



W.P.No.27900 of 2018 & 11923 & 13033 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.02.2023
Pronounced on	15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.27900 of 2018 & W.P.Nos.11923 & 13033 of 2013

In W.P.No.27900 of 2018:-

1.A.Vijayan

2.M.Mohan

3.M.Abdul Gaffar

4.D.Nakkeeran

5.P.Radhakrishnan

... Petitioners

Vs.

1.The State of Tamil Nadu
Rep. by its Chief Secretary to Government,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2.The Joint Secretary,
Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Fort St. George,
Chennai-600 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the second respondent pertaining to the order bearing letter



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No.30282/P/2018-1 dated 19.09.2018, quash the same and direct the respondents to regularise the services of the petitioners with retrospective effect from the date of their initial appointment made vide G.O.Ms. No.85, Personnel & Administrative Reforms Department dated 04.07.2003 and grant service and all other benefits to the petitioners by taking into consideration of the service rendered by them to the Government.

For Petitioners : Mr.V.Rahupathi

For Respondents : Mr.K.H.Ravikumar, GA

In W.P.No.11923 of 2013:-

1.M.Govindaraj

2.K.Arumugam

3.D.S.Kumar

4.M.Dhanaraj

5.N.Pandiyan

6.S.Selvarani

7.U.Sekar

8.R.Jayselvi

9.R.Thangaselam

10.E.V.Geetha

& 90 Others

... Petitioners

Vs.



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2.The Secretary,
Government of Tamil Nadu,
Personnel & Administrative Reform Department,
Chennai-600 009.

[R1-Deleted vide Court order dated 30.04.2014
by MSNJ in MP.1 of 2014]

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to regularise the services of the petitioners with retrospective effect from the date of their initial appointment made vide G.O.Ms. No.85, Personnel & Administrative Reforms Department dated 04.07.2003 and grant service and all other benefits to the petitioners by taking into consideration of the service rendered by them to the Government.

For Petitioners : Mrs.P.Nalini Chidambaram, Sr. Counsel
for Mr.K.Chozhan

For Respondents : Mr.K.H.Ravikumar, GA

In W.P.No.13033 of 2013:-

- 1.V.Parthasarathy
- 2.K.Desinghu
- 3.P.Rajamony
- 4.E.Selvaraji
- 5.T.Roozo
- 6.V.Ravikumar
- 7.D.Sivasami
- 8.S.Tamilselvan
- 9.A.Baskaran



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10.P.Danajeyan

& 527 Others

... Petitioners

Vs.

1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Secretary,
Government of Tamil Nadu,
Personnel & Administrative Reform Department,
Chennai-600 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to regularise the services of the petitioners with retrospective effect from the date of their initial appointment made vide G.O.Ms. No.85, Personnel & Administrative Reforms Department dated 04.07.2003 and grant service and all other benefits to the petitioners by taking into consideration of the service rendered by them to the Government.

For Petitioners : Mrs.P.Nalini Chidambaram, Sr. Counsel
for Mr.K.Chozhan

For Respondents : Mr.K.H.Ravikumar, GA



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COMMON ORDER

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When the Government employees had gone on an indefinite strike on 01.07.2003 and 02.07.2003, G.O.(Ms) Nos.84 & 85, Personnel & Administrative Reforms (Per. G) Department, dated 04.07.2003 came to be passed for recruitment of 1000 temporary Assistants for Secretariat work and 500 Junior Assistants from each District by creating Supernumerary posts. Accordingly, the petitioners herein along with others, came to be recruited as temporary Junior Assistants on contract basis. The Government in the meantime, took a policy decision based on the representations made by these temporary appointees to appoint them regularly by conducting a Special Competitive Examination in Group – IV Standard for the temporary Assistants / Judicial Assistants. The first respondent herein, had issued orders in G.O. (Ms) No.155, Personnel & Administrative Reforms (P) Department, dated 19.09.2006, calling upon the Tamil Nadu Public Service Commission (TNPSC) to conduct a Special Competitive Examination for absorption of these temporary appointees, as Junior Assistants in the Tamil Nadu Ministerial Service / Tamil Nadu Judicial Ministerial Service. TNPSC had accordingly issued a notification dated 06.12.2007 for conduct of the Special Competitive Examination and based on the results, placement orders came to be passed in the year



2012. The petitioners now seek for regularization of their services from the date of their initial appointment.

2. The learned counsel/Senior counsel for the petitioners relied upon the decision of the Hon'ble Supreme Court in the case of **S. Sumnyan & others Vs. Limi Niri & others** reported in **(2010) 6 SCC 791**, as well as the decision of the Hon'ble Division Bench of this Court in the case of **Indian Council of Medical Research & others Vs. K. Rajalakshmi & another** reported in **2005 (1) CTC 488** and submitted that, the petitioners would be entitled to seek for regularization from the date of their initial appointment. The learned counsel/Senior counsel further submitted that since they are not claiming the regular time scale of pay from the date of initial appointment, there will not be any financial implications on the Government.

