



W.P.No.31325 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2023

DELIVERED ON: 14.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.31325 of 2019

K.Sarojini

... Petitioner

Vs.

1. The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai 600 104.
2. The Union of India,
Rep. by its Chief Post Master General,
Tamil Nadu Circle, Chennai 600 002.
3. The Superintendent of Post Offices,
Postal Stores Depot, Kilpauk,
Chennai 600 010.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, to call for entire records in order dated 31.01.2019 made in O.A.No.310/01543 of 2014 passed by



W.P.No.31325 of 2019

the Central Administrative Tribunal, Chennai and quash the same and consequently, direct the respondents 2 and 3 to regularise the service of the petitioner retrospectively, fixation of pay applicable for the regular post, counting of services for the purpose of pension and other pension benefits.

For petitioner : Mr.N.S.Sivakumar

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This writ petition has been filed by the petitioner, challenging the order dated 31.01.2019 passed by the Tribunal in O.A.No.310/01543/2014, in and by which, the claim of the petitioner to regularise her service was rejected,

2. The brief facts leading to the filing of the present writ petition is as follows.

The petitioner was working as a part time contingent scavenger in the Postal Department on daily rated basis from 01.03.1983 and she had worked continuously, without any break or termination by putting 31 years of service. Therefore, she made a representation to the respondents seeking



W.P.No.31325 of 2019

regularization of service and it was not considered. Hence, she filed O.A.No.806/2014 before the Tribunal and by order dated 12.06.2014, the respondents were directed by the Tribunal to consider the representation of the petitioner seeking regularization of service. Pursuant to the order of the Tribunal, the respondents have considered and rejected the representation of the petitioner, vide order dated 12.08.2014. Therefore as against the above order, she approached the Tribunal by filing original application, however, it was dismissed. Challenging the dismissal order passed by the Tribunal, this writ petition has been filed.

3. The learned counsel for the petitioner submitted that, the Tribunal had granted the benefit of regularization of service to the similarly placed persons by order dated 19.01.2012 in O.A.Nos.778, 779, 780 and 781 of 2011, however it was denied in the case of the petitioner, which is discriminatory and arbitrary. Therefore, she seeks to set aside the impugned order passed by the Tribunal and direct the respondent concerned to regularize the service of the petitioner, considering her long period of 31 years, without any break.



W.P.No.31325 of 2019

4. Heard the learned counsel for the petitioner and we have perused the materials on record.

5. It is the primordial contention of the petitioner that, when the relief of regularization of service was granted to the similarly placed persons by the Tribunal in O.A.Nos.778, 779, 780 and 781 of 2011, vide order dated 19.01.2012, the same was denied to the petitioner, which is arbitrary. However, it is the contention of the respondents before Tribunal that, though the petitioner has put long years of service, she did not work against the sanctioned post. It is further contended by the respondents/Department that the petitioner was allowed to continue in service as part time contingent scavenger, even after attaining the age of superannuation and her working hours was less than 8 hours. Further more, she is not having required educational qualification, as per the statutory recruitment rules and as such she is not entitled for regularization.

6. While perusing the order passed by the Tribunal, it shows that the respondents/Department had relied upon the decision of the Hon'ble



W.P.No.31325 of 2019

Supreme Court in *Secretary to Government, School Education*

Department, Chennai Vs. R.Govindasamy and others reported in (2014) 4

SCC 769 ; State of Karnataka Vs. Umadevi reported in (2014) 4 SCC 40,

dated 10.04.2006; and State of Rajasthan Vs. Daya Lal reported in (2014)

4 SCC 435. In the light of the above decisions of the Hon'ble Supreme

Court, and also considering the facts that the petitioner is not possessed

required educational qualification and she was not even appointed through

Employment Exchange, the Tribunal has dismissed the application filed by

the petitioner.

7. At this juncture, it is worthwhile to mention that, following the

decision of the Hon'ble Supreme Court in the case of *Umadevi; and*

Govindasamy, this court also had an occasion to deal with a similar matter

in the case of *Saraswathy v. State of Tamil Nadu [W.P.No.5529 of 2015*

dated 18.12.2019] wherein this Court held as follows:

“5. In the case of Secretary to Government, School Education Dept., Chennai, v. R. Govindaswamy and Others, reported in (2014) 4 SCC 769, the Hon'ble Apex Court has allowed the appeal filed by the Government.

6. In yet another decision rendered by the Hon'ble Apex Court in



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W.P.No.31325 of 2019

Secretary to Government, Commercial Taxes and Registration Department, Secretariat and Another v. A. Singamuthu , reported in CDJ 2017 SCC 239, it has been held in paragraph Nos.16, 17 and 18 are extracted hereunder:

“16. The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said G.O.Ms.No.22 dated 28.02.2006 and directed the appellants to grant regularization of respondent's service from the date of completion of ten years of service with salary and other benefits. The learned Judge failed to take note of the fact that as per G.O.Ms.No.22, dated 28.02.2006, the services of employees working in various government departments on full time daily wage basis, who have completed more than ten years of continuous service as on 01.01.2006 will be regularized and not part time Masalchis like the respondent herein. In G.O.Ms.No.84, dated 18.06.2012, the Government made it clear that G.O.Ms.No.22, dated 28.02.2006 is applicable only to full time daily wagers and not to part time daily wagers. Respondent was temporarily appointed part time worker as per Tamil Nadu Finance Code Volume (2) Appendix (5) and his appointment was completely temporary. The respondent being appointed as part time Masalchi, cannot compare himself to full time daily wagers and seek benefit of G.O.Ms.No.22 dated 28.02.2006. The Single Judge also failed to consider that the Government did not grant regularization of services of any part time employee on completion of ten years of his service as envisaged under the G.O.Ms.No.22, dated 28.02.2006.

