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W.A.Nos.69 to 72 & 74 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 31.03.2023

DELIVERED ON:16.06.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE TMT.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.A.Nos.69 to 72 and 74 of 2019
and CMP.Nos.692, 698, 695, 696 & 703 of 2019

Secretary to Government for Women
and Child Welfare Department,
Puducherry.

.. Appellant in all W.As.

Vs.

1.Mrs.S.Anbu
2.R.Gunasekaran
3.M.Parayavarthan
4.S.Sundaram
5.E.Dharmalingam
6.R.Gowmathi

.. Respondents 1 to 6 in
W.A.No.69 / 2019

1.L.Marie Catherine
2.L.Helice Vimala
3.N.Vijayalakshmi
4.N.Patchaivazhi
5.A.Prakash
6.B.Kalaniti

.. Respondents 1 to 6 in



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W.A.No.70 / 2019

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1.K.Subrayalu
2.M.Mariapan
3.A.Velmurugan

.. Respondents 1 to 3 in
W.A.No.71 of 2019

1.A.Munusamy
2.E.Vengadesan
3.S.Velmurugan
4.D.Soupramanian
5.C.Ramamurthy
6.P.Vengadabady
7.P.Sattivelane
8.K.Rajeswary
9.H.Arulmozhi

.. Respondents 1 to 9 in
W.A.No.72 of 2019

1.V.Karthik
2.B.Sulochana
3.S.Sunasegaran
4.R.Kanthaperumal
5.B.Prem
6.S.Sinrajal
7.A.Murugaiyan
8.L.Veeraragavaperuman @ Arun
9.A.Kamalathan
10.B.Gobinathan
11.R.Purushothaman
12.T.Selvaganapathy
13.M.Murugasamy

.. Respondents 1 to 13 in
W.A.No.74 of 2019

Chairperson,
Puducherry Women's Commission,
Puducherry.

.. Respondent No.7 in W.A.Nos.69 &
70 of 2019



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Respondent No.4 in W.A.No.71/2019
Respondent No.10 in WA.No.72 / 2019
Respondent No.14 in WA.No.74/2019

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 07.09.2017 made in W.P.Nos.4803, 12775, 24508, 26370 and 26371 of 2012.

For Appellants : Mr.R.Sreedhar,
Additional Government Pleader

For Respondents : Mr.L.Chandrakumar

COMMON JUDGMENT

D.KRISHNAKUMAR, J.

The appellant has filed these writ appeals challenging the impugned common order dated 07.09.2017 made in W.P.Nos.4803, 12775, 24508, 26370 and 26371 of 2012, in and by which the learned Single Judge, has directed the appellant/first respondent in the writ petitions to apply the provisions of G.O.Ms.No.22, Department of Personnel and Administrative Reforms Dated 27.02.2009 to the respondents/writ petitioners and regularize their services from the date of their initial appointment by sanctioning necessary posts in respect of



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various categories in which the writ petitioners/respondents concerned are working and grant all other attendant monetary benefits.

2. Facts leading to the filing of these writ appeals are as follows.

For the sake of brevity, the array of parties in W.A.No.69 of 2019 is adopted:

2.1. The writ petitioners are all casual employees working in the seventh respondent commission which is functioning under the appellant Department. The seventh respondent Commission was constituted in the year 2004 as per the orders of the Government of India. It is a statutory body being controlled by the appellant Department viz., Women and Child Welfare Department. The entire funds for the Commission is funded by the Government of Puducherry.

2.2. The writ petitioners came to be appointed on various dates during the year 2004 on casual basis and they have been allowed to continue in their work uninterruptedly without any break. They were originally paid daily wages ranging from Rs.277/- to Rs.376/- depending



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on their employment in various categories. Since the writ petitioners have been continuously working from the date of their respective original appointment, they have been recommended by the appellant for regularizing their services on par with regular employees employed by the Government in similar categories.

2.3. According to the writ petitioners, originally the Government of Puducherry issued G.O.Ms.No.92, in the year 1998 providing for regularization of daily rated employees, who had rendered a minimum of 240 days service in a year. The said Government Order has been replaced by G.O.Ms.No.22, Department of Personnel and Administrative Reforms dated 27.02.2009, which provides for comprehensive guidelines for employees like the writ petitioners in a phased manner. The said Government Order was issued solely for the purpose of regularising casual employees working in the Department of Government of Puducherry and their Subordinate Offices.



