



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.14101 of 2020

and

W.M.P. (MD) Nos.11760, 11761 & 11762 of 2020

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R.Muneeswari

... Petitioner

vs.

1.State of Tamil Nadu

rep.by its Additional Chief Secretary
to the Government

Department of Home

Fort St.George, Chennai-9

2.The Director General of Police / Director

Tamil Nadu Fire and Rescue Services Department
Chennai-8

3.The Deputy Director

Southern Region

Tamil Nadu Fire and Rescue Services Department
Melaveli Street, Madurai-625 001

4.The District Officer

Tamil Nadu Fire and Rescue Services Department
Madurai District, Madurai

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records pertaining to the impugned order in Na.Ka.No.9033/Aa/2020, dated 01.09.2020 on the file of the respondent No.4 and quash the same as illegal in so far as the petitioner is concerned and consequently for a direction directing the respondents to bring the petitioner under special time scale of pay on completion of three years of service in the post of Part Time Sweeper and disburse the arrears of salary on par with the similarly placed persons, within the time stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman

For Respondents : Mr.A.K.Manikkam
Special Government Pleader



O R D E R

The order of termination, dated 01.09.2020, issued by the fourth respondent, terminating the petitioner from the service of Part Time Sweeper, is under challenge in this writ petition.

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2. The petitioner was admittedly engaged as Part Time Sweeper in the office of the fourth respondent for office cleaning work. The grievance of the petitioner is that she was terminated from service despite the fact that there is an opportunity to continue the service. However, Part Time Sweepers cannot claim any regularization or permanent absorption in the said post as their initial appointment is not in accordance with the Recruitment Rules.

3. The Honourable Supreme Court in the case of **Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and others**, reported in (2014) 4 SCC 769, has held as follows:

"7. 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:

"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 daily-wage employee, under cover of some interim orders of the



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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 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 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)

4. The learned counsel for the petitioner made a submission that the salary for the period in which the petitioner already served is yet to be paid.

5. It is needless to state that the petitioner is entitled for the salary for the period during which she served as Part Time



Sweeper. Therefore, the respondents are directed to settle the salary dues to the petitioner, if not already paid, within a period of twelve weeks from the date of receipt of a copy of this order.

6. With the above observations and directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Additional Chief Secretary to the Government,
Department of Home,
State of Tamil Nadu,
Fort St.George, Chennai-9.

2.The Director General of Police / Director,
Tamil Nadu Fire and Rescue Services Department,
Chennai-8.

3.The Deputy Director,
Southern Region,
Tamil Nadu Fire and Rescue Services Department,
Melaveli Street, Madurai-625 001.

4.The District Officer,
Tamil Nadu Fire and Rescue Services Department,
Madurai District, Madurai.

+1 CC to M/s.SPL.GP (SR-20076[F] dated 21/04/2022)

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-20328[F] dated 22/04/2022)

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