



W.P.No.4557 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

CORAM:

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

W.P.No.4557 of 2016

1. S.Arul Lingom
2. P.Nangil Nidhi
3. R.Yesu Mohan

... Petitioners

Vs.

1. The Government of Tamilnadu
rep. By its Principal Secretary to
Government, Personnel &
Administrative Reforms Department,
Fort St. George, Chennai – 600 009
2. The Government of Tamilnadu
rep. Principal Secretary to Government,
Finance (Pay cell) Department,
Fort St. George, Chennai – 600 009
3. The District Collector,
Nagercoil, Kanyakumari District

... Respondents

Writ Petition filed under Article 226 Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records from the 1st respondent relating to his proceedings made in Letter No.44182/P/2015-01 dated 23.11.2015 and quash the same as null and void, illegal and invalid and consequently to regularise the services of the petitioners from July 2003, the initial date of their appointments as 'junior assistants' and



W.P.No.4557 of 2016

according promotions taking into account their initial date of appointees as Junior Assistants besides counting the services of the petitioners from their respective initial dates of entry into services for the purpose of earning pension under the old pension scheme applying the law laid down by the Division Bench of this Court reported in 2014 (2) CTC 777 besides settling the difference of monetary and service benefits.

For Petitioner : Mr. A.Amal Raj

For Respondents : Mr.M.Shahjagan
Special Government Pleader

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records from the 1st respondent relating to his proceedings made in Letter No.44182/P/2015-01 dated 23.11.2015 and quash the same as null and void, illegal and invalid and consequently to regularise the services of the petitioners from July 2003, the initial date of their appointments as 'junior assistants' and according promotions taking into account their initial date of appointees as Junior Assistants besides counting the services of the petitioners from their respective initial dates of entry into services for the purpose of earning pension under the old pension scheme applying the law laid down by the Division Bench of this Court reported in 2014 (2) CTC 777 besides settling



W.P.No.4557 of 2016

the difference of monetary and service benefits.

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

The petitioners are the colleagues as 'Junior Assistants' attached to different departments. Initially, the petitioners were appointed as 'junior assistants' as early as in July 2003, which is prior to the introduction of G.O.Ms.No.259 Finance (pension) department dated 06.08.2003, the New Contribution Scheme. The cause of action for appointment of the petitioners arose on account of extraordinary strike called for by the Government servants, but the appointments of the petitioners were made not in the place of those government employees went on strike, but separately by way of creating supernumerary posts of 'Junior Assistants' in each districts to meet the contingency and the emergency situation invoking Rule 11 of the General Rules, namely, the Tamilnadu State & Subordinate Services in the Tamilnadu Ministerial Service Rules by issuing G.O.Ms.No.85 P&AR Dept., dated 14.07.2003 within the limits of 500 newly created supernumerary posts and through proper channel, Rule of reservation within the meaning of Rule 22 of T.N. State & Subordinate Services were also adhered.

(ii) Even after the strike made by the Government employees came to



W.P.No.4557 of 2016

Assistants'. While that being the case, the petitioners' name were not included in the seniority list of Junior Assistants taking into account of the fact that petitioners' initial appointments were made under Rule 11 of Tamilnadu State and Subordinate Services by creating supernumerary posts with effect from July 2003. Consequently, the petitioners have made a joint representation dated 25.02.2013 joining together all the aggrieved 'Junior Assistants' before the 1st respondent seeking to regularise the services from July 2003 with all attendant benefits and old pensional benefits, since no orders have been passed, he petitioner has approached this Court in W.P.No.30752 of 2015. The 1st respondent issued a impugned order rejecting the claim of the petitioners on the ground that the service rendered on contract basis during the government servants general strike period, 2003 cannot be added with that of regular appointment. Challenging the same, the present Writ Petition has been filed.

3. Per contra, the learned Special Government Pleader appearing for the respondents would contend that the petitioners were selected for appointment on temporary contract basis in consolidated pay as Assistants / Junior Assistants in Tamilnadu Secretariat Service / Tamilnadu Ministerial service respectively under General Rule 11 of the Tamilnadu State and Subordinate Service Rules during the Tamil nadu Government employees



W.P.No.4557 of 2016

general strike 2003 through Employment Exchange by executing a temporary appointment agreement in favour of the Governor of Tamilnadu on certain terms and conditions. As per the same, such appointments were purely temporary and it shall not confer any right to claim any preferential treatment for regular appointments. In view of the same, the claim of the petitioners in their representation dated 25.02.2013 to consider the temporary service rendered on contract basis for service and monetary benefit is not legally sustainable and the same was rejected.

