



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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Orders Reserved On 05.04.2022	Orders Pronounced On 13.04.2022
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W.P. (MD) No.20571 of 2019

and

W.M.P. (MD) No.17213 of 2019

C.K.Jeyaraj

.. Petitioner

-vs-

1. The Secretary to Government,
Rural Development Department,
Secretariat, Fort St. George, Chennai-9.

2. The District Collector,
Kanyakumari District, Nagarcoil.

3. The Commissioner,
Melpuram Panchayat Union,
Kanyakumari District.

4. The President,
Vanniyur Village Panchayat,
Vanniyur Panchayat, Malaiyadi Post,
Kanyakumari District.

.. Respondents

Prayer:- Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records connected with the impugned order passed by the 2nd respondent in his proceedings Se.Mu.No.Va3/Va.Pa.39/2015 dated 26.08.2019 and quash the same and consequently direct the 2nd respondent to regularize the service of the petitioner in terms of G.O.Ms.No.151 Social Welfare (Ma) Nutritious Meals Praogramme (Sa Na 4) Department dated 16.10.2008 complied in G.O.Ms.No.218 Health and Family Welfare (AB2) Department dated 28.7.2015 and in the light of the judgment of this Court in W.P.Nos.41207 to 41210 of 2005 dated 25.11.2009.

For Petitioner : Mr.S.Govindan

For RR1 & 2 : Mr.N.Satheesh Kumar,
Additional Government Pleader

For RR3 & 4 : No appearance



O R D E R

The order impugned dated 26.08.2019 rejecting the claim of the writ petitioner for grant of regularisation and permanent absorption is under challenge in the present writ petition.

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2. The petitioner states that he was appointed as Plumber on daily wages basis by the President, Vanniyur Panchayat, as per the resolution of the Panchayat, vide Resolution No.127 of 1997. His work involves operation of water pumps, overhead tanks, volves, etc. The petitioner joined duty on 21.08.1997 under the control of the 4th respondent/village panchayat. The petitioner states that he is continuing his service for the past above 23 years and discharging his duties to the satisfaction of his superiors. The petitioner states that he is differently abled and therefore, as per G.O.Ms.No.151, dated 16.10.2008 the time scale of pay and the benefit of regularisation are to be granted.

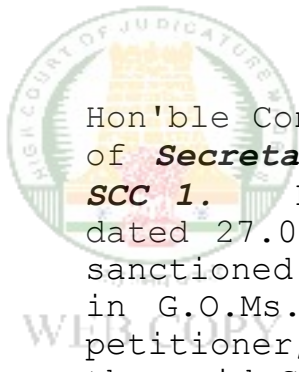
3. The learned counsel for the petitioner mainly contended that similarly placed differently abled persons were considered based on G.O.Ms.No.151, dated 16.10.2008 for grant of regularisation and therefore, the case of the writ petitioner is also to be considered for regularisation and permanent absorption in the time scale of pay.

4. The learned counsel for the writ petitioner drew the attention of this Court with reference to the order passed by this Court in W.P.No.10437 of 2002 dated 02.08.2002 and the judgment in W.A.No.2413 of 2003 dated 17.02.2004 and the subsequent orders passed by the learned Single Judges of this Court in W.P.Nos.41207 to 41210 of 2005 dated 25.11.2009, W.P.Nos.40558 to 40561 of 2005 dated 26.11.2009 and the judgment of the Hon'ble Division Bench in W.A.(MD) No.147 of 2013 dated 22.01.2013.

5. The learned Additional Government Pleader mainly contended that there is no full time post of Overhead Tank Operators sanctioned in village panchayats. In no village panchayat, such full time post has been created or sanctioned. Further, the writ petitioner was appointed as part time Overhead Tank Operator in a non-sanctioned post. The petitioner was not appointed through the District Employment Exchange or in accordance with the recruitment rules in force. Thus, the appointment of the writ petitioner was irregular and further, the President of the village panchayat appointed the petitioner on part time basis.

6. Mere statement that the petitioner was performing the duties for full time cannot be accepted, as there is no sanctioned post of full time Overhead Tank Operators in village panchayat. The District Collector being the Inspector of Panchayats has not granted any approval for any such appointment. Therefore, the petitioner's

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Hon'ble Constitution Bench of the Supreme Court of India in the case of **Secretary, State of Karnataka vs. Umadevi** reported in **(2006) 4 SCC 1**. Even as per the Government Order issued in G.O.Ms.No.74, dated 27.06.2013, the petitioner ought to have been appointed in a sanctioned post as full time employee. The Government Order issued in G.O.Ms.No.22, dated 28.02.2006 was also not applicable to the petitioner, as he was a part time temporary employee and further, the said Government Order issued in G.O.Ms.No.22 had been withdrawn by the Government. Thus, the claim of the petitioner for regularisation cannot be granted.

7. This Court is of the considered opinion that all earlier judgments of the High Court and Supreme Court were considered by the Hon'ble Constitution Bench of the Supreme Court of India in the case of **Umadevi** (supra). Now irregular and illegal appointments cannot be regularised and the one time measure permitted by the Constitution Bench in para 53 also cannot be extended perpetually. Only if proposals were pending during the relevant point of time when the Constitution Bench delivered judgment, those proposals are allowed to be disposed of. However, such one time measure cannot continue for an indefinite period. In para 54, the Constitution Bench in unambiguous terms held that all judgments running counter to the principles laid down in **Umadevi's** case are denuded to remain as precedent and therefore, such judgments or orders cannot be considered for the purpose of grant of regularisation or permanent absorption.

8. In the present case, the post of Panchayat Secretary is the only sanctioned post in the village panchayat. There is no full time post of Overhead Tank Operator sanctioned to any of the village panchayat in Kanyakumari District/in any of the Districts and there is no Government rule or provision to regularise the services of part time village panchayat employees. The petitioner is only a part time Overhead Tank Operator in village panchayat and therefore, his services could not be regularised is the defence set out in the counter filed by the respondents. It is further contended that as per Section 101(3) of the Tamil Nadu Panchayat Act, 1994, the Inspector of Panchayats is the competent authority for creating new post in the village panchayat and mere passing of resolution in village panchayat will not confer any right to the petitioner. All village panchayat employees including Water Supply Attenders are part time workers except the sanctioned post of Panchayat Secretary and for the part time work, they are eligible to get the consolidated pay fixed by the Government from time to time. The learned Additional Government Pleader brought to the notice of this Court that the claim of other similarly placed persons was also rejected by the Courts following the judgment of the Constitution Bench of the Supreme Court in **Umadevi** (supra).



9. In view of the facts and circumstances, it is evident that the petitioner was appointed as part time Overhead Tank Operator on daily wage basis and there is no sanctioned post. Even as per the Government Order, the petitioner was not appointed in accordance with the recruitment rules or through the District Employment Exchange. Thus, the claim of the writ petitioner for regularisation and permanent absorption cannot be considered. The petitioner is eligible to draw the consolidated pay as fixed by the Government periodically and the benefit of regularisation cannot be granted.

10. With the above observations, this writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

abr

To

1. The Secretary to Government,
Rural Development Department,
Secretariat, Fort St. George, Chennai-9.

2. The District Collector,
Kanyakumari District, Nagarcoil.

3. The Commissioner,
Melpuram Panchayat Union,
Kanyakumari District.

+1 CC to M/s.S. GOVINDAN, Advocate (SR-18915[F] dated 18/04/2022)

+1 CC to M/s.SPL.GP. (SR-19181[F] dated 18/04/2022)

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