



W.A.No.1458 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.12.2022	Delivered on 20.01.2023
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CORAM:

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

W.A.No.1458 of 2019

1.M.Shanmugam
2.M.Sivam
3.L.Mahendhiran
4.G.Madhaiyan

...Appellants

Vs.

1.Government of Tamil Nadu,
Represented by its Principal Secretary,
Rural Development & Panchayat Raj Department,
Fort St.George, Chennai - 600 009.

2.The Director/Commissioner,
Rural Development & Panchayat Raj Department,
having Office at Panagal Maaligai,
Saidapet, Chennai – 600 015.

3.The District Collector,
Dharmapuri District.

4.The Commissioner,
Pennagaram Panchayat Union,
Dharmapuri.

..Respondents



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 28.03.2019 passed in W.P.No.32112 of 2018.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.Abishekmurthy

Government Advocate for R2 to R3

Mr.G.Ameedius

Government Advocate for R4

J U D G M E N T

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

Challenge in this intra-court appeal is to the order of the Writ Court dismissing the Writ Petition filed by the appellants, challenge in which was to the rejection of the request for regularization.

2.The appellants were appointed as Hand Pump Fitting Assistants on a daily wage basis in the 4th respondent Panchayat Union on the following dates i)1st petitioner – 09.01.1999, ii) 2nd petitioner – 01.04.1999 iii) 3rd petitioner – 01.01.2000 iv) 4th petitioner – 01.04.2000. However, the 1st respondent by his proceedings dated 23.08.2000 removed them from service.



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The said proceeding was challenged by the petitioners in O.A.No.6665 of 2000 before the Tamil Nadu Administrative Tribunal and an order of interim injunction was granted by the Tribunal restraining the respondents from removing the appellants from service. As such they continued to work as Hand Pump Fitting Assistants. Upon abolition of the Tribunal, the said O.A.No.6665 of 2000 was transferred to this Court and numbered as W.P.No.40742 of 2006.

3.A contention was raised on behalf of the 4th respondent herein to the effect that the appellants were disengaged on the basis of the instructions received from the District Collector, Dharmapuri on 22.08.2000. While the counsel for the appellants herein relied upon G.O.Ms.No.22 dated 28.02.2006 and G.O.Ms.No.55 dated 15.06.2006, directing regularization of such temporary employees appointed prior to 01.04.1997 and in respect of the contention that they should be regularized, this Court held that G.O.Ms.No.55 dated 15.06.2006 provides for continues employment of persons appointed after 01.04.1997 also.



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4. On the said conclusion, this Court while negating the request for positive direction for regularization directed the Government to consider regularization. Pursuant to this order, the appellants herein made a representation to the 4th respondent, seeking regularization. The District Collector, Dharmapuri by his proceedings dated 18.12.2012 recommended regularization of the service of the appellants, since they had completed 10 years of service as daily wage employees. The Government, however, relying upon G.O.Ms.No.55, rejected their claim on the ground that they were appointed as daily wage employees after 01.04.1997 and therefore, they are not entitled to be regularized. It is this order, which was challenged by the appellants in W.P.No.32112 of 2018. We find that no counter was filed in the Writ Petition.

5. The Writ Court by its order dated 28.03.2019, dismissed the Writ Petition relying upon the judgments of the Hon'ble Supreme Court in **State of Karnataka Vs. Umadevi and others** reported in **2006 (4) SCC 1**, and the **Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and Others** reported in **(2014) 4 SCC 769** and the **State**



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**of Tamil Nadu through Pirncpal Secretary to Government, Commercial
Taxes and Registration Department, Secretariat and Another Vs.**

A.Singamuthu reported in **2017 (4) SCC 113**. The solitary ground on which, the Writ Court dismissed the Writ Petition was that there is no vested right of regularization and persons, who are employed on a temporary basis cannot get into regular service by- passing the claims of those, who are otherwise qualified. Aggrieved by the dismissal of the Writ Petition, the petitioners have come up with this appeal.

6.We have heard Mr.V.Vijay Shankar, learned counsel for the appellants and Mr.Abhishek Murthy, learned Government Advocate for the respondents 1 to 3 and Mr.G.Ameedius, learned Government Advocate for the 4th respondent.

7.Mr.V.Vijay Shankar, learned counsel appearing for the appellants would vehemently contend that the Writ Court was not justified in dismissing the Writ Petition without adhering to the various Government orders that were passed providing schemes for regularization of these daily rated employees.



