



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.6836 of 2019
and
WMP (MD) No.5458 of 2019

R.Mary

... Petitioner

Vs.

1. The Principal Secretary to Government,
Education Department,
Secretariat, St.George Fort,
Chennai - 9.
2. The Director of School Education,
DPI, College Road,
Nungambakkam,
Chennai - 600 006.
3. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
4. The District Educational Officer,
Kuzhithurai, Kanyakumari District.
5. The Assistant Educational Officer,
Karungal,
Kuzhithurai Educational District,
Kanyakumari District.

... 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 Lr.No.8365/Nee.Va.1(2)/2014-2 dated 24.09.2014 of the 1st 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

:Mr.S.Titus

For R1 To R5

:Mr.G.V.Vairam Santhosh

Addl.Govt.Pleader

O R D E R

The order of rejection, dated 24.09.2014, issued by the first respondent, rejecting the claim of the writ petitioner for regularization, is under challenge in the present writ petition.

2. The petitioner was appointed as part time sweeper in Government Primary School, Kodunkulam, Marthandam, Kanyakumari District. The order of appointment indicates that the petitioner was appointed as part time sweeper and the said fact is admitted by the writ petitioner in the affidavit filed in support of the writ petition itself. The petitioner joined duty in the year 1983 and was working for a considerable length of time. The petitioner was allowed to retire from service as part time sweeper. The writ petition itself was filed by the petitioner at the age of 69 years. Thus, the writ petition is liable to be rejected on the ground of laches.

3. This apart, the representation submitted by the writ petitioner for regularization was considered by the Government and the order impugned dated 24.09.2014 was issued based on the Judgment of the Hon'ble Supreme Court of India in Civil Appeal No.2126 - 2729 of 2014. As per the Judgment, the part time employees, on completion of 10 years, are not entitled for the benefit of regularization. The petitioner admittedly, was appointed as part time sweeper and furthermore, the present writ petition is filed at the age of 69 years. The Hon'ble Supreme Court of India, with reference to the issues, categorically settled the principles in the case of **State of Tamil Nadu Vs. A.Singamuthu**, reported in **(2017 (4) SCC 113)**, and the relevant paragraphs are extracted hereunder:

"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:



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(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 directed 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.



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

4. In view of the Judgment reported in **(2017 (4) SCC 113)** (cited supra), this Court do not find any infirmity as such in respect of the impugned order of rejection. Accordingly, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (AD-II)

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/ /2022

Sub Assistant Registrar(CS)

MPK

To

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Education Department,
Secretariat, St.George Fort, Chennai - 9.
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Kanyakumari District.

+1 CC to M/s.SPL GP (SR-5908[F] dated 14/02/2022)

W.P. (MD) No.6836 of 2019

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