



W.P. No. 25295 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

**W.P. No. 25295 of 2018
and W.M.P. No. 29421 & 29422 of 2018**

1. K.S.Krishna Rao
2. K.Vinayagam
3. M.Amsanathan
4. D. Thiyagu
5. N.Venkatesan
6. K.Govindan
- 7.J.Perumal

... Petitioners

-VS-

1. Government of India,
Ministry of Labour & Employment,
Rep. By its Secretary,
Shram Shakti Bhawan,
Rafi Marg, New Delhi-110 001.

2. The Regional Labour Commissioner,
No.26, III Block, 5th Floor,
Shastri Bhawan, Haddows Road,
Nungambakkam, Chennai-6.

3. Life Insurance Corporation,
Rep. By its Chairman,
5th Floor, West Wing, Yogakshema,
P.B.Bo.19953, Jeevan Bhima Marg,
Nariman Point, Mumbai- 400 021.

4. The Zonal Manager,
Life Insurance Corporation,
New No.153, Old No.102,
LIC Building, 11th Floor, Anna Salai,
Chennai-2.

... Respondents



W.P. No. 25295 of 2018

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the 3rd and 4th respondents to regularize out services with the respondent Corporation w.e.f. The date of the our initial appointment or at least after completing 480 days from the date of initial engagement with all consequential service and other benefits including monetary benefits.

For Petitioner : Mr.M.Sathyakumar

For Respondent : Mr.K.Ramamoorthy, CGSC

ORDER

The Writ Petition has been filed seeking a direction to the 3rd and 4th respondents to regularize out services with the respondent Corporation w.e.f. the date of the their initial appointment or at least after completing 480 days from the date of initial engagement with all consequential service and other benefits including monetary benefits.

2. The case of the petitioner is that the petitioners were appointed as watchmen in the respondent Corporation and subsequently, worked in different posts and at different places and they have worked for more than 480 days. Even then the respondents have not regularized their service. Hence, the petitioners filed the present writ petition seeking direction to regularize their service.



W.P. No. 25295 of 2018

3. Learned counsel for the respondents submitted that the very same prayer has been sought for by the workmen before this Court in W.P.No.29529 of 2018. This Court, vide its order dated 28.02.2019, dismissed the writ petition. The said order is squarely apply to the present case on hand.

4. As rightly submitted by the learned counsel for the respondents, this Court perused the order in W.P.no.29529 of 2018 dated 28.02.2019. For better understanding, the relevant paragraphs are extracted hereunder:

"12. Even, the Hon'ble Supreme Court of India, in a recent case of State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another Vs. A.Singamuthu reported in 2017 [4] SCC 113 and the relevant paragraphs 16, 17, 18, 19 and 20 are extracted hereunder:-

"16. In State of Rajasthan vs. Daya Lal [State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340] , this Court has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and this Court clearly laid down that parttime employees are not entitled to seek regularisation as they do not work against any sanctioned posts. It was also held that part-time employees in government-run institutions can in no case claim parity in salary with



W.P. No. 25295 of 2018

WEB COPY

regular employees of the Government on the principle of equal pay for equal work. Relevant excerpt from the said judgment is as under: (SCC pp. 435- 36, para 12) “12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals: (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 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



W.P. No. 25295 of 2018

WEB COPY

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



W.P. No. 25295 of 2018

WEB COPY

with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.[See *State of Karnataka v. Uma Devi* (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , *M. Raja v. CEERI Educational Society*[*M. Raja v. CEERI Educational Society*, (2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334] , *S.C. Chandra v. State of Jharkhand* [*S.C. Chandra v. State of Jharkhand*, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943] , *Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand* [*Kurukshetra Central Coop. Bank Ltd.v. Mehar Chand*, (2007) 15 SCC 680 : (2010) 1 SCC (L&S) 742] and *Official Liquidator v. Dayanand* [*Official Liquidator v. Dayanand*, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .]” (emphasis supplied) 17. The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said GOMs No. 22 dated 28-2-2006 and directed the appellants to grant regularisation 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 GOMs No. 22 dated 28-2-2006, the services of employees working in various government departments on fulltime daily-wage basis, who have completed more than ten years of continuous service as on 1-1-2006 will be



W.P. No. 25295 of 2018

WEB COPY

regularised and not part-time masalchis like the respondent herein. In GOMs No. 84 dated 18-6-2012, the Government made it clear that GOMs No. 22 dated 28-2-2006 is applicable only to full-time daily wagers and not to part-time daily wagers. The respondent was temporarily appointed part-time worker as per Tamil Nadu Finance Code, Vol. 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 GOMs No. 22 dated 28-2-2006. The Single Judge also failed to consider that the Government did not grant regularisation of services of any part-time employee on completion of ten years of his service as envisaged under GOMs No. 22 dated 28-2-2006.

