



W.A.No.1909 of 2018

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.K.GOVINDARAJAN THILAKAVADI

W.A.No.1909 of 2018
and
C.M.P.No.15392 of 2018

- 1.The Secretary to Government,
School Education Department,
Fort St.George, Chennai -9.
- 2.The Director of Elementary Education,
DPI Complex, College Road, Chennai – 6.
- 3.The District Elementary Education Officer,
Tiruvellore District.
- 4.The Assistant Elementary Officer,
Minjur Ponneri Taluk, Tiruvallur District.
- 5.The Headmaster,
Minjur Panchayat Union Primary School,
Minjur Ponneri Taluk, Tiruvallur District.

...Appellants

Vs.

1.K.Goviundammal

2.Thulasiammal

...Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order made in W.P.No.18596 of 2012 dated 18.07.2012.

For Appellants : Mr.L.S.M.Hasan Fizal
Additional Government Pleader
For Respondents : Mr.R.S.Anandan for Ms.K.Revathy

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Government is on appeal, aggrieved by the direction issued by the Writ Court for regularization of services of the respondents.

2.According to the respondents, they were appointed as Sweepers on temporary basis on 10.03.1986 and 16.08.1973 respectively. They have made several representations for their regularization. They claim that they are entitled to regularization as per G.O.Ms.No.22 P & AR Department dated 28.02.2006. Therefore, they sought for a mandamus directing regularization from the date of their initial appointment.



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3. Before the Writ Court, the learned Additional Government Pleader submitted that similar orders have been passed in other Writ Petitions allowing such claims and therefore, the same may be allowed. The Writ Court after recording the fact that similar orders have been passed in other Writ Petitions, allowed the instant Writ Petition also.

4. It is also stated that the said orders were implemented by the Department. The Writ Court also noted that one such order directing confirmation in W.P.No.4859 of 2009 was confirmed by the Division Bench of this Court in W.A.No.1520 of 2010 and special leave petition in SLP.No.6231 of 2011 filed as against the said judgment was dismissed on 12.05.2011. In view of the above, the Writ Court issued a mandamus as prayed for. Aggrieved, the Government is on appeal.

5. We have heard Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader for the appellants and Mr.R.S.Anandan, learned counsel appearing for Ms.K.Revathi for the respondents.



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6. In similar circumstances, the Division Bench of this Court, to which, one of us (Honourable Mr. Justice R. Subramanian) was a party had disposed of the Writ Appeal in W.A.No.2089 of 2018 dated 04.01.2023.

The operative portion of the said order reads as follows:-

“5. We find that the judgment of the Writ Court was based on the statement made by the learned Additional Government Pleader as to the applicability of some of the judgments of this Court to the case on hand. Having made such a statement and induced the Writ Court to pass an order in favour of the petitioner, it is really unfair on the part of the Government to file the above appeal against the said order invoking subsequent G.O. Viz., G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013.

6. We find that G.O.Ms.No.74 is given retrospective effect from 01.01.2006. This would indirectly amount to overruling the judgments of this Court, which were passed based on G.O.Ms.No.22, which is not permissible in law. A executive order or instruction cannot be retrospective so as to result in overruling the judgments of this Court based on the position that prevailed when the orders were passed.

7. The learned Additional Government Pleader would attempt to rely upon the judgment of the Supreme Court in Civil Appeal Nos.2726 and 2779 of 2014, wherein the Supreme



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Court has held that the part time employees are not entitled to regularisation.

8.We are in entire agreement with the law laid down by the Hon'ble Supreme Court, but the said judgment is not applicable on the facts to the case on hand. We therefore, not inclined to interfere with the iorder of the writ Court. The Writ Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.”

7.In view of the above pronouncement, we do not see any need to interfere with the order of the Writ Court. This Writ Appeal therefore, fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (K.G.T.,J.)
15.02.2023

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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WEB COPY To:-

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R.SUBRAMANIAN, J.
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