



WEB COPY



W.A.No.2089 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.2089 of 2018
and CMP.No.16390 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 Headmaster,
Minjur Panchayat Union Primary School,
Ponneri (South) Tiruvallur District.

...appellants

Vs.

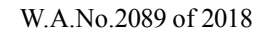
V.Pattammal

...respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order of this Court dated 17.07.2012 in WP.No.18339 of 2012.

For appellants : Mr.G.Ameedeus, G.A.

For respondent : Mr.R.S.Anandan
for Ms.K.Revathy



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

2. The sole respondent claimed that she was appointed as a Sweeper on 25.07.1980 on temporary basis and she has been working as such continuously and her salary was increased from Rs.10/- per month to Rs.60/- per month and thereafter to Rs.175/- per month. Claiming that she has completed 27 years of service and she is entitled to the benefit of G.O.Ms.No.22, P & AR Department, dated 28.02.2006, the petitioner sought for a Mandamus directing the Government to regularise her service.

3. When the Writ Petition came before Hon'ble Mr. Justice N.Paul Vasanthakumar, as he then was, a statement was made by the learned Additional Government Pleader to the effect that the issue is covered by the judgment of this Court dated 03.08.2009 in WA.No.230 of 2009, which was confirmed by the Hon'ble Supreme Court by the dismissal of SLP.No.1972



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of 2009. Several other judgments taking the similar view were also placed before the Writ Court. The Writ Court taking note of the above judgments allowed the Writ Petition and directed to regularisation.

4. We are surprised with the fact that the Government has chosen to file an appeal against the order, which was passed based on the statement made by the learned Additional Government Pleader with reference to the applicability of certain judgments of this Court to the case on hand. It was not a concession made by the learned Additional Government Pleader on facts to enable the Government to contend that the learned Additional Government Pleader, had no authority to give a concession.

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.



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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. The 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 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 Writ Court. The Writ Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.J.) (S.S.K.J.)
04.01.2023

Index : No
Speaking order: Yes
pvs



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and
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