



W.P.No.4662 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.4662 of 2018

1. P.Shobitharaj
2. M.Cecil
3. Chandara Leela
4. A.Stephen
5. B.Ravi

... Petitioners

Vs.

The Secretary
Government of Tamilnadu,
Personnel and Administrative
Reform Department,
Chennai – 600 009

... Respondent

Writ Petition filed under Article 226 Constitution of India for issuance of a Writ of Mandamus directing the respondents to regularise the service of the petitioners with retrospective effect from the date of their initial appointment made vide G.O.Ms.No.85 dated 04.07.2003 and grant all other service benefits to the petitioners by taking into consideration of the service rendered by the petitioners to the Government pursuant to the petitioners representation dated 13.02.2017.

For Petitioners : Mr. T.S.Senbagaraman for
Mr.Julili Jinu

For Respondent : Mr.M.Shahjagan
Special Government Pleader



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ORDER

The present Writ Petition has been filed for issuance of a Writ of Mandamus directing the respondents to regularise the service of the petitioners with retrospective effect from the date of their initial appointment made vide G.O.Ms.No.85 dated 04.07.2003 and grant all other service benefits to the petitioners by taking into consideration of the service rendered by the petitioners to the Government pursuant to the petitioners representation dated 13.02.2017.

2. The brief facts of the case are as follows:-

(i) On 01.07.2003, the Government servants working in the Secretariat as well as in the District Administration proceeded to strike protesting various decisions taken by the State Government affecting the interests of the government employees. Therefore, the State Government passed orders dismissing the employees, who were on strike, in pursuant to the same, the Government issued G.O.Ms. No. 84, Personnel and Administrative Reforms (Per.G) Department, dated 4.7.2003 and decided to recruit temporary Assistants to attend to the work in the Departments of the Secretariat. Similarly, by G.O.Ms. No. 85, Personnel and Administrative Reforms (Per.G) Department, dated 4.7.2003, the Government decided to



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recruit temporary Junior Assistants in various Districts. Thus, the petitioners who held the requisite qualification for appointment to the post of junior assistants were recruited on the basis of the employment exchange seniority. Thereafter, G.O.Ms. No. 155, dated 19.9.2006 came to be issued, wherein, the State Government has decided to conduct a Special Competitive Examination in Group IV Standard for those temporarily recruited Assistants in the Secretariat and Junior Assistants in the various Districts in supernumerary posts for the purpose of their absorption in service.

(ii) The petitioners appeared in the said examination and their services were regularized only after they succeeded in special competitive exam which was conducted by Tamilnadu Public Service Commission. The petitioners have tendered their service for more than 7 to 8 years under the consolidate wages and are discharging their duty with utmost sincere and to the satisfaction of their higher authority from the date of appointment as junior assistants and thereafter, their employment of service was made as permanent after the special examination. Since the petitioners have performed the duties as compared to that of regular junior assistants, the petitioners seek for regularisation from the date of initial appointment.

3. The learned counsel for the petitioners would submit that the



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petitioners were engaged and serving the government continuously without any break in service from the date of Initial appointment pursuant to the proceedings of the 2nd respondent in G.O Ms No:85, dated 04.07.2003. Moreover the duties and responsibilities rendered by the petitioners in consolidated pay and in regular time scale of pay were one and the same. Therefore, the service of the petitioners are to be regularized from the date of their Initial appointments.

4. The learned counsel for the petitioners further submits that from the date of petitioners' appointments, they have been discharging the same function in the same department as temporary junior assistants, except the change in nomenclature, there is no other difference in the nature of duties performed by the petitioners as compared to that of regular junior assistants. The petitioners equally qualified and have done identical work as that of the regular junior assistants. Therefore, the petitioners are entitled for regularization from the date of initial appointment and hence they had made several representations to the appropriate authority and requested them to regularize their service from the date of appointment to enable them to avail all other service benefits retrospectively. Since there was no response from the respondents, the present Writ Petition has been filed.



