



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:08.04.2022

CORAM:

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

W.P(MD)Nos.8922 to 8924 of 2019

Mrs.A.Sakilabanu	... Petitioner in W.P(MD)No.8922/19
Mrs.E.M.Vetrikumari	... Petitioner in W.P(MD)No.8923/19
Mrs.T.Durga Parameshwari	... Petitioner in W.P(MD)No.8924/19

Vs.

- 1.The State of Tamil Nadu,
Rep by its Secretary to Government,
Public Works Department,
Fort St.George,
Chennai-600 009.
- 2.The Engineer in Chief(General)
Public Works Department,
Chepauk,
Chennai-600 005.
- 3.The Chief Engineer,
Public Works Department,
Building Construction and Maintenance
Chepauk,
Chennai-600 005.
- 4.The Superintending Engineer,
Public Works Department,
Building Construction and Maintenance,
Trichy,
Trichy District-620 001.
- 5.The Executive Engineer,
Public Works Department,
Building Construction and Maintenance,
Thanjavur,
Thanjavur District-613 001. ... Respondents in all W.Ps

COMMON PRAYER: Writ Petitions under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 5 to regularize the service of the petitioner w.e.f her date of appointment and to grant all monetary benefits in service within the time frame stipulated by this Court.



For Petitioners
For Respondents

: Mr.S.Bharathy Kannan
: Mr.D.Sadiq Raja
Additional Government Pleader

COMMON ORDER

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The relief sought for in these writ petitions is to direct the respondents 1 to 5 to regularize the service of the petitioners from the date of appointment and all attendant benefits.

2.The petitioners were engaged as daily wage employee(NMR) in Public Works Department, during the year 1994. The petitioners are continuously working as NMR in the Public Works Department. In view of the fact that the petitioners have completed 10 years of daily wage employment, made a representation to the authorities to grant benefit of regularization and permanent absorption. In view of the fact that the authorities have not considered the claim, the petitioners are constrained to move the present writ petition.

3.The learned counsel for the petitioners made a submission that the service of the similarly placed NMR employees were also regularized in the Public Works Department and in this regard, the Government has also passed an order. Therefore, on the same line, the benefit of regularization is to be extended to the writ petitioner.

4.The learned Additional Government Pleader made a submission that the principles, in this regard, are settled by the Hon'ble Supreme Court and the High Court and now, the daily wage employees are not regularized in a routine manner. If at all their initial appointments were made in accordance with the rules, then only, the Government is extending the benefit of regularization strictly in accordance with the rules and the Government Orders in the subject. Therefore, the petitioners are not entitled for the benefit of regularization.

5.The regularization and permanent absorption are to be granted in accordance with the rules in force. The persons, who were not appointed in accordance with the rules, cannot seek regularization, as their initial appointments are considered as back door entry. The temporary employment without following the recruitment rules cannot end with an order of regularization, as such the procedure would affect the principles of equal opportunity enunciated under the constitution of India.

6.The principles are elaborately considered by the Hon'ble Supreme Court of India in the case of the **Secretary, State of Karnataka-vs-Uma Devi**, reported in **2006 (4) SCC 1** and the subsequent judgments of the Hon'ble Apex Court clarified with irregular appointment cannot be regularized.



7.This Court also considered similar cases for grant of regularization and permanent absorption, in the case of **S. Shanmugam-vs-Additional Chief Secretary, Rural Development & Panchayatraj, Fort St.George, Chief Secretariat, Chennai-600 009 and others**, reported in **2019(1)LLN 743(Mad.)**. The relevant paragraphs are extracted hereunder:

"8.In respect of the judgment of the Apex Court as well as this Court, the respondents are time and again committing certain irregularities and illegalities by appointing persons through some other modes in violation of the directions issued by the Constitutional Bench of the Supreme Court of India. Such an attitude of the Officers of the Government has to be severely viewed and the Government has to take appropriate action against the Officials who are committing such illegalities and irregularities in violation of the constitution by providing full time appointment in public employment in contravention to the Recruitment Rules. In the case of **Secretary to Government School Education Department, Chennai vs. R.Govindaswamy and others reported in 2014 [4] SCC 769**, the Supreme Court held that:-

"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 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 dailywage 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 cutoff 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 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)

9. The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgment. Therefore, the appeals are allowed. However, in light of the facts and circumstances of the case as Shri P.P. Rao, learned senior counsel has submitted that the appellant has already implemented the impugned judgments and does not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected.