17. The learned Single Judge erred in extending the benefit of G.O.Ms.No.22, dated 28.02.2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned Senior Counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is from 01.04.1999 till the date of his regularization that is 18.06.2012, the financial commitment



W.P.No.31325 of 2019

to the State would be around Rs.10,85,113/-(approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned Senior Counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularized under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularization of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

18. It is pertinent to note that even the regularization of services of part time employees vide G.O.(Rt.) No.505 Finance (AA-2) Department dated 14.10.2009 and G.O.(2D) No.32 Finance (T.A. 2) Department dated 26.03.2010 was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of Government Orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that G.O.Ms.No.22 P & AR Department, dated 28.02.2006 is applicable only to full time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part time employees. As per G.O.(Rt.) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside”.

7.In the light of the decision cited supra, there is no merit in the writ petition. Hence, the writ petition is liable to be dismissed and accordingly it is dismissed. No order as to costs in this writ petition.”



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8. Further, the Hon'ble Supreme Court in **Registrar General of India**

V. Thippa Setty [(1998) 8 SCC 690] has held as under:

"2. We have heard counsel for both sides and perused the orders of the Tribunal dated 16-12-1991 and 19-2-1993. By the previous order, the Tribunal's direction was to regularise the respondents with effect from the date of promulgation of the recruitment rules or from the date of their appointment, depending on the seniority list. That was a direction which was a flexible one leaving it to the management to consider from what date regularisation should take effect. In pursuance of the said direction, on the new recruitment rules being promulgated on 11-5-1985, the regularisation was given effect from that date. However, in the subsequent order passed by the Tribunal on 19-2-1993, the Tribunal has directed that they should be treated as having been conferred regular status with effect from 5-2-1981, that is, the date of their entry into service as Investigators. It must be remembered that they had entered as ad hoc appointees and the question was whether they should be regularised in service since they had worked as ad hoc employees for a sufficiently long time. If the ad hoc service is regularised from the back date in this manner, it will disturb the seniority of regularly appointed employees in the cadre and, therefore, ordinarily the regularisation must take effect prospectively and not retrospectively. It must also be borne in mind that ad hoc appointees, casual labour and daily-rated persons are not subject to strict discipline of service and it is a matter of common experience that their attendance is very often not regular and at times they do not even meet the qualification for appointment since they are taken on ad hoc basis. These deficiencies are overlooked by way of granting of relaxation and, therefore, care must be taken to see that they do not upset the seniorities of regular appointees. Whether they qualify in a given case or not is not relevant but what is relevant is that regularisation should be prospective and not retrospective as the chances of their upsetting the seniorities cannot be overlooked. The Tribunal must take care to see that when they pass orders of regularisation from retrospective dates, those who are likely to be affected on account of that order are not before that court and unwittingly their careers are not adversely affected. Ordinarily, therefore, the regularisation must be prospective.

3. For the above reasons, we set aside the impugned order of the



W.P.No.31325 of 2019

*Tribunal and restore the order of regularisation passed by the appellant.
We allow the appeal accordingly with no order as to costs"*

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9. The Hon'ble Supreme Court in the decision in ***Union of India v.***

Ilmo Devi and another [2021 SCC Online 899], has held as follows:

28. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

*29. Applying the law laid down by this court in the aforesaid decisions, the directions issued by the High Court in the impugned judgment and order, more particularly, directions in paragraphs 22 and 23 are unsustainable and beyond the power of the judicial review of the High Court in exercise of the power under Article 226 of the Constitution. Even otherwise, it is required to be noted that in the present case, the Union of India/Department subsequently came out with a regularization policy dated 30.06.2014, which is absolutely in consonance with the law laid down by this Court in the case of Umadevi (supra), which does not apply to the part-time workers who do not work on the sanctioned post. **As per the settled preposition of law, the regularization can be only as per the regularization policy declared by the State/Government and nobody can claim the regularization as a matter of right dehors the regularization policy.** Therefore, in absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time Safai Karamcharies, even otherwise, they were not entitled for the benefit of regularization under the regularization policy dated 30.06.2014. (emphasis supplied)*

10. The Hon'ble Supreme Court in a latest decision in ***The Government of Tamil Nadu and another v. Tamil Nadu Makkal Nala Paniyalargal and Ors. Etc. [2023 Live Law (SC) 294]*** has held as under:



W.P.No.31325 of 2019

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“11..... The High Court has observed that even while absorbing and/or regularizing the services of the respondents, the State Government may create supernumerary posts. Such a direction to create supernumerary posts is unsustainable. Such a direction is wholly without jurisdiction. No such direction can be issued by the High Court for absorption/regularization of the employees who were appointed in a temporary unit which was created for a particular project and that too, by creating supernumerary posts.”

11. In the light of the ratio laid down by the Hon'ble Supreme Court in the decisions cited supra, and also in view of the fact that the petitioner was not appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts, she cannot claim regularisation of services from the date of initial appointment. Therefore, the claim of the petitioner to grant regularization of service, as granted to the similarly placed persons (O.A.Nos.778, 779, 780 and 781 of 2011, vide order dated 19.01.2012), cannot be accepted, in view of the decisions of the Hon'ble Supreme Court, cited supra. As such, we are of the view that the orders passed by the Tribunal does not warrant any interference by this Court and the writ petition is liable to be dismissed, as it has no merits.



W.P.No.31325 of 2019

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12. Accordingly, this writ petition is dismissed. No costs.

(D.K.K.J.) (P.D.B.J.)

14.12.2023

Internet: Yes/No

Index : Yes/No

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W.P.No.31325 of 2019

D.KRISHNAKUMAR, J.

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Pre-delivery Order in
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