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5. Besides the above, the learned counsel for the petitioners relied on the Judgment of Hon'ble Supreme Court reported in (2010) 6 Supreme Court Cases 791 [S.Sumnyan and Others Vs. Limi Niri and Others] & the Order of this Court in W.P.No.27900 of 2018 & W.P.Nos.11923 & 13033 of 2013 [A.Vijayan and Others Vs. The State of Tamilnadu, rep. By its Chief Secretary to Government, Government of Tamilnadu, Fort St. George, Chennai and Another].

6. On the other hand, the learned Special Government Pleader appearing for the respondent would submit that the terms of the contract appointments of the petitioners are purely temporary in nature and it shall not confer any right to claim any preferential treatment for regular appointments. However, taking into consideration the welfare of the said temporarily appointed employees on contract basis and continuing in service as a contract employees, the Government have issued orders in G.O. (Ms) No.155, Personnel and Administrative Reforms (P) Department, dated 19.09.2006 to conduct a special competitive examination in Group IV standard through the Tamil Nadu Public Service Commission to absorb the petitioners and other similarly placed persons as Junior Assistants in Tamil Nadu Ministerial Service / Tamil Nadu Judicial Ministerial Service only.



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7. The learned Special Government Pleader appearing for the respondents also submits that the petitioners were appointed only under Rule 11 of the erstwhile General Rules for the Tamil Nadu State and Subordinate Services by agreements [Presently under Section 19 of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act 14 of 2016)] and their service were under contract basis that too with consolidated pay, hence the same will not make them eligible to claim any preferential treatment for retrospective regularization from the date of their initial appointment. Initially they were not appointed through normal method of recruitment, viz., Tamil Nadu Public Service Commission, as envisaged in the Constitution of India, Tamil Nadu Public Service Commission Regulations and any other Service Rules. Further, in the appointment order issued to them, it is made very clear that they will be discharged at any point of time without prior order and without assigning any reasons therefore, the petitioners could not make any claim at a later date. The Government in the interest and welfare of the contract employees alone, without discharging them, took a policy decision to conduct a special competitive examination for their absorption into Tamil Nadu Ministerial Service / Tamil Nadu Judicial Ministerial Service as Junior Assistants and based on the marks obtained in written examination departmental preference exercised at the time of applications and communal rotation, the petitioners were absorbed in



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various Government Departments as Junior Assistants in Tamil Nadu Ministerial / Judicial Ministerial service through special competitive examination conducted by the Tamil Nadu Public Service Commission. Hence, the contention of the petitioners that they are serving in the same department in the same post since their initial appointment from the year 2003 is not justifiable, thereby prayed to dismiss the writ petition.

8. Heard the learned counsel for the petitioners and the learned Special Government Pleader appearing for the respondent and perused the documents placed on record carefully.

9. Admittedly, it is the case of the petitioners that the petitioners were appointed as 'Junior Assistants' as early as on July 2003, prior to the introduction of G.O.Ms.No.259 Finance (Pension) Department dated 06.08.2003, the New Contribution Scheme, on account of extraordinary strike called for by the Government Servants and the petitioners were not regularised from the date of their initial appointments. That apart, the petitioners were also not granted the benefit of drawal of pension under old pension scheme.

10. On going through the appointment orders issued by the 3rd respondent to the petitioners by way of proceedings A1/46194/2003 dated 08.07.2003, it is clearly seen that the appointment of the petitioners are



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purely on temporary basis under Rule 11 of State and Subordinate Officers Rules and the petitioners are liable for termination at any time without any prior notice. It is also stated in the appointment orders that they are not eligible for other allowances other than gross remuneration of Rs.4,000/- . In fact, the said appointment orders shall not confer any right to claim any preferential treatment for regular appointments.

11. It is relevant to note that the Government, by way of G.O.Ms.No.263 dated 21.06.2004 issued orders terminating the services of all appointees including the petitioners. Taking into consideration the welfare of those appointed temporarily on contract basis and continuing in service as a contract employees, the Government have issued orders in G.O. (Ms) No.155, Personnel and Administrative Reforms (P) Department, dated 19.09.2006 to conduct a special competitive examination in Group IV standard through the Tamil Nadu Public Service Commission to absorb them as Junior Assistants in Tamil Nadu Ministerial Service / Tamil Nadu Judicial Ministerial Service only.