10. With the aforesaid observations, the appeals stand disposed of accordingly. No order as to costs."

9. Though the Honourable Supreme Court, in the case cited *supra*, had issued the above direction in clear terms, the respondents are issuing some orders in violation of Articles 14 and 16 of the Constitution of India by appointing few persons of their choice and depriving the entire Society. Thus, in violation of the principles laid down by the Supreme Court and by the Constitutional Bench and in the case of **R. Govindasamy** [cited *supra*], action to be initiated against the erring officials. Equal opportunity in employment is the right of the citizen and any violation will affect the rights conferred to the citizens in the Constitution of India. Thus, the action of the authorities in providing public employment through back door entry to be identified and serious action have to be taken against all such officials, who passed such orders of regularisation of appointments.



10. In this regard, once again the Supreme Court in the case of **State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and Another Vs. A.Singamuthu** reported in 2017 [4] SCC 113 has held that the Courts are repeatedly directing the States to follow the constitutional scheme for appointing candidates in public post. The Government, time and again, is violating the legal dictums and favouring some individuals, attempting to get public employment through back door entry. The State must be a model employer and the State is bound to follow the constitutional principles. The State cannot discriminate the citizens and the State is the authority to follow Articles 14 and 16 in respect of all citizens scrupulously. If the State itself is discriminating the citizens and encouraging the back door appointment to public post, this Court is unable to imagine the plight of the meritorious citizens of this Country, who are longing for public employment. Few miscreant officials have to be put on task and strict action against those officials are to be undertaken.

11. Thus, this Court is of the firm and clear opinion that all the citizens should get equal treatment from the Government and the Government, being the model employer, cannot discriminate the citizens. In this regard, the mere continuation of services on temporary/casual/daily wages cannot confer any right and in order to appoint any candidate in the permanent basis in the public post, the scheme recognized by the constitution has to be strictly adhered to and the violation of the same to be viewed seriously. Repeatedly, the Constitutional Courts are flooded with these kind of writ petitions and the candidates, who entered through back door entry in public post, are repeatedly filing writ petition in order to secure regularisation through Courts after few years. The Courts are also unable to solve this, in view of the continuous irregularities and illegalities committed in this regard. Since, at the time of weighing the principles of equity, the Courts have to grant some relief to the persons who are in stress and strain on account of long period of services. Though such cases are considered on few occasions, those cases can never be cited as precedent nor the Government to follow such cases as principle. In such view of the matter, no further consideration can be shown in this writ petition.

12. In view of the fact that the writ petitioner was appointed as daily wage employee with breaks in service is not entitled for the relief as such sought for in the present writ petition. The writ petitioner has to participate in the selection process for the purpose of securing the public employment through the open competitive process."



8.This being the principles, the present writ petitions are devoid of merits and stand dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (Protocol)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
The State of Tamil Nadu,
Public Works Department,
Fort St.George,
Chennai-600 009.

2.The Engineer in Chief(General)
Public Works Department,
Chepauk,
Chennai-600 005.

3.The Chief Engineer,
Public Works Department,
Building Construction and Maintenance
Chepauk,
Chennai-600 005.

4.The Superintending Engineer,
Public Works Department,
Building Construction and Maintenance,
Trichy,
Trichy District-620 001.

5.The Executive Engineer,
Public Works Department,
Building Construction and Maintenance,
Thanjavur,
Thanjavur District-613 001.

+3CC to Mr.S.Bharathy Kannan, Advoate, SR.No. 18245,18246,18247

+1CC to M/s.SPL GP,SR.No. 17897,17899,17941

W.P(MD)Nos.8922 to 8924 of 2019

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SG(CO)

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