18. The learned Single Judge erred in extending the benefit of GOMs No. 22 dated 28-2-2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 1-4-1989 and completed ten years of service on 31-3-1999. 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 1-4-1999 till the date of his regularisation, that is, 18-6-2012, the financial commitment to the State would be around Rs 10,85,113



W.P. No. 25295 of 2018

WEB COPY

(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 regularised 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 regularisation 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.

19. It is pertinent to note that even the regularisation 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 26-3-2010 was effected by extending the benefit of G.O. dated 28-2-2006 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 GOMs No. 22 P & AR Dept. dated 28-2-2006 is applicable only to full-time daily-wage employees and who had completed ten years of continuous service as on 1-1-2006 and not to part-time employees. As per G.O. (Rt.) No. 84 dated 18-6-2012, the



W.P. No. 25295 of 2018

WEB COPY

respondent is entitled to the monetary benefits only from the date of issuance of government order regularising his service, that is, 18-6-2012. The impugned order [Commercial Taxes and Registration Deptt., State of T.N. v. A. Singamuthu, Writ Appeal No. 1209 of 2012, decided on 4-7-2012 (Mad)] of the Division Bench affirming the order [A. Singamuthu v. Commercial Taxes and Registration Deptt., State of T.N., WP No. 26702 of 2010, order dated 26-11-2010 (Mad)] 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. 20. In the result, the impugned order is set aside and this appeal is allowed. No costs.” 13. The Apex Court in unequivocal terms held that 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 Schemes.



W.P. No. 25295 of 2018

WEB COPY

14. Now the law is settled in respect of grant of regularization or permanent absorption. It is not as if the Authorities Competent can engage persons as Part Time employees and on temporary basis and allow them to work for long years and thereafter submit proposals for regularization and permanent absorption contrary to the Service Rules in force. Such a practice is to be deprecated. The State must initiate actions against all such officials, who all are involving in such irregularities and illegalities in public employments. 15. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

13. The Apex Court in unequivocal terms held that 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 Schemes.



W.P. No. 25295 of 2018

WEB COPY

14. Now the law is settled in respect of grant of regularization or permanent absorption. It is not as if the Authorities Competent can engage persons as Part Time employees and on temporary basis and allow them to work for long years and thereafter submit proposals for regularization and permanent absorption contrary to the Service Rules in force. Such a practice is to be deprecated. The State must initiate actions against all such officials, who all are involving in such irregularities and illegalities in public employments.

15. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed."

5. The above judgment will squarely apply to the facts of the present case. Applying the said ratio laid down by the this Court, the present Writ Petition is also dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

29.09.2023

rli



W.P. No. 25295 of 2018

Index: Yes/No

NCS: Yes/No

To

1. Government of India,
Ministry of Labour & Employment,
Rep. By its Secretary,
Shram Shakti Bhawan,
Rafi Marg, New Delhi-110 001.

M.DHANDAPANI, J.

Rli

2. The Regional Labour Commissioner,
No.26, III Block, 5th Floor,
Shastri Bhawan, Haddows Road,
Nungambakkam, Chennai-6.

3. Life Insurance Corporation,
Rep. By its Chairman,
5th Floor, West Wing, Yogakshema,
P.B.Bo.19953, Jeevan Bhima Marg,
Nariman Point, Mumbai- 400 021.

4. The Zonal Manager,
Life Insurance Corporation,
New No.153, Old No.102,
LIC Building, 11th Floor, Anna Salai,
Chennai-2.



WEB COPY



W.P. No. 25295 of 2018

W.P. No. 25295 of 2018

29.09.2023