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Even before taking us through the various Government orders, the learned counsel would submit that all the four appellants are working ever since the date of their appointments in the year 1999 and 2000 till today without any interval. He would submit that the very fact that all the appellants have been engaged as daily rated employees, despite the dismissal of the Writ Petitions would go to show the work, done by them is permanent in nature and is not seasonal or temporary. He would also take us through the various Government orders that were passed by the Government.

8.The earliest of the said Government orders is G.O.Ms.No.878 dated 15.05.1981 wherein, the Government after taking into account the suggestions made by the Director of Rural Development had taken a conscious decision to regularize the services of the contingency staff of the Panchayat Unions, who have put in 10 years of service as on 01.04.1981 to be brought into regular establishment with a time scale of pay. While doing so, certain conditions were imposed. Condition No.7 of the said Government Order reads as follows:-

“7) In future as and when the employees borne on the



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Contingent establishment complete 10 years of service, the executive authority of the Panchayat institution should send necessary proposals to bring them to time scale of pay through the Collector of the District concerned and Director of Rural Development, Madras for approval of the Government after the total strength in each category is fixed by the Collector or the Director of Rural Development as the case may be.”

Therefore, a provision was made for regularization of persons, who are appointed on a temporary basis in future also.

9.Subsequently, another Government order in G.O.Ms.No.267 came to be passed on 22.12.1999 wherein, services of about 218 Panchayat employees were regularized. The said Government Order however, made it clear that any person other than the 218, who are covered by the said Government Order should not be made permanent. Then came G.O.Ms.No.161 dated 26.06.2000 wherein, about 171 persons were directed to be regularized by creating 171 posts of Night Watchman in various Panchayats. Thereafter, G.O.Ms.No.22 was issued on 28.02.2006, pursuant to the announcement of the Hon'ble Chief Minister regularizing those temporary employees, who had rendered 10 years of service as on



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01.01.2006. Consequent upon this Government Order, G.O.Ms.No.55 was issued on 15.06.2006, regularizing several employees, who had been appointed before 01.04.1997. The said Government Order specifically provides for continuation for service of the Assistants of Fitters appointed after 01.04.1997 on daily wage basis and the relevant clause of the said Government Order namely, Clause – III (e) reads as follows:-

“(e) This G.O. is applicable to the Assistants of the Fitters appointed from 1982 to 01.04.1997. The Assistants of Fitter appointed after 01.04.1997 the payment shall be made on daily wages basis.”

10. Reliance is also placed on various other Government Orders, which provided for regularization of services of other categories of employees like Computer Assistants etc. In respect of Panchayat Union employees, the Government issued G.O.Ms.No.144 dated 09.09.2008 regularizing the services of 114 persons from and out of 218 persons, who are directed to be regularized by G.O.Ms.No.161 dated 26.06.2000. Contending that they are entitled to regularization on completion of 10 years of service and that they were appointed after 01.04.1997, the appellants would seek regularization.



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11.Mr.V.Vijay Shankar, learned counsel appearing for the appellants would draw out attention to Paragraph 41 of the judgment of the Hon'ble Supreme Court in **State of Jharkhand and Others Vs. Kamal Prasad and Others** reported in **(2014) 7 SCC 223** which reads as follows:-

“41.The learned Senior Counsel on behalf of the appellants have failed to show as to how the interim orders upon which he placed strong reliance are extended to the respondents which is not forthcoming except placing reliance upon the decision of this Court in Amrit Lal Berry [Amrit Lal Berry v. CCE, (1975) 4 SCC 714 : 1975 SCC (L&S) 412] , without producing any record on behalf of both the State Governments of Bihar and Jharkhand to substantiate the contention that the interim orders obtained by the similarly placed employees in the writ petitions referred to supra were extended to the respondent employees to maintain parity though they have not obtained such interim orders from the High Court. Therefore, the learned Senior Counsel has failed to prove that the respondents have failed to render continuous services to the appellants at least for ten years without the intervention of the orders of the court, the findings of fact recorded by the Division Bench of the High Court is based on



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record, hence the same cannot be termed as erroneous in law. In view of the categorical finding of fact on the relevant contentious issue that the respondent employees have continued in their service for more than 10 years continuously therefore, the legal principle laid down by this Court in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] at para 53 squarely applies to the present cases. The Division Bench of the High Court has rightly held that the respondent employees are entitled for the relief, the same cannot be interfered with by this Court."