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2.4. According to the writ petitioners/respondents, the employees working in the seventh respondent Commission under the appellant Department are also covered under the Scheme and therefore, they are also entitled to be conferred with the benefit of the provisions of the Scheme. After the said Government Order coming into force in the year 2009, several departments have initiated action for regularizing the services of casual employees by implementing the Government Order. However, inspite of the fact that the writ petitioners / respondents are similarly placed, their claims were not considered by the appellant department and therefore, they filed the aforesaid writ petitions.

2.5. The appellant/first respondent in the writ petitions have filed a common counter affidavit in all the writ petitions stating that the seventh respondent Commission has no power or competency to engage anybody and it is only the Directorate of Women and Child Development can engage persons in the event of need after getting the concurrence of the Finance Department and the orders of the Lieutenant Governor and the claim of the writ petitioners that they have been appointed by the



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Pondicherry Women's Commission after getting from the Government of Pondicherry is absolutely false and at no point of time, the Government of Pondicherry gave any approval to make any engagement of casual labourers.

2.6. The learned Single Judge, after taking into consideration the submission made by the parties, has allowed the writ petitions with a direction to the appellant to apply the provisions of G.O.Ms.No.22, Department of Personnel and Administrative Reforms dated 27.02.2009 to the writ petitioners/respondents herein and regularize their services from the date of their initial appointment by sanctioning necessary posts in respect of various categories in which the writ petitioners are working and grant all other attendant monetary and services benefits. The respondents therein were also directed to disburse the salaries that are payable to the writ petitioners for the work which are extracted from them for all these years forthwith, before steps are initiated for regularization of their services.



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2.7. Challenging the aforesaid order of the learned Single Judge, the official respondent, namely the Secretary to Government, Women and Child Welfare Department, Puducherry, has filed the instant writ appeals.

2.8. The Member Secretary, Puducherry Women's Commission has filed an affidavit dated 24.03.2023 stating that the Daily Rated Employees engaged by the then Chairperson covered in the Writ Appeal Nos.60 to 74 of 2019 are not working from March 2011 to till date. The said Daily Rated Employees have been paid with their salary upto February, 2011. It is also stated that they did not extract any work from the Daily Rated Employees from March, 2011 and it is pertinent to state that none of the Daily Rated Employees have attended the office of the Women Commission from March, 2011 as they are very much aware that they are not entitled to any sort of regularisation as claimed in the writ petition and the “Principles of No Work No Pay” would also apply and in any event, any claim made by the writ petitioners would be an unjust enrichment as they did not work for the Government of Puducherry from March, 2011.



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3. Mr.R.Sreedhar, learned Additional Government Pleader (Puducherry) appearing for the appellant would contend that the seventh respondent Commission has recruited casual employees like the writ petitioners without getting proper approval from the Government of Puducherry and such back-door entries cannot be allowed to be validated by applying the provisions of the Scheme framed by the Government, vide G.O.Ms.No.22, Department of Personnel and Administrative Reforms dated 27.02.2009. He would further contend that the employees recruited by the seventh respondent Commission did not satisfy the eligibility criteria for regularization and the Government of Puducherry, in fact, had not sanctioned any post for employing the writ petitioners and therefore, their plea for regularization cannot be accepted and therefore, prayed for dismissal of these writ appeals.

4. Mr.L.Chandrakumar, learned counsel for the respondents/writ petitioners would contend that engagement of casual labourers by the seventh respondent Commission has to conform to the Scheme framed by the Government of Puducherry, vide, G.O.Ms.No.22, Department of



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Personnel and Administrative Reforms dated 27.02.2009 and would further submit that the seventh respondent Commission, vide communication dated 05.05.2010 had submitted a detailed report to the Government of Puducherry with regard to employment of casual labourers of various categories of posts and also recruitment of various posts for effective functioning of the Commission and therefore, the Government of Puducherry is very well aware of the service details of the casual employees employed by the seventh respondent Commission and the learned Judge has taken into consideration all the aforesaid facts and has rightly issued directions to the appellant to implement G.O.Ms.No.22 dated 27.02.2009 and regularize the services of the respondents/writ petitions from the date of their initial appointment by sanctioning necessary posts in respect of various categories in which the writ petitioners are working and therefore, prayed for dismissal of these writ appeals.

5. This Court has given anxious consideration to the rival submissions and also perused the materials on record.



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6. The point for consideration in these writ appeals is whether the respondents/writ petitioners, who are working as Temporary Daily Wage Employees for several years in the seventh respondent Commission in non-sanctioned posts, are entitled for regularization in the light of G.O.Ms.No.22, Personnel and Administrative Reforms dated 27.02.2009?

