



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:09.03.2022

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.8527 of 2019

and

W.M.P (MD)No.6664 of 2019

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M.Karthikeyan

... Petitioner

Vs.

1.The Director of Town Panchayat,
Kuralagam
Chennai.

2.The Assistant Director (Town Panchayat)
O/o. the Assistant Director Office,
Collectorate Campus
Madurai District.

3.The Executive Officer
O/o. the Executive Officer,
Kodikulam Town Panchayat
Koomapatti Post
Srivilliputhur Taluk
Virudhunagar District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings in e.f.vz;.76/2018 dated 26.03.2019 and quash the same as illegal and consequently to direct the respondents to regularise the services of the petitioner as Tractor Driver in the 2nd respondent Town Panchayat w.e.f. the date of the appointment in the light of the G.O.(Nilai) No.23 Municipal Administration and Water Supply Department dated 03.03.1998.

For Petitioner : Mr.C.Venkatesh Kumar

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

The order impugned dated 26.03.2019 declining the request of the writ petitioner for regularising the services of the petitioner as Tractor Driver in the 2nd respondent Town Panchayat w.e.f. the date of the appointment in the light of the G.O.(Nilai) No.23 Municipal Administration and Water Supply Department dated 03.03.1998 is under challenge in the present writ petition.



2.The petitioner states that he was engaged as a contract labourer and allowed to continue in service.

3.The learned counsel for the petitioner made a submission that as per G.O.Ms.No.23 Municipal and Administration and Water Supply Department dated 03.03.1998, the Drivers, who are all engaged on daily wage basis or NMR are to be regularised. Based on the said Government Order, the petitioner is eligible for regularisation.

4.The Additional Government Pleader opposed the contention by stating that the petitioner was neither appointed as contract labourer nor engaged as daily wage employee. He was participating in tender on yearly basis and accordingly was driving the vehicle. Therefore, at no circumstances, he was appointed in any capacity as a driver by the respondent.

5.Even before the petitioner was engaged as a contract labourer. G.O.Ms.No.23 was issued in the year 1998 and thereafter, a Constitution Bench of the Hon'ble Supreme Court of India delivered a legal proposition in the matter of regularisation and permanent absorption in the State of Karnataka v. K.Uma Devi 2006 4 SCC 1.

6.As of now, the High Court by exercising the judicial review under Article 226 of the Constitution of India cannot issue a direction to the respondent to regularise the contract labourers, which was reiterated by the Supreme Court in the case of **State of Tamil Nadu v. Govindasamy** reported in **2014 (4) SCC 769** and it is relevant to extract Paragraph No.8 of the same:

"8.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:

(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 regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant post."

7. In view of the fact that the petitioner was not appointed in accordance with the recruitment rules in force and further as per appointment rules, he is not eligible for the benefit of regularisation. Thus, there is no infirmity in respect of the reasonings stated in the order impugned.



8. Accordingly, the writ petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

RR

To

- 1.The Director of Town Panchayat,
Kuralagam, Chennai.
- 2.The Assistant Director (Town Panchayat)
O/o. the Assistant Director Office,
Collectorate Campus, Madurai District.
- 3.The Executive Officer
O/o. the Executive Officer,
Kodikulam Town Panchayat
Koomapatti Post, Srivilliputhur Taluk, Virudhunagar District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-11059[F] dated 10/03/2022)

+1 CC to M/s.SPL GP (SR-11194[F] dated 10/03/2022)

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MGJ(25.03.2022) 3P 6C