



WP.No.35167 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.35167 of 2014
and
M.P.Nos.1 and 2 of 2014
and
M.P.No.1 of 2015

L.Sivakumar

.... Petitioner

vs

1. The Commissioner cum Chief Secretary,
Government of Tamil Nadu,
Agricultural Department,
Fort St.George,
Chennai-600 009.

2. The Director of Agriculture,
Chepauk,
Chennai-600 005.

3. The Joint Director of Agriculture,
Trichy.

4. The Assistant Director of Agriculture,
Manikandam, Trichy District.

.... Respondent

Writ Petition filed under Article 226 of the Constitution to issue a
Writ of Certiorarified Mandamus to call for the records on the file of the 1st



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respondent in connection with the impugned letter No.5642/VNi4(1)/2014-4 dated 10.06.2014 and quash the same and consequently direct the respondents to absorb the petitioner in the regular vacancy sanctioned as per G.O.(P)243 Agriculture (Vni4) Department dated 10.12.2013 in regular time scale of pay on relaxing the relevant Rules for appointment, as done in similar cases in various Departments.

For Petitioner : Ms.T.Aananthi

For respondents : Mrs.Mythreye Chandru
Special Government Pleader

ORDER

The petitioner was appointed as a watchman on daily wage basis on 16.08.1999 under the control of the 4th respondent. However, he was not regularized in service till date. The Government has issued orders to regularize the services of numerous casual labourers employed by Government department. As per the various Government orders those who have completed 10 years of service were directed to be regularized. G.O.Ms.No.74, P& AR Department dated 27.06.2013 has been issued with certain restrictions with regard to age, appointment through Employment office, part time working etc. Subsequently, G.O.71 RW & P Department dated 12.02.2014 has been passed relaxing the restrictions relating to age and appointment through Employment office passed in G.O.No.74, P& AR



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Department dated 27.06.2013. The 1st respondent passed G.O.(P) No.243 Agri.Department dated 10.12.2013 granting permission to the 2nd respondent to fill up 769 posts in Agriculture Department and 37 posts at Agricultural Engineering department, totally 856 posts of Watchman, Masdoor, Masalsi and Sweepers. Therefore, the petitioner approached this Court in W.P.No.5226 of 2014, in which, by order dated 21.02.2014, this Court directed the respondent to consider the representation of the petitioner for regularization in the light of the Government Orders and to pass appropriate orders within a period of eight weeks. The 1st respondent, by Government Letter No.5642/VNi4(1)/2014-4 dated 10.06.2014, rejected the request of the petitioner. Aggrieved over the same, the petitioner is before this Court.

2. Heard the submission of both the sides.

3. From the perusal of the materials, it is seen that in identical circumstances, several casual labourers working in very same Agricultural Department have approached this Court by way of writ petitions and one such case is W.P.No.5039/2015. This Court citing the judgment of the Hon'ble Supreme Court in Sheo Narain Nagar's case and the order passed in S.L.P.No.9110 and 9111 of 2013 dated 29.04.2013 directed the respondents



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to regularize the petitioner therein within a period of three months from the date of receipt of a copy of the order. Against the same, the Government preferred an appeal vide W.A.No.536 of 2022 and the same was dismissed on 13.04.2022. Again, an SLP was preferred against the Division Bench order in SLP(C) No.016850/2022 which was also dismissed on 30.09.2022. Thereafter, order was passed regularising the service of the petitioner therein. Like wise in the case of one Anbazhagan, the Government relaxed the conditions imposed in G.O.Ms.No.74 P& AR Department dated 27.06.2013 and implemented the order of the Court by regularizing him in G.O.Ms.No.205 Town Development Department dated 18.12.2014. In yet another case, in G.O.Ms.No.71, Rural Development Department dated 12.02.2014, the conditions specified in G.O.Ms.No.74 were relaxed apart from giving age relaxation and non sponsoring through Employment Exchange. Thus, in quite a number of cases, the Government has relaxed the rules and regularized the employee from the date of completion of 10 years. In the instant case, the petitioner has also completed more than 15 years of service.

4. Government has taken a consistent stand before this Court that the



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order of regularization is contrary to the judgment of the Hon'ble Supreme Court in State of Karnataka vs Uma Devi and Ors , AIR 2006 SC 1806 as well as Civil Appeal Nos.2730 and 2731 of 2014 in the case of Secretary to Government, School Education Department, Chennai.

5. It is to be noted that the judgment of the Hon'ble Supreme Court in Uma Devi's case has been distinguished in the case of Sheo Narain Nagar Vs. The State of Uttar Pradesh in Civil Appeal No.18510 of 2017 dated 13.11.2017, wherein it has been observed as under:

"8..... We have to strike a balance to really implement the ideology of Uma Devi (supra). Thus, the time has come to stop the situation where Uma Devi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Uma Devi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra).

9. Coming to the facts of the instant case, there was a



direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.

10. The High Court dismissed the writ application relying on the decision in Uma Devi (supra). But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such



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Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The appellants were required to be appointed on regular basis as a one time measure, as laid down in paragraph 53 of Uma Devi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today."

6. Therefore, it is very clear that the judgment of Uma Devi can be applied only in cases where illegal appointments are made denying the opportunity of the people who are waiting before the Employment Exchange. Such back door appointments shall be considered as illegal cannot be regularized at any cost. But, when Government has adopted the procedure of engaging casual labourers indiscriminately and has taken a policy decision to regularize them on completion of 10 years of service, they cannot turn around and state such engagements are illegal. Non sponsoring through Employment Exchange may be an irregular method, the Government in an unavoidable circumstances have engaged casual labourers



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for getting their work done. Those casual labourers have continued for more than ten years. It is also relevant to state that those last grade servants does not require any educational qualification to do those menial works. In such circumstances, selection or engagement of casual labourers may not undergo regular selection method of getting sponsor from Employment Exchange or adherence to rules. Once a decision is taken to regularize the casual labourers it shall be uniformly applied.

7. In the instant case, it is noted that by way of several Government Orders, the restriction imposed in G.O.Ms.No.274 dated 27.06.2013 as well as the rules with regard to age, educational qualification and reference through Employment Exchange were relaxed and their service were regularized. When a particular treatment was given to a person in the very same department, it shall be extended to the similarly placed persons of the very same department. The respondent department cannot take different stands with regard to its own employees. Once a decision is taken in implementing the orders of regularization, it shall be extended to all the people who are similarly placed. Therefore, if it is not extended inspite of the direction given by the Court it amounts to discrimination. Such



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discriminatory treatment is violative of principles of natural justice, doctrine of equality and it will amount to arbitrary exercise of power.

8. In such of the matter, this Court is of the considered opinion that the judgment of the Hon'ble Supreme Court in Sheo Narain Nagar's case reported in 2018(13) SCC 432, will squarely apply to this case. Following the judgment of the Hon'ble Supreme Court in the above judgment as well as the orders passed in S.L.P.Nos.9110 and 9111 of 2013 dated 29.04.2013, this Court is inclined to grant relief as prayed for.

9. In the result, the Writ Petition is allowed. The impugned order dated 10.06.2014 is quashed. The respondents are directed to pass orders regularizing the service of petitioner in the light of the above Government Orders within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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



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