7. The fact remains that the petitioners were appointed on various dates on casual/temporary/daily wage basis from the year 2004 in the seventh respondent Commission in non-sanctioned posts. It is also not in dispute that the Government of Puducherry has issued G.O.Ms.No.22, Personnel and Administrative Reforms dated 27.02.2009, in and by which the Government of Puducherry provided comprehensive guidelines for regularising the employees like the writ petitioners in a phased manner.

8. The grievance of the respondents/writ petitioners is that all the departments in the Government of Puducherry and other autonomous



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bodies like Municipalities, Corporations etc., have implemented G.O.Ms.No.22 dated 27.02.2009 and extended the benefit of regularizing the services of Daily Rated Employees, who were appointed prior to 2009, when the said Government Order was issued. However, due to the change in the Government after the assembly elections held in the year 2009, the Government of Puducherry and the seventh respondent Commission have taken a decision to terminate the services of the writ petitioners and to engage fresh batch of candidates in their place.

9. In pursuant to the said Government Order in G.O.Ms.No.22, the Government of Puducherry framed a Scheme called Puducherry Casual Labourers (Engagement and Regularization) Scheme, 2009, taking into consideration of the fact that casual labourers belonging to weaker sections of the Society and many of them belong to SC and OBC and disengagement of their services will cause undue hardship to them, while on the other hand, employment opportunities are to be provided to eligible youth entering the job markets and therefore, it was considered desirable to frame a Scheme as a One Time Measure. It is useful to



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extract the following clauses of the said Scheme:

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“3.The Scheme is applicable to all casual labourers, except those charged to specific works or schemes, working in departments of the Government of Puducherry and their attached subordinate offices, subject to their eligibility as per the provisions of the Scheme.

4. The casual labourers who are under engagement for a period not less than 8 hours a day shall be termed as “full time casual labourers” and the casual labourers who are under engagement for a period less than 8 hours a day shall be termed as “part time casual labourers”. All other designations e.g. Daily wager, CLR etc., will be discontinued, from the date of notification of this scheme.

.....

11. The list of full time as well as part-time casual labourers under engagement irrespective of the source of engagement on the date of notification of this scheme performing the functions of Sanitary Assistant, Sanitary Helper and Watchman shall be prepared by the DP & AR. Similar list shall be prepared by all the departments in respect of the full time and part time casual labourers under their engagement performing the functions of the respective departmental works. The draft list shall be published calling for objections, if any, within a period of fifteen days and



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thereafter, such a list will be finalized with the approval of the Lieutenant Governor. Such final list hereinafter referred to as the “list” shall be published within 3 months from the date of notification of this scheme.

12. Wherever absorption is provided as a method of recruitment in the recruitment rules, the vacancies existing in the relevant post as on the date of notification of this scheme shall be filled up by absorption of eligible full time casual labourers from the list of the concerned department.

.....

14. Depending upon the requirement, not more than 25% of vacancies arising in future in the appropriate Group “D” posts (initial category) may be filled by absorption of full time casual labourers available in the list and not less than 75% of vacancies shall be filled by direct recruitment. The full time casual labourers shall also be considered by the competent selection committee along with open candidates provided the full time casual labourers possess the required educational qualification and if selected necessary age relaxation wherever required, shall be obtained from Lieutenant Governor. Accordingly, recruitment rules for the said posts will be amended by the departments concerned within a period of 3 months.”



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10. G.O.Ms.No.22 was issued by the Government of Puducherry framing guidelines for regularization of casual labourers as a One Time Measure, however, the name of the writ petitioners were not found in the list prepared for regularization of services. Further, the Government of Puducherry has not sanctioned or allocated funds for payment of salaries to the writ petitioners/respondents and their services will be regularised, provided if they satisfy all the eligibility criteria as per the aforesaid Scheme, but the respondents/writ petitioners did not possess the eligibility criteria as per the rules. According to the appellant, the aforesaid appointment of the respondents/writ petitioners in the seventh respondents commission is nothing but back door entry and therefore, the said appointment is *per se* illegal. The Hon'ble Supreme Court in a catena of decisions has categorically held that temporary employees have no right for regularization of their service.

11. Let this Court will analyze and consider the concept of regularisation of service of temporary employees in the light of the ratio laid down by the Hon'ble Apex Court in catena of decisions.