12. At this juncture, it is pertinent to note that based on the marks obtained in written examination, departmental preference exercised at the time of applications and communal rotation, the petitioners were absorbed in various Government Departments as Junior Assistants in Tamil Nadu



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Ministerial / Judicial Ministerial service through special competitive examination conducted by the Tamil Nadu Public Service Commission.

Hence, the contention of the petitioners that they are serving in the same department in the same post since their initial appointment from the year 2003 is not justifiable.

13. As far as the contention of the petitioners seeking to rely on the orders passed by this Court in W.P.No.27900 of 2018 dated 15.03.2023 [wherein this Court had allowed the said writ petition filed by the similarly placed candidates based on the precedent of the Hon'ble Apex Court reported in (2010) 6 Supreme Court Cases 791 [S.Sumnyan and Others Vs. Limi Niri and Others] and Judgment rendered by the Division Bench of this Court [**Indian Council of Medical Research & others Vs. K.Rajalakshmi & another reported in 2005 (1) CTC 488**] is concerned, it would be relevant to point that the Hon'ble Supreme Court [Malook Singh and Ors. vs. State of Punjab and Ors. (28.09.2021 - SC) reported in MANU/SC/0795/2021 relied on the Constitution Bench in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and held that 'ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to Rules'.



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*"The notification dated 3 May 1977 stated that the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case maybe, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the ad hoc appointees since their ouster after a considerable period of service would have entailed hardship. **Thus, the initial appointment was supposed to be a stop gap arrangement, besides being not in accordance with the rules, and the ad hoc service cannot be counted for the purpose of seniority.**"*

14. That apart, the Hon'ble Division Bench of this Court while dealing with similar issue in ***M. Gopinathan vs. The Secretary to the Government of Tamil Nadu and Ors. (25.02.2019 - MADHC) : MANU/TN/2209/2019*** has held as follows:-

"4. The Learned Counsel for the Appellant relying on the decision of the Hon'ble Supreme Court of India in S. Sumnyan vs. Limi Niri [MANU/SC/0275/2010 : (2010) 6 SCC 791], contended that once an employee was appointed according to the rules, his seniority has to be counted from the date of his initial appointment and inasmuch as the appointment of the



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Appellant had been made under rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules by calling from the list of candidates sponsored by the employment exchange, there was no illegality in his appointment and as such, the Appellant should be granted the benefit of regularization from the date of his initial appointment on 02.04.2007 instead of the date of issuing the order of regularization.

5. We are unable to countenance the aforesaid submission. It is not in dispute that the post of Typist to which the Appellant was appointed is a regular post for which recruitment had to be done through Tamil Nadu Public Service Commission in accordance with the Rules and that exercise had not been taken up at the time of his initial appointment. The mere circumstance that the name of the Appellant had been sponsored through employment exchange would not per se clothe him with the right to claim that there was no illegality in his initial appointment

.....

Hence, we do not find any infirmity in the conclusion arrived by the Learned Judge that the Appellant is not entitled to include the period from 02.04.2007 to 25.11.2010, when she had worked on temporary basis, for the purpose of reckoning seniority or extending other benefits of regularization with retrospective effect, and we confirm the same."

15. Considering the facts and circumstances of the case and taking note of the Judgments of the Hon'ble Apex Court and Hon'ble Division



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Bench of this Court mentioned supra and coupled with the fact that the petitioners were appointed only under Rule 11 of the erstwhile General Rules for Tamilnadu State and Subordinate Services by agreements and as per the terms of contract, the appointments of the petitioners are purely temporary in nature and it cannot confer any right to claim preferential treatment for retrospective regularisation from the date of their initial appointment and intially, the petitioners were not appointed under normal method of recruitment through Tamilnadu Public Service Commission as envisaged in the Constitution of India, Tamilnadu Public Service Commission Regulations and any other Service Rules, this Court is of the view that the petitioners cannot be granted the reliefs as sought for in the present Writ Petition.

In the result, the Writ Petition is dismissed. No costs.

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Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

The Secretary
Government of Tamilnadu,
Personnel and Administrative

<https://www.mhc.tn.gov.in/judis>



Reform Department,
Chennai – 600 009

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V.BHAVANI SUBBAROYAN J.

ssd

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