The learned counsel would contend that in the present case also, the situation contemplated in Paragraph 53 of the judgment in Umadevi's case should be invoked to grant the benefit to the appellants.

12. He would also rely upon the judgment of the Hon'ble Supreme Court in **Prem Ram Vs. Managing Director, Uttarakhand Pwya Jal and Nirmal Nigam, Dehradun and Others** reported in (2015) 11 SCC 255 wherein, the Honble Supreme Court had observed as follows:-

"10. If that be so, there is no denying the fact that the persons who were junior to the appellant, having been engaged much later than him, steal a march over him in terms of



regularisation in service while the appellant remained embroiled in litigation over what was eventually found to be an illegal termination of his service. It is true that the appellant has already superannuated. That does not, however, make any difference. What is important is that the appellant had been appointed as early as in the year 1988 and had, by the time the decision of this Court in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was pronounced, already completed more than 10 years' service. The Government has formulated rules for regularisation of such daily wagers, no matter the same are the subject-matter of a challenge before the High Court. What is noteworthy is that neither the State Government nor the Jal Nigam has resented the idea of regularisation of those who have served for over a decade. The rules providing for regularisation are a sufficient enough indication of that fact. We do not, therefore, see any impediment in directing regularisation of the services of the appellant on the analogy of his juniors with effect from the date his juniors were regularised and for the release of all retiral benefits in his favour on that basis by treating him to be in continuous service till the date of his superannuation. We make it clear that this direction will not entitle the appellant to claim any amount towards arrears of salary based on such regularisation."



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13. Reliance is also placed on the judgment of the Hon'ble Supreme Court in **Jivanlal Vs. Pravin Krishna, Principal Secretary and Others** reported in **(2016) 15 SCC 747** wherein, the Hon'ble Supreme Court had held that if similarly placed persons have been regularized on completion of 10 years of service, such benefit cannot be denied to others. Our attention is also drawn to the judgment of the Hon'ble Supreme Court in **The Secretary to Government, Highways Department Vs. V.Meenakshi Sundaram** reported in **2018 (8) SCC 238** wherein, again the Hon'ble Supreme Court had reiterated that the regularization of persons, who had completed 10 years of service will not be in conflict with the law laid down to the Umadevi's case. The Hon'ble Supreme Court, in fact, pointed out that though the intention in Umadevi was to put a full stop to pernicious practice of irregularly and illegally appointing daily wage workers and continuing with them indefinitely, an exception was made in Paragraph 53 of the said judgment and in **State of Karnataka Vs. M.L.Kesari** reported in **(2010) 9 SCC 247**, the Hon'ble Supreme Court had explained the term one time measure used in Umadevi's case.

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14.The learned counsel would also draw our attention to the judgment of the Hon'ble Division Bench of this Court in W.A.(MD)No.913 of 2015 dated 21.02.2017 contending that said such persons working in the Highways and Rural Development Department were conferred the benefit of regularization. Reliance is also placed on the judgment of another Division Bench of this Court in W.A.No.3954 of 2019 and 553 of 2020 dated 01.11.2021 wherein, there was a direction to regularize services of several employees, who had working in the various Panchayat Unions.

15.Contending contra, Mr.Abhishek Murthy, learned counsel appearing for the respondents 2 and 3 would submit that G.O.Ms.No.55 is very clear to the effect that it cannot be applied to regularization of persons appointed after 01.04.1997. G.O.Ms.No.22 provided for regularization of persons, who had completed 10 years of service as on 01.01.2006. The appellants do not satisfy either of the requirements. They had not completed 10 years of service as on 01.01.2006 and they are appointed after 01.04.1997 therefore, the service of the appellants cannot be regularized. He would also



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rely upon the judgment that are relied upon by the Writ Court in negating the relief. We have considered the rival submissions.

16.No doubt, in Umadevi's case, the Hon'ble Supreme Court came down heavily upon temporary recruitment followed by regularization. As pointed out in Narendakumar referred to supra, the Hon'ble Supreme Court intended to put a full stop to the perinicious practice of irregularly or illegally appointing daily wagers and continuing with them indefinitely. We must without reservation concede that the noble intention has not been achieved. Despite Umadevi, Governments have been continuing to adopt practice of employing temporary employees even in permanent vacancies or even in posts, which have a permanent character.

