



W.P.No.6034 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.02.2023

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THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.6034 of 2015

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.... Petitioner

vs

1. The Director of School Education,  
Chennai - 600 006.

2. The District Educational Officer,  
O/o The District Educational Officer,  
Gobichettipalayam,  
Erode District.

..Respondents

Writ Petition 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 in the post of Scavenger in the Government Girls Higher Secondary School, Bhavani as per G.O.Ms.No.111 dated 09.05.2012 issued by the Department of Education by considering her representation dated 05.01.2015.



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For Petitioner : Mrs.S.Esairani Narasimman

For Respondents : Mr.Abishek,  
Government Advocate

### ORDER

This writ petition has been filed to direct the respondents to regularize the service of the petitioner in the post of Scavenger in the Government Girls Higher Secondary School, Bhavani as per G.O.Ms.No.111 dated 09.05.2012 issued by the Department of Education by considering his representation dated 05.01.2015.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

3. Learned counsel for the petitioner would contend that the name of the petitioner was sponsored through employment exchange on 06.12.1996 for the post of Scavenger in Government Girls Higher Secondary School, Bhavani and was appointed to the said post on 01.04.1997. Though the appointment order indicates as a part time employee, she was working as a full time employee in the said post for more than 20 years. Similarly placed persons like that of the petitioner who were appointed as daily wage



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employees were granted regularisation vide G.O.Ms.No.111 dated 09.05.2012, G.O.Ms.No.234 dated 01.06.2009 and G.O.Ms.No.471 dated 22.09.2009.

4. Learned counsel would further submit that it is well settled position of law that daily wagger/muster roll employees, after completion of 10 years and more continuous service with a minimum of 90 days in a calendar year, have to be regularised in the available permanent posts. The existence of the sanctioned post from the date of the petitioner's appointment for about 20 years is proved by the conduct of the respondents in allowing her to continue in service. Learned counsel also relied on the decision reported in 2006 (4) SCC 1 (Secretary, State of Karnataka & Ors. vs. Uma Devi) and 2010 (9) SCC 247 (State of Karnataka & Ors vs M.L.Kesari & Ors) in support of his contention.

5. Denying the averments in the affidavit filed in support of the writ petition, learned Government Advocate would submit that the petitioner is working as a part time scavenger, paid from Parents Teachers Association School funds. Therefore, she could not claim for regularisation of service



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without a duly created or sanctioned post. The part time employees paid from School Parents Teachers Association funds are not eligible for regularisation of service until regular time scale of post of scavenger is created or sanctioned by the government and allotted to the school. Thus, the claim of the petitioner for regularisation cannot be considered.

6. This Court considered the submissions made on either side and perused the materials available on record.

7. It is not in dispute that the petitioner was sponsored through employment exchange for the post of part time scavenger in Government Girls Higher Secondary School, Bhavani and she was appointed on 01.04.1997 as a part time employee. She had been discharging her duties without any blemish for more than 20 years. The contention of the petitioner that though she was appointed as a part time worker, she was made to do the work for full time, cannot be brushed aside. Since working in a School as a scavenger, one cannot imagine that she will be doing only as a part time job. The duties and responsibilities will be similar in nature as that of full time scavenger. Moreover, she was allowed to work continuously for



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more than 20 years and still she is working in the School. The existence of the post from the date of the petitioner's appointment for about 20 years is proved by the conduct of the respondents by appointing her through employment exchange and allowing her to continue in service till date. Only when there is a vacancy and regular work, she should have been accommodated in the post for long number of years. Therefore, the petitioner has to be treated on par with Sweepers/Scavengers working in the regular post. Further, it is seen that similarly placed persons like that of the petitioner have approached this Court seeking regularisation and only for those persons, G.O.Ms.No.111 dated 9.5.2012 was passed and they were regularised. The representations sent by the petitioner to the respondent authorities requesting to regularise the service, did not evoke any response. Further, the respondents did not produce any materials to show that the petitioner was paid salary as a part-time Scavenger from the School Parent Teacher Association Fund. Thus, in view of the reasons stated above, this Court is of the view that the petitioner is entitled to get regularisation of her service, however, on her completion of ten years of service.



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8. In the result, the Writ Petition is allowed. The respondents are directed to regularise the service of the petitioner on her completion of 10 years of service and award all consequential benefits arising thereof, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

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Index:Yes/No  
Speaking/Non-speaking order  
vsi

To

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Chennai - 600 006.
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J.NISHA BANU,J.

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