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12. Article 309 of the Constitution of India confers the powers to the appropriate authority to regulate the recruitment of the public services of the Union or of the State. It enables the executive to make recruitment rules under the government services. However, this power of the executive is subject to the provisions of the Constitution and of any Statute enacted by the appropriate legislature. The executive may make rules either under the proviso to the Article or by issuing rules/instructions in the exercise of its executive power. The executive, while framing such rules, must act fairly and consistent with the provisions provided under Article 14 and 16 of the Constitution of India and the relevant statutory rules. Normally, appointments are made through prescribed recruiting agencies. But exigencies of work may sometimes call for making appointments on ad hoc or temporary basis.

13. In *State of Haryana v. Piara Singh [AIR 1992 SC 2130]*, the Hon'ble Apex Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. It may be argued that filing up



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vacancies against sanctioned posts by regularization is against the constitutional provisions of equality of opportunity in the matter of public employment violating the Articles 14 and 16 of the Constitution by not making the offer of employment to the world at large and allowing all eligible candidate equality of opportunity to be considered on merits.

14. Adhoc appointments is considered to be most convenient way of entry, usually from back door, at times even in disregard of rules and regulations, are recent innovations to the service jurisprudence. This infection of back door entries is widespread, especially in Government, Semi-Government or State financed departments or institutions. The courts have also deprecated the practice of regularization of adhoc employees through number of judgments. In *Ashwani Kumar vs. State of Bihar* [AIR 1997 SC 1628] and *State of Karnataka vs. Umadevi* [AIR 2006 SC 1806], the Supreme Court observed that, back door entries for filling up vacancies have got to be strictly avoided. It will amount to regularisation of back-door entries which were vitiated from the very inception.



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**CHANGE IN PRINCIPLES OF REGULARISATION OF THE
TEMPORARY EMPLOYEES [BEFORE AND AFTER UMA DEVI
CASE]**

15. Prior to *Uma Devi case*, the principles were as follows:

15.1. If the adhoc/casual/ temporary appointments were made against sanctioned posts and the policy of adhocism is followed for a long period without filling up those posts on a regular basis, then the courts will interfere. The reason was given by the Hon'ble Apex Court in *Rattanlal vs. State of Haryana [AIR 1987 SC 478]* that the policy of 'ad-hocism' followed by the State Government for a long period has led to the breach of Articles 14 and 16 of the Constitution of India. Such a situation cannot be permitted to last any longer.

15.2. Regularisation might also be the direct effect of statutory provisions including rules. In *Union of India vs Basant Lal [1992 (2) SCC 679]*, the Supreme Court while considering the Chapter XXIII of the Indian Railways Establishment Manual Casual Labourers, who had worked continuously for more than specified days held that the casual



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workers had fulfilled the requirement of continuous service and directed the railway authorities to accord the status of temporary employees.

15.3. Although the persons concerned might not be entitled to regularisation on any of the principles or for any of the reasons noted above, they might still be entitled to regularisation of their service by preferential opportunity of recruitment i.e. recruitment through appropriate channel against vacancies as and when such vacancies arise subject to their satisfying the requisite qualifications prescribed under the rules. Such vacancies should ordinarily be filled up by regularising such employees and not by deputation of employees who are already employed in the regular establishment [*Sandeep Kumar v. State of Uttar Pradesh, AIR 1992 SC 713*].

15.4. If there is a valid policy decision by the Government to regularise adhoc employees, then such employees have the right to enforce the same by approaching the court. In *Jaginder Singh vs. State of Punjab*[1981 (2) SLR 792], it was held that if an employee recruited



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on an adhoc basis fulfils all conditions for regularisation as laid down by the Government in a policy circular and the appropriate authority recommends regularisation on being satisfied that the conditions are fulfilled and that regular vacancies exist.

15.5. Regularisation might also be directed if the Court is satisfied that the employer had deliberately indulged in unfair or unhealthy labour practice to deny casual or badli workers a claim for permanency ***[H.D.Singh v. Reserve Bank of India, 1985 (4) SCC 201]***. In that case the Supreme Court held that a confidential circular directing the officers that the badli workers should not be engaged continuously and should as far as possible be offered work on rotation basis must be characterized as unfair labour practice. The Supreme Court directed the badli worker to be enlisted as a regular employee. Although H.D. Singh was a case involving Industrial Dispute Act, 1947, the principle of unfairness on which the provisions of the Act relating to unfair labour practices is based should apply with equal force in situations where for some reason the Act is not applicable.



