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W.P.No.26767 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

WP No.26767 of 2018

WMP Nos.31121 and 31172 of 2018

1. G.Anbalagan
2. S.Babu
3. R.Senthilkumar
4. G.Lognathan
5. K.Rajasekar
6. L.Balaji Babu
7. M.Ravikumar
Civil Engineering Consultant
8. L.Ravikumar
Civil Engineering Consultant
9. N.Jagadeesan
Civil Engineering Consultant
10. A.Kannan
Civil Engineering Consultant
11. K.Mohanasundaram
Civil Engineering Consultant
12. K.Nandakumar
Civil Engineering Consultant
13. N.Sathiyamoorthy
Civil Engineering Consultant

[Cause title amended vide order dated 03.04.2019 made in
WMP No.10573 of 2019 in WP No.26767 of 2018 by SMSJ] Petitioners



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-Vs-

1. Government of Tamil nadu,
Rep. by Principal Secretary to Government,
School Education Department,
Secretariat, Chennai – 600 009.
2. The State Project Director,
Sarvasiksha Abhiyan,
Chennai – 600 006.
3. The District project Co-ordination officer,
Sarvasiksha Abhiyan,
O/o. The Additional chief Executive officer,
Salem – 636 001.
4. District Project Co-ordination officer,
Sarva Siksha Abhiyan
O/o.The Additional Chief Executive officer,
Namakkal – 637 001

.... Respondents

Prayer :- Writ Petition under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents herein to regularly absorb the petitioners into regular service, commensurate with their qualification and eligibility with effect from the respective dates of their initial appointment and to grant all consequential benefits to them.

For Petitioner : Mr.S.Balakrishnan
for MR.M.Ravi

For Respondents : Mr.K.H.Ravikumar
Government Advocate



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ORDER

This writ petition has been filed for a direction to the respondents to regularly absorb the petitioners into regular service, commensurate with their qualification and eligibility with effect from the respective dates of their initial appointment and to grant all consequential benefits to the petitioners.

2. The case of the petitioners is that they were appointed as Civil Construction Supervisor / Consultant under 'SarvasikshaAbhiyan' (Education for all) in Salem and Namakkal Districts, on consolidated monthly pay basis during the financial year 2006-2007 on contract basis. As per GO Ms.No.162, School Education, dated 11.12.2022, G.O.Ms.No.106, School Education, dated 23.07.2003 and Pro.Na.Ka.No.1478/A1/SSA/02 dated 20.08.2003 necessary staff numbering 331 were appointed in various categories and are functioning. The petitioners herein were appointed as Civil Engineers are functioning on consolidated monthly pay basis. Their duty is to attend the works of newly established schools such as Construction of class rooms, Toilets, Compound walls and other maintenance works. Ever since the date of joining duty, the petitioners have been continuously serving for the past more than 10 to 14 years with artificial



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breaks. By their continuous and uninterrupted service as such, the petitioners are entitled to be regularly absorbed in regular time scale of pay. In spite of repeated representations, their services have not been regularized. Since no action has been taken by the respondents, the present writ petition has been filed before this Court.

3. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents.

4. The learned counsel for the petitioners submitted that the petitioners are entitled to the relief in terms of G.O.Ms.No.350, Health and Family Welfare Department dated 21.10.2009 in and by G.O.Ms.No.25, Handlooms, Handicrafts, Textiles and khadi Department dated 23.02.2011, G.O.Ms.No.334, PWD dated 19.10.2007 and again by G.O.Ms.No.134, PWD dated 07.05.2010, G.O.Ms.No.385, Finance (PC) Department dated 01.10.2010, G.O.Ms.No.391, Finance (FC) Department DATED 15.09.2008, wherein the employees who worked on daily wage basis for more than 10 years have been brought to regular time scale of pay in various departments. The learned counsel for the petitioners further submitted that the Hon'ble Supreme Court of India held that equal pay for equal work and the said principle will also squarely apply to the case of the



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petitioners herein.

