



W.P.No.25614 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

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1. K.Ari Krishnan

2. S.Sivanesan

3. V.Baskaran

.. Petitioners

v.

1. The Union of India

rep.by the Special Director General

Southern Region

CPWD, Rajaji Bhavan

Chennai 600 090

2. The Chief Engineer

CPWD, Rajaji Bhavan

Besant Nagar

Chennai 600 090

3. The Superintending Engineer

PCD/CPWD

Pondicherry-6



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4. The Central Administrative Tribunal
Chennai Bench

represented by its Registrar
City Civil Court Campus
High Court, Madras

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in its No.57(2)CAT/DDG(HQ)/2016/91 dated 03.02.2016 as confirmed by the Central Administrative Tribunal, Chennai Bench viz., the 4th respondent herein in MA.No.45/2019 in OA.1222/2016 dated 04.02.2019 and quash the same and consequently direct the respondents to regularise the petitioners on an regular basis in any Group D vacancies, in the light of the Notification dated 31.07.2002 prohibiting engagement of contract employees.

For Petitioners :: Mr.V.Vijay Shankar

For Respondents :: Mr.A.Kumaraguru
Senior Panel Counsel for R1 to R3
R4-Tribunal

ORDER

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

W.M.P.No.25136 of 2019 seeking to permit the petitioners to file a single writ petition is allowed as full Court fee has been paid.



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2. It is the claim of the petitioners that they are working in the office of the third respondent continuously without any break for more than 15 years for doing the works of plumbing, carpentry, beldar etc., although engaged initially on hand receipt basis by the department, through a registered contractor on casual or contract basis. When the Department did not take steps to regularise their services in the regular sanctioned vacancies, they made representations seeking for their absorption against such posts. But the first respondent, by order dated 3.2.2016, rejected their request stating that they were only engaged on contract basis and had also crossed the upper age limit. Challenging the said order, they filed the O.A.No.1222 of 2016 before the Central Administrative Tribunal, Chennai Bench seeking appropriate direction to the respondents to appoint them in the regular Group D vacancies. A detailed counter affidavit was also filed by the respondents 1 to 3. However, when the matter was posted for hearing on 27.11.2018, the O.A., was dismissed for default. Therefore, the petitioners filed M.A.No.45 of 2019 before the Central Administrative Tribunal to set aside the dismissal order and to restore the O.A., to file. But the said application was also dismissed by the order dated 04.02.2019.



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Aggrieved thereby, the present writ petition has been filed.

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3. The learned counsel appearing for the petitioners strenuously argued before this Court that when the petitioners have been working continuously for more than 15 years as casual labourers on daily wage basis with the respondent Department either engaged directly or through a registered contractor, they are entitled to seek for regularisation of their services. He further submitted that the Central Administrative Tribunal has not passed orders on merits and when an application was filed by the petitioners for restoration of the O.A., the Central Administrative Tribunal, recording the submission made by the learned counsel appearing for the respondent Department that the petitioners were already disengaged and the prayer has become infructuous, dismissed the O.A., for default. According to the petitioners, since the O.A., has not been disposed of on merits, the order passed by the Central Administrative Tribunal is liable to be set aside.

4. The learned Senior Panel Counsel appearing for the respondents 1 to 3, stoutly opposing the prayer made on behalf of the petitioners,



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submitted that when the petitioners were not at all appointed by the respondent Department and they have been engaged only as casual labourers under a registered contractor on hand receipt basis or work order basis for plumbing, carpentry or beldar jobs, the petitioners have no legal right to seek for regularisation of their services in the regular vacancies. Hence, he submitted that when the petitioners have no locus standi to maintain the writ petition, the order passed by the Central Administrative Tribunal requires no interference.

5. We have carefully considered the rival contentions. The issue raised in this writ petition is no longer res integra, as the Constitution Bench of the Hon'ble Supreme Court way back in the year 2006, in the case of ***Secretary, State of Karnataka v. Uma Devi and others (2006) 4 SCC 1***, has succinctly held that when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedures and he is aware of the consequences of appointment being temporary, casual or contractual in nature, such persons cannot invoke the



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theory of legitimate expectation for being confirmed in the post. In the said

judgment, the Hon'ble Supreme Court has observed as follows:-

“There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.”

The said judgment was also relied upon by the Hon'ble Supreme Court in the subsequent decisions in *State of Rajasthan v. Daya Lal and others*, AIR 2011 SC 1193 and in *Secretary to Government, School Education Department, Chennai v. R.Govindaswamy and others*, (2014) 4 SCC 769 by emphatically holding that the High Courts, in exercising power under



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Article 226 of the Constitution of India, will not issue directions for regularization, absorption or permanent continuance. Unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process against sanctioned vacant posts, the equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularization of services of an employee which would be violative of the Constitutional scheme.

6. Following the aforesaid decisions, this Court also in various judgments had held that the persons engaged on contract or casual or daily rate basis have no vested right to seek for regularisation of their services. In fact, following the aforesaid decisions of the Hon'ble Supreme Court, a Division Bench of this Court to which one of us (DKKJ) was a member, in **W.A.Nos.69 to 72 & 74 of 2019 dated 16.06.2023 (Secretary to Government for Women and Child Welfare Department v. S.Anbu and others)**, has held that the persons engaged on casual or daily rate basis are not entitled to seek for regularisation of their services.



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7. In the light of the above dictum, coming back to the facts of the present case, it is the admitted case of both sides that the petitioners were not appointed by the respondent Department either in the sanctioned posts or by following the procedures established in law in the matter of public employment. Further, the petitioners have not placed any material before this Court to show that they have been appointed by the respondent Department in any sanctioned vacancies through an offer of appointment. In such circumstances, accepting the contention of the respondent Department that the petitioners were already disengaged by the registered contractor, we hold that the petitioners are not entitled to seek for regularisation of their services in the regular sanctioned vacancies and on this score, the writ petition is liable to be dismissed.

8. However, considering the plight of the petitioners that they were engaged by the registered contractor on casual or daily rate basis and they have been performing their jobs as skilled labourers, liberty is granted to the petitioners to approach the authority concerned seeking for employment and it is wholly for the respondents 1 to 3 to consider the same in accordance



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with law, as this Court has not expressed any opinion in this regard in view of the settled legal principles. With this observation, the writ petition stands dismissed. Consequently, W.M.P.Nos.25138, 25139 of 2019 and 21767 of 2020 are also dismissed. There shall be no order as to costs.

(D.K.K.,J.) (P.B.B,J.)
25.08.2023

Index : yes/no
Neutral citation : yes/no
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