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15.6. Lastly, the Supreme Court in *State of Haryana vs Piara Singh [AIR 1992 SC 2130]* held that if an adhoc employee is continued for fairly long spell, the authorities must consider his case for regularisation provided, he is eligible and qualified according to the rules and his service record is satisfactory and his appointments does not run counter to the reservation policy of the state.

UMA DEVI CASE

16. The Hon'ble Supreme Court in the landmark decision in *State of Karnataka v. Uma Devi and Others [AIR 2006 SC 1806]*, held 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



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of the relevant recruitment rules.”

17. Even before ***Uma Devi's case***, the State of Tamil Nadu had issued G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department dated 28.02.2006. As per the said Government Order, the temporary employees who have completed ten years of service as on the date of the Government Order can be regularized. Thus the State Government was extending the benefit of regularization or permanent absorption to the temporary / daily rated employees who have completed ten years of service as on 28.02.2006. Pursuant to the said Government Order, large number of temporary employees were conferred with the benefit of regularization and based on that, several persons have raised their claim for regularization. However, after the Constitution Bench judgment in ***Uma Devi's case***, the Government of Tamil Nadu had issued G.O.Ms.No.74, Personnel and Administrative Reforms Department dated 27.06.2013, imposing certain conditions and those conditions are akin to that of the recruitment rules in force. The very idea of issuing G.O.Ms.No.74 is to provide certain restricted concession to temporary employees who were otherwise appointed by following the recruitment



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rules in force. Therefore, the prospects of large number of employees who have served on daily wage basis are prevented from getting their regularization.

18. After ***Uma Devi's case*** the principles were as follows:

18.1. A claim based on mere legitimate expectation or reasonable expectation without anything more cannot ipso facto give a right to invoke the principles. (***Union of India and another Vs. Arul mozhi Iniarasu and others; reported in 2011 (9) SCR 1 Supreme Court***). In the decision in *Umadevi's case* also it is clearly laid down that in such cases, theory of legitimate expectation cannot be invoked.

18.2. There is no fundamental right to be absorbed in service. In ***Umadevi's case*** also the Apex Court refused to accept the argument that the right to life protected by Article 21 of the Constitution of India would include right to employment. At present, right to employment itself is not a fundamental right. The absorption certainly would not be a fundamental right.



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18.3. The Hon'ble Supreme Court in the case of *State of Rajasthan*

v. Dayal Lal and Others [AIR 2011 SC 1193] held as follows:

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issued 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 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),



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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 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.”

18.4. Absorption, regularization, permanency of casual, daily wagers etc. appointed/recruited de-hors the constitutional scheme of public employment is impermissible and violative of article 14 and 16 of constitution. (*Chief Executive Officers, Pondichary Khadi Industry v/s Aroquia Radja – 2013 1 CLR 1057- SC*). In *Umadevi's case* also it has been held that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not



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confer any right on the appointee. This means proper competition amongst the needy candidates would also be necessary.

18.5. The Hon'ble Supreme Court in the case of *Secretary to Government, School Education Department, Chennai v. R.Govindaswamy and others [(2014) 4 SCC 769]*, has observed as follows:

“8.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:

“(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 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



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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 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) “



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WEB COPY 19. Reiterating the principles laid down in ***Govindswamy's case***,

Supreme Court of India emphatically held that the High Courts, in exercising power under 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.

20. The Hon'ble Supreme Court in the decision in ***Union of India v. Ilmo Devi and another [2021 SCC Online 899]***, has followed its earlier decision in ***Daya Lal's case***, which was subsequently reiterated in ***Gowindaswamy's case***, has held as follows:

28. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not



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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*



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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)

The Hon'ble Supreme Court in the aforesaid decision in *Ilmodevi case* has categorically held that regularization can be only as per the regularization policy declared by the State/Government and nobody can claim regularization as a matter of right dehors the regularization policy.

21. Though the Government of Puducherry framed a Scheme called Puducherry Casual Labourers (Engagement and Regularization) Scheme, 2009, in compliance of G.O.Ms.No.22, P& AF Department dated 27.02.2009, taking into consideration of the fact that casual labourers belonging to weaker sections of the Society and many of them belong to SC and OBC and disengagement of their services will cause undue hardship to them, in the light of the decision of the Hon'ble Supreme Court in *Ilmo Devi's case*, the respondents/writ petitioners cannot claim regularization as a matter of right, dehors the regularisation



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scheme.

