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W.P.Nos.25359 & 25362 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.25359 & 25362 of 2023
and W.M.P.No.24766 of 2023

T. Arumugam ... *Petitioner in WP.No.25359/2023*

S. Jayalakshmi ... *Petitioner in WP.No.25362/2023*

Vs.

- 1.The State rep. by
Principal Secretary to Government,
School Education Department,
Secretariat, Chennai – 600 009.
- 2.The Director,
Directorate of Elementary Education,
DPI Campus,
Nungambakkam, Chennai – 600 018.
- 3.The District Collector,
Thiruvannamalai District.
- 4.The Chief Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.
- 5.The District Elementary Educational Officer,
Cheyyar,
Thiruvannamalai District. ... *Respondents in both WPs*



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6.The Block Educational Officer,
Thellar Block,
Vandavasi Taluk,
Thiruvannamalai District. ... 6th Respondent in
WP.No.25359/2023

6.The Block Educational Officer,
Anakkavur Block,
Cheyyar Taluk,
Thiruvannamalai District. ... 6th Respondent in
WP.No.25362/2023

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in his proceedings in Govt.Letter(Nilai)No.2261/Pa.Ka.4(1)/2022 and Govt.Letter(Nilai)No.2214/Pa.Ka.4(1)/2022, dated 20.03.2023, subsequent letter of 5th & 6th respondents in their proceedings in Na.Ka.No.1975/A1/2023 and Na.Ka.No.1206/A1/2023, dated 06.06.2023 and 22.05.2023, quash the same and consequently direct the 1st respondent to regularize the petitioners' service from the date of appointment i.e. 28.11.1997 and 01.04.2008, respectively, and give time scale salary and other attendant benefits in the light of judgment passed by this Court in WP.No.19954 of 2013, which was upheld by the Division Bench in W.A.No.1258 of 2018.

For Petitioners : Mr.P. Murali
(*in both WPs*)

For Respondents : Mrs.V. Yamuna Devi,



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for appointing 786 sweepers and it is in this background, this Court directed the respondents to regularize the services of the *ad hoc* appointees from the date of the said Government Order i.e. from 02.03.2012. Thus, the order passed in W.P.No.19954 of 2013, may not be applicable to the petitioners herein.

4. Incidentally, in the case of '*S. Anjammal Vs. The State of Tamil Nadu, Personnel and Administrative Reforms Department & others*', an order came to be passed by me on 21.09.2022 in W.P.No.5619 of 2014, wherein, reliance was placed on various decisions of the Hon'ble Supreme Court, as well as this Court and ultimately held that the claim of the petitioner therein, who was the part-time sweeper, seeking for regularization, cannot be considered. The said order reads as follows:-

"2. When similarly placed part-time sweepers from the same respondent/Department had approached this Court seeking for such regularisation, the issue came to be finally decided by the Hon'ble Supreme Court in the case of 'Secretary Government, School Education Department, Chennai Vs. Thiru. R. Govindaswamy & others' reported in '(2014) 4 SCC 769', in the following manner:-

"5. The issue involved here remains restricted as to



whether the services of the part-time sweepers could have been directed by the High Court to be regularized. The issue is no more res integra.

In State of Karnataka & Ors. v. Umadevi & Ors.,
AIR 2006 SC 1806, this Court held as under:

“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.”

6. In Union of India & Ors. v. A.S. Pillai & Ors.,
(2010) 13 SCC 448, this Court dealt with the issue of
regularisation of part-time employees and the court
refused the relief on the ground that part-timers are
free to get themselves engaged elsewhere and they
are not restrained from working elsewhere when they
are not working for the authority/employer. Being



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the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

*7. This Court in **State of Rajasthan & Ors. v. Daya Lal & Ors.**, AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:*

“8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation 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 regularisation of services of an employee which would be violative of the constitutional scheme. While



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something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

*(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, **if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation** in the absence of a legal right.*

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

*(iv) **Part-time employees are not entitled to seek regularisation** as they are not working against any sanctioned posts. There cannot*



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be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

*(v) **Part-time temporary employees in government-run institutions cannot claim parity in salary** with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.” (Emphasis added)*

8. The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgment. Therefore, the appeals are allowed. However, in light of the facts and circumstances of the case as Shri P.P. Rao, learned senior counsel has submitted that the appellant has already implemented the impugned judgments and does not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected.”

*3. A similar view was also taken in the case of **'Secretary to Government Commercial Taxes and Registration Department & another Vs. A.Singamuthu'** wherein, the ratio laid down in the case of **'Secretary***



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Government, School Education Department, Chennai Vs.

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Thiru. R. Govindaswamy & others' supra was followed.

Thus, the claim of the petitioner who is a part-time sweeper, seeking for regularisation, cannot be considered in view of the aforesaid decisions....”

5. The petitioners herein, who are also part-time sweepers, have now sought for regularization of their services. In view of the decision taken by me in *S. Anjammal's case (supra)*, the present Writ Petitions cannot be taken into consideration.

6. At this juncture, the learned counsel for the petitioners submitted that though T.Arumugam (petitioner in WP.No.25359 of 2023) had continued in service after 2013 also, he was not paid the consolidated salary.

7. Per contra, the learned Special Government Pleader placed reliance on the averments made in the counter-affidavit and submitted that the T.Arumugam (petitioner in WP.No.25359 of 2023) was relieved from work on 01.06.2018 and all the dues were paid.



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8. In case, T.Arumugam (petitioner in WP.No.25359 of 2023) is of the view that the statement made by the respondents is not correct, liberty is hereby granted to him, to make a representation seeking for any unpaid amounts and on receipt of such representation, the respondents shall consider the same within a period of four (4) weeks from the date of receipt of the representation.

9. Accordingly, the Writ Petitions stand dismissed. No costs.
Connected miscellaneous petition is closed.

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Speaking/Non-speaking order
Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No

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M.S.RAMESH,J.

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