pleader



O R D E R

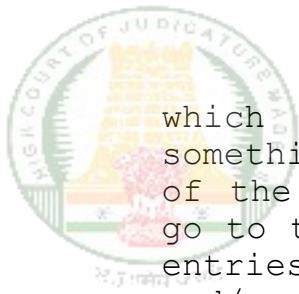
The petitioner was appointed as part time menial. The petitioner continued as a part time sweeper for many years. However, he was allowed to retire only as a part time sweeper. The writ petition itself is filed by the petitioner at the age of 76 years seeking the relief of regularization. The petitioner earlier approached the competent authority, who in turn, considered the facts and the merits and passed the impugned order dated 14.10.2017. The District Educational Officer, who passed the impugned order, rejected the claim of the writ petitioner based on the Judgment of the Hon'ble Supreme court dated 21.02.2014 passed in Civil Appeal No.2126 - 2729 of 2014. As per the Judgment of the Supreme Court, the part time of employees are not entitled for regularization even on completion of 10 years of service. As far as the present petitioner is concerned, he served several years back and the writ petition itself was filed at the age of 76 years.

2. Furthermore, the Hon'ble Supreme Court of India in the case of **State of Tamil Nadu Vs. A.Singamuthu**, reported in **(2017 (4) SCC 113)**, dealt with the case of a part time or casual employment for the purpose of grant of regularization. In the said Judgment, G.O.Ms.No.22 is also considered by the Hon'ble Supreme Court and the following observations are made:

"16. In State of Rajasthan and Others Vs. Daya Lal and Others(2011) 2 SCC 429, this Court has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and this Court clearly laid down that part-time employees are not entitled to seek regularisation as they do not work against any sanctioned posts. It was also held that part-time employees in government-run institutions can in no case claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Relevant excerpt from the said judgment is 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) 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 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.

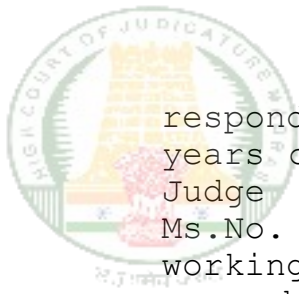
(iii) Even where a scheme is formulated for regularization with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off 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 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: [Secretary, State of Karnataka v. Uma Devi](#) 2006 (4) SCC 1, [M. Raja v. CEERI Educational Society, Pilani](#) 2006 (12) SCC 636, [S.C. Chandra v. State of Jharkhand](#) 2007 (8) SCC 279, [Kurukshetra Central Co-operative Bank Ltd v. Mehar Chand](#) 2007 (15) SCC 680, and [Official Liquidator v. Dayanand](#) 2008 10 SCC 1." (emphasis added)

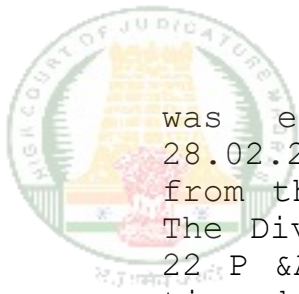
17. The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said G.O. Ms. No.22 dated 28.02.2006 and the appellants to grant regularisation of



respondent's service from the date of completion of ten years of service with salary and other benefits. The learned Judge failed to take note of the fact that as per G.O. Ms.No. 22 dated 28.02.2006, the services of employees working in various government departments on full-time daily wage basis, who have completed more than ten years of continuous service as on 01.01.2006 will be regularised and not part-time Masalchis like the respondent herein. In G.O.Ms. No. 84 dated 18.06.2012, the Government made it clear that G.O.Ms. No. 22 dated 28.02.2006 is applicable only to full-time daily wagers and not to part-time daily wagers. Respondent was temporarily appointed part-time worker as per Tamil Nadu Finance Code Volume (2) Appendix (5) and his appointment was completely temporary. The respondent being appointed as part-time Masalchi, cannot compare himself to full-time daily wagers and seek benefit of G.O.Ms.No.22 dated 28.02.2006. The Single Judge also failed to consider that the Government did not grant regularisation of services of any part-time employee on completion of ten years of his service as envisaged under the G.O.Ms. No.22 dated 28.02.2006.

18. The learned Single Judge erred in extending the benefit of G.O.Ms.No.22 dated 28.02.2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned senior counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is from 01.04.1999 till the date of his regularization that is 18.06.2012, the financial commitment to the State would be around Rs.10,85,113/- (approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned senior counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularized under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularization of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

19. It is pertinent to note that even the regularisation of services of part-time employees vide G.O. (Rt.) No.505 Finance (AA-2) Department dated 14.10.2009 and



was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of Government Orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that G.O.Ms.No. 22 P & AR Dept. dated 28.02.2006 is applicable only to full-time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part-time employees. As per G.O.(Rt.) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside.

20. In the result, the impugned order is set aside and this appeal is allowed. No costs."

3. In view of the facts and circumstances, the reasons stated for rejection of the claim of the petitioner for regularization is in consonance with the principles laid down by the Hon'ble Apex Court of India in the Judgment reported in **(2017 (4) SCC 113)** (cited *supra*) and there is no infirmity as such. Accordingly, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

To

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+1 CC to M/s.SPL GP (SR-5933[F] dated 14/02/2022)

W.P. (MD)No.5515 of 2019
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RS (25.02.2022) 6P-7C