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CONCLUSION

22. The Governments, both the Central and the States have been engaging employees on temporary basis and after some time regularizing their services, this practice has been held to be bad and contrary to the law of the land by the Supreme Court. The temporary employees have no right of regularization of their service. The case of *Uma Devi's case* (supra), followed by *Govindaswamy's case*, has settled the law that no directions can be issued to regularize or absorb adhoc, daily wagers and temporary employees appointed without following the procedure prescribed by the Rules applicable for recruitment to such posts and it will amount to violation of Article 14 and 16 of the Constitution of India. The court cannot issue any such directions on the ground of discrimination which is contrary to the constitutional scheme of appointment.

23. Length of adhoc, temporary or casual employment is no ground



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to regularize and absorb in permanent service. Such irregular appointments made in violation to the concept of equality enshrined in our Constitution. Such appointees do not acquire any right enforceable by Court of Law. Court will not be justified in issuing directions to absorb or make such employees permanent and to issue interim directions on the claim of such persons which run counter to the Constitutional mandates and will perpetuate the illegality. Such directions will facilitate the bypassing of the constitutional and statutory mandates.

24. In the case on hand, it remains that the respondents / writ petitioners were appointed as daily rated employees in the seventh respondent Commission and they continue to serve in that capacity for several years and their appointments were also not approved by the Government of Puducherry and they have been paid wages out of the funds sanctioned by the Government. All of a sudden, the Government stopped paying aid to the seventh respondent Commission and as a result of which, the respondents/writ petitioners were not been paid salary and their services were also disengaged from the year 2011. The seventh



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respondent commission has also categorically took a stand in their affidavit dated 24.03.2023 that the daily rated employees / writ petitioners are not working in their Commission and their services were disengaged from March, 2011. Such being the factum of the case, the Government is to be precluded as well as its authority are to be properly instructed not to engage or appoint employees in contravention with the recruitment rules in force and effecting appointments through back doors.

25. The State is bound to over see the appointments made illegally or irregularly by the competent authorities and the same is to be construed as the fraud on the Constitution and such authorities are liable for prosecution under the Discipline and Appeal Rules and other relevant rules. The State shall be vigilant in this regard and the authorities indulging in such activities of exercising powers by issuing illegal or irregular appointments are to be punished under the Discipline and Appeal Rules. No leniency can be shown by the State in this regard, since these all are the Constitutional principles required for the State to be followed and the State being a modal employer, has to implement the



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Constitutional perspectives and the principles scrupulously and without any deviation.

26. It is also to be noted that persons like the respondent/writ petitioners are working on part time / daily rated employees in non-sanctioned posts and they are continuously working in the said departments for several years and one fine morning, the respondent/Government disengage their services and as a result of which, several families are left in lurch. While directing that appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the person concerned has worked for sometime and in some cases for the considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the



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Constitutional Scheme of appointment and to take a view that such a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public employment which is not permissible.

27. When a person enters a temporary employment or gets engagement as a contractual or casual workers and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made by following a proper procedure for selection. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. The State cannot constitutionally make such a promise.



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28. In the light of the aforesaid decisions of the Hon'ble Supreme Court, we are of the view that positive direction cannot be given for regularizing the services of temporary employees, like the respondents/writ petitioners, merely based on a Government order and therefore, they are not entitled for any relief of permanent absorption as such sought for in the writ petitions. All appointments are to be made only under the Constitutional Schemes and by following recruitment rules in force. Equal opportunities in public employment is the constitutional mandate and therefore, the illegal appointments cannot be regularized merely on the ground of length of the services rendered, even after the principles settled. In the case on hand, the services of the writ petitioners were disengaged from March, 2011 and in the light of the ratio laid down by the Hon'ble Supreme Court in the decisions cited supra, they are not entitled for regularisation. This Court finds considerable force in the contentions made by the learned counsel for the appellant and therefore, the impugned order of the Writ Court warrants interference and consequently, it is liable to be set aside.



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29. In the light of the aforesaid discussions, these Writ Appeals stands allowed and the impugned common order dated 07.09.2017 made in W.P.Nos.4803, 12775, 24508, 26370 and 26371 of 2012 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] [K.G.T., J.]
16.06.2023

Index:yes/no
Internet:yes / no
Jvm

To
Chairperson,
Puducherry Women's Commission,
Puducherry.



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**D.KRISHNAKUMAR, J.,
&
K.GOVINDARAJAN THILAKAVADI, J.**

Jvm

**Common Judgment in
W.A.Nos.69 to 72 and 74 of 2019**

16.06.2023