17.In the case on hand of the appellants were appointed in the years 1999 and 2000 and they are serving even today which shows that the work that is done by the appellants is of a permanent character. Though they were originally appointed as Hand Pump Fitting Assistants, they are now being engaged as Overhead Tank Operators. Therefore, the need for the services of



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the appellants continuous. This practice of the Government in employing persons on daily wage basis in works of permanent in nature amounts to exploitation of labour. We have several labour beneficial enactments in the statute books and without an exception all such labour beneficial enactments exempt Governments and Local Bodies from the sweep of those enactments. Though the exemptions were granted with the avowed object of protecting public functionaries and saving public money, we find that such exemptions are being used unreasonably to exploit citizens by employing them on a daily wage basis.

18.The very fact that there is so much of literature in the form of judicial pronouncements relating to daily wage employees itself would show that this practice has come to stay. It would be very easy for us to condemn the Government for having adopted such practices and also confirm the order of the Writ Court. If we have to do that, we feel, we will fail in our duty to render justice as a constitutional Court.

19.No doubt, the judgments relied upon by the Writ Court namely, Umadevi, R.Govindaswamy and A.Singamuthu condemn the practice of



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regularization. We should also point out both Umadevi and Singamuthu dealt with the case of part time employees and not full time employees. We also find that we will be aiding the practice of the Government to have daily rated employees and replace them with their men whenever there is a change in the political fortunes thereby, making public employment a tool in the hands of politicians to enhance their political fortunes.

20. We have come across several cases where such temporary daily wage employees are removed from services and replaced by others depending upon the political situations prevalent at that point of time. Fortunately, for these appellants despite swinging of the the political pedulum, they have been continuing to work. Even though their initial service was protected by the order of the Tribunal, atleast from 01.12.2010 till date for nearly 12 years, there was no protection for their services by means of any order of Court.

21. The Hon'ble Supreme Court even after the judgment in Umadevi had held that in appropriate cases, it will be open to regularise the services of



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temporary daily rated employees if it is shown that the nature of the work done by them was permanent and they were served for more than 10 years.

This Court has also issued several directions in this regard.

22.No doubt, the exploitation of this daily rated employees by the Government should be stopped. But, at the same time, if we refuse to regularize the persons like the appellants, who have put in 20 years of service as daily rated employees, we would only be encouraging exploitation by the state. If the private individual running an industry with 20 employees cannot have temporary employees and the Tamil Nadu Industrial Employees (Conferment Permanent Status) Act would apply to them, we see no reason to allow those persons, who are working under the State or its wings to suffer the temporary employment for a span of 10 years and more.

23.The learned Government Advocate would submit that if we direct regularisation of the appellants that would open the flood gates. We are alive to that fact. The Government is guilty of exploitation of atleast these four individuals for more than 22 years now. If their service had been



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regularized, they would have been entitled to various benefits including increments, Dearness Allowance etc. The Government should be a model employer. We find that the Government has been a worse employer in the case of these four appellants and it had been exploiting them for more than 22 years. Whatever is the difference between the daily wages that has been paid to the appellants and what should have been paid to them if they had been permanent employees would be the illegal gain made by the Government at the cost of these appellants. We should not be misunderstood as being sentimental or emotional, we are only sympathetic. Sympathetic to the cause of such persons, who are exploited by the mighty state.

24.We therefore, have no hesitation in setting aside the order of the Writ Court and directing regularization of the appellants with effect from the date on which they completed 10 years in service. We make it clear that the appellants would be entitled to monetary benefits only from the date on which they came before this Court in W.P.No.32112 of 2018 i.e., on 03.12.2018.

25.In fine, this Writ Appeal is allowed, the order of the Writ Court



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is set aside. There will be a direction to the respondents to regularize the service of the appellants with effect from the date on which they had completed 10 years of service from the date of their initial appoinyment. It is made clear that the appellants would be entitled to monetary beneifts of such regularization only from 03.12.2018. In the circumstances, we spare costs with the fond hope that the Government will discontinue exploitation of its citizens by employing them as daily rated employees atleast in future.

(R.S.M., J.) (S.S.K., J.)
20.01.2023

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Internet:Yes
Index:Yes
Speaking

To:-

1.The Principal Secretary,
Government of Tamil Nadu,
Rural Development & Panchayat Raj Department,
Fort St.George, Chennai - 600 009.

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2.The Director/Commissioner,
Rural Development & Panchayat Raj Department,
having Office at Panagal Maaligai,
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R.SUBRAMANIAN, J.
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