



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED:26.04.2022  
CORAM:

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

WEB COPY

**W.P. (MD)No.21692 of 2019**

A.Ramaazhagu

... Petitioner

**Vs.**

1.The Secretary to Government  
Education Department,  
Secretariat  
St. George Fort, Chennai.

2.The Director of School Education,  
College Road,  
Nungambakkam,  
Chennai 600 006.

3.The Chief Educational Officer,  
Trichy  
Trichy District.

4.The District Educational Officer,  
Manapparai  
Trichy District.

5.The Headmaster  
Government Higher Secondary School  
Ilangakurichi, Trichy District.

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to regularize the petitioner's service as Part time sweeper on the date of completion of ten years of part time service from 19.06.1992 and to pay time scale of pay and other benefits payable with effect from 19.06.2002 by counting 50% of part time service for the purpose of seniority in the light of the order passed in W.A.(MD) No.93/2018 dated 27.03.2018 as confirmed by the Hon'ble Supreme Court in SLP No.23980 of 2018 by considering petitioner's representation dated 26.08.2019.

For Petitioner

: Mr.R.Maheswaran

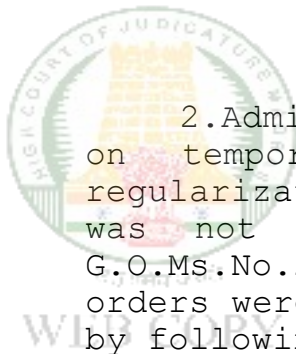
For Respondents

: Mr.G.V.Vairam Santhosh

Additional Government Pleader

**ORDER**

The relief sought for in the present writ petition is to direct the respondents to regularize the petitioner's service as Part time sweeper on the date of completion of ten years of part time service.



2. Admittedly the petitioner was appointed as part time sweeper on temporary basis. The petitioner seeks the relief for regularization based on G.O.Ms.No.222, date 01.11.2006. The said G.O was not applicable to the part time employee. This apart, G.O.Ms.No.22 was already withdrawn by the Government and revised orders were passed stating that only the employee, who was appointed by following the rules in force, are entitled for regularization.

3. The issue relating to the part time employees was decided by the Hon'ble Supreme Court of India in the case of **Secretary to Government, School Education Department, Chennai-vs-Thiru R. Govindaswamy & Ors.**, reported in **2014(4) SCC 769** and in para 8 of the judgment which reads as under:

"8. This Court in *State of Rajasthan v. Daya Lal* [*State of Rajasthan v. Daya Lal*, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340 : 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 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 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."

4. In view of the fact that the writ petitioner was appointed as part time employee on daily wages and he cannot claim any right in regularization or permanent absorption, which is in violation of the service rules in force. Thus, the relief as such sought for cannot be considered. Accordingly, writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(AS)

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/ /2022

Sub Assistant Registrar(CS)



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+1 CC to M/s.SPL.GP. ( SR-21884[F] dated 27/04/2022 )

**W.P. (MD)No.21692 of 2019**  
**Date:26.04.2022**

SA(06.06.2022) 4P 7C