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5. The learned counsel for petitioners submitted that similarly placed employees like the petitioners approached this Court for regularization and the relief was initially rejected and thereafter, an Appeal was filed in W.A.No.755 of 2013. The Division Bench of this Court had taken into consideration the Full Bench judgment and issued certain directions.

6. The learned counsel for petitioners specifically relied upon paragraph No.9 and 10 of the Division Bench Judgment and the same is extracted hereunder :-

9. We may hasten to add that the need for the appellants still continues. As stated, they have been working continuously for more than two decades now. To continue them as temporary and contractual employees forever would certainly amount to unfair labour practice. It is not as if they wanted to join the Scheme. They have been brought under the Scheme pursuant to the Manual of the Central Government. Though at that point of time it was thought to be a time-bound scheme, the fact remains that it is being continued over the years (15 years).



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10. Thus, in the light of the above, we are inclined to direct the respondent No.1 to frame a comprehensive scheme for the purpose of absorbing the appellants as directed by the Full Bench in Kamrup District Siksha Sarathi(I) Association (supra). The above said exercise will have to be done by the State Government within a period of three months from the date of receipt of a copy of this order.

7. The learned counsel for the respondent has filed a counter affidavit denying the allegations made in the affidavit stating that the Sarva Siksha Abhiyan is a time bound project for Universal Elementary Education implemented through “Tamil nadu State mission of Education for All”, a society registered under Tamil nadu Societies Registration Act,1975. The object of the project is to be completed by Government 31.03.2010. The learned counsel further submitted that no appointment shall be made permanently except additional teachers only as per Sarva Shiksha Abhiyan norms. However, in case if there is any need to appoint contractual staff for a limited period for the performance of specialized jobs for which expertise is not available with them, such contractual staff may only be hired at the level the management cost maintained within 6% of total scheme cost as envisaged under the scheme.



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8. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

9. This Court had dismissed the writ petition with a similar plea in WP(MD) No.13678 of 2012 dated 27.02.2018, wherein it has been categorically held as follows :-

5. Considering the arguments, this Court is of an opinion that initial appointment of the writ petitioners were not in accordance with the recruitment rules in force. The order of appointment issued to the writ petitioners, which all are enclosed in the typed set of papers filed in support of these writ petitions, categorically states that the appointment was given under the Scheme temporarily and on contract basis. Further, the term relating to the consolidated pay has also been stated in the order of appointment. This apart the terms on the order of appointment categorically stated that the appointment is made on consolidated pay and on temporary basis for a period of one year. Thus, it is clear that the writ petitioners appointed in service accepting all these terms and conditions stipulated in the order of appointment. The persons appointed in service by accepting the terms and conditions of the order of appointment, cannot come back and say that their services must be regularized and they must be permanent or absorbed in the regular post. It is



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not as if a candidate can enter into the government service on temporary basis and after serving for considerable length of time, can claim permanent absorption or regularisation. The practice of granting regularisation or permanent absorption in this manner is held as unconstitutional.

6. The persons on entering into a scheme or government Department accepting the terms and conditions of the appointment and commencing their service and after some time they are giving representations seeking regularization and permanent absorption then they are moving a writ petition for a direction. Such a practice of securing a public appointment are to be deprecated and the constitutional Courts cannot encourage such practice of granting permanent absorption to the candidates, who were not appointed in accordance with rules.

10. Admittedly, the petitioners were not appointed in accordance with the recruitment rules in force and further, they were appointed for the particular project/ Scheme and therefore, seeking for regularization cannot be granted by this Court. More over, the decision relied upon by the petitioners is not binding on this Court, since the facts and circumstances in that case are different.



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WEB COPY 11. In view of the above, the relief as sought for by the petitioner cannot

be granted by this Court and this writ petition is accordingly dismissed. No costs.

Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No

Internet : Yes/No

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V.BHAVANI SUBBAROYAN.,J

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