4. The learned Special Government Pleader appearing for the respondents also submitted that in batch of cases in W.P.No.3498 of 2013 etc., filed by the temporary junior assistants / typists appointed in Tamilnadu Judicial Ministerial Service with a prayer to regularise their service with all attended benefit, the Hon'ble Division Bench of this Court in its common order dated 27.11.2014 has ordered as follows:

“5. We have examined the said submission. We are of the considered view that such a direction cannot be granted for more than one reason. Firstly, the petitioners, while working in the post on temporary basis, had an opportunity to participate in the examination conducted by the public service commission for appointment in the said post. Some of the candidates had appeared for examination and also come out successfully. The petitioners, it appears, have not participated in the selection



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W.P.No.4557 of 2016

process. Secondly the petitioner while accepting the appointment on temporary basis were conscious of the fact that their appointment was only till regularly appointed incumbents are available. Thirdly, the petitioners' appointment was not in accordance with the constitution scheme of employment. Thus, it cannot be directed to conduct a separate examination for regularisation of the present employees."

hence, pleaded to dismiss the petition.

5. Heard the learned counsel on either side and perused the documents placed on record.

6. Admittedly, 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. Further, the petitioners were not granted the benefit of drawal of pension under old pension scheme.

7. 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 purely on temporary basis under Rule 11 of State and Subordinate Officers



W.P.No.4557 of 2016

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.

8. 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.

9. 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



W.P.No.4557 of 2016

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.

10. As far as the contention of the petitioner seeking to apply the law laid down by the Hon'ble Division Bench of this Court reported in 2014 (2) CTC 777 (W.P.No.2110 of 2014) [Union of India and Another Vs. K.Punniyakoti and Others] is concerned, the respondents therein were appointed as Casual Labourers on daily wage basis for cleaning and assisting the technicians and scientists carrying out the task on various Laboratories of IGCAR and the Government of India has introduced a scheme called 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993', with effect from 01.09.1993 and according to the said scheme, the casual labourers employed as on date of order, who have rendered one year of continuous service in IGCAR are bound to be conferred temporary employee status and they are regularly selected under Group 'D', after selection for permanent absorption, whereas, in the present



W.P.No.4557 of 2016

case, the petitioners were recruited by an agreement under General Rule 11 of Tamilnadu State and Subordinate Services, therefore, it is crystal clear that the said case does not apply to the facts and circumstances of the present case on hand, as the facts of the said case is entirely different.

11. It also cannot be forgotten that though this Court in W.P.No.27900 of 2018 dated 15.03.2023 had allowed the said Writ Petition filed by similarly placed candidates based on the precedent of Hon'ble Supreme Court **S. Sumnyan & others Vs. Limi Niri & others reported in (2010) 6 SCC 791** and Judgement rendered by Hon'ble Division Bench of this Court in **Indian Council of Medical Research & others Vs. K.Rajalakshmi & another reported in 2005 (1) CTC 488**, however, 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 Vs. 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.

"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



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W.P.No.4557 of 2016

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."**

12. It is also relevant to note that 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 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



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W.P.No.4557 of 2016

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."

13. Considering the facts and circumstances of the case and taking note of the Judgments of the Hon'ble Apex Court and Hon'ble Division 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 on appointment by agreements and as per the terms of contract, the appointments of the petitioners are purely temporary and it cannot confer any right to claim preferential treatment for retrospective regularisation from the date of their initial appointment and initially, 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



W.P.No.4557 of 2016

of the view that the prayer of the petitioners cannot be granted.

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

09.06.2023

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

V.BHAVANI SUBBAROYAN J.

ssd

To

1. The Government of Tamilnadu
rep. By its Principal Secretary to
Government, Personnel &
Administrative Reforms Department,
Fort St. George, Chennai – 600 009
2. The Government of Tamilnadu
rep. Principal Secretary to Government,
Finance (Pay cell) Department,

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



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