3. The learned Government Advocate placed reliance on Rule 11 of the Tamil Nadu State and Subordinate Services Rules and submitted that, when an appointment is made by an agreement, the appointee cannot be regarded as a member of the service in which the post to which he was appointed is included and shall not be entitled to make



any preferential claim in view of such an appointment. On this basis, the learned Government Advocate submitted that since all the petitioners herein were appointed on a contract basis, to meet out the exigencies, the Government had taken a lenient view to regularize their services by conduct of Special Competitive Examination and hence, they would be entitled for such benefits only from the date of successfully passing of the examination and not prior to that.

4. I have given careful consideration to the submissions made by the respective counsels.

5. To appreciate the claim of the petitioners herein, the circumstances of their initial absorption may be relevant.

6. With effect from 02.07.2003, the Federation of the Employees of the various departments in the Government of Tamil Nadu joined an indefinite strike. The Government having failed to resolve the demands of these striking employees, took a policy decision to recruit temporary Junior Assistants to over come the contingencies arising out of the strike. Through G.O. (Ms) No.263, Personnel and Administrative Reforms Department, dated 21.06.2004, 1000 temporary



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supernumerary posts in the Tamil Nadu Secretariat and 500 Junior Assistants in each Districts were created for appointment on contract basis. In this background, about 15,500 persons from the Employment Exchanges came to be engaged on contract basis. After the strike had ended and the regular employees had rejoined their duties, these contract employees continued in service for more than one year thereafter. Through G.O. (Ms) No.263, Personnel and Administrative Reforms Department, dated 21.06.2004, their services were terminated. Since these employees had expressed their difficulties in finding an alternative employment, the then Hon'ble Chief Minister had issued a press statement on 23.06.2004, ordering for continuation of the services of the contract employees in the Government and accordingly their services were utilised in the vacancies in various departments. Consequently, the Government had, rightly in my view, decided to conduct a Special Competitive Examination in Group-IV Standard through Tamil Nadu Public Service Commission (TNPSC) for their permanent absorption. The decision of the Government, which came as a privilege, became momentary in view of the subsequent decision of the Government to regularise their services from the date of completion of the Special Competitive Examinations.



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7. Being aggrieved by the decision of the Government in having declined to grant retrospective regularisation from the date of their initial appointments, the present Writ Petitions have been filed.

8. When a situation arose on a set of facts before the Hon'ble Supreme Court in *S. Sumnyan's case (supra)*, wherein a similar claim was made by the employees for regularisation from the date of initial appointment, even though their initial appointment was not in accordance with the prescribed procedure, it was held that the subsequent decision to regularise would relate back to the date of their initial appointment. The relevant portion of the order reads as follows:-

"42. *In the case at hand, however, the fact situation is totally different on account of the fact that the appointment letters issued to the appellants appointing them on temporary and ad hoc basis as Assistant Engineers in the Public Works Department specifically mentioned that the appellants will be governed by the Service Rules and also that they would be regularised according to the Rules on the recommendation of a Selection Board constituted by the Government. We would like to*



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extract both the aforesaid conditions formulating part of the terms and conditions contained in the appointment letters issued to the appellants:

"3. This appointment will be on purely temporary and ad hoc basis until regular appointments are made according to the Rules on the recommendation of a Selection Board constituted by the Government. No increment in time scale will be permissible till their appointment is regularised. This ad hoc appointment as Assistant Engineer will not entitle any seniority in the cadre of regular Assistant Engineer.

8. His appointment will be governed by the relevant Rules and Orders of the Government issued from time to time."

43. *In that view of the matter there was not only a case of the appellants having a legitimate expectation that their cases would be considered for regularisation by the competent authority but also a case where the Service Rules were also made applicable to the appellants. When the Arunachal Pradesh Public Service Commission ("A.P. PSC") considered the cases of the appellants for regularisation on*



completion of their probationary period of two years, all the said factors weighed with the A.P. PSC and consequently it was decided to regularise them from the date of their initial appointment. Therefore, in the facts of the present case, the ratio laid down in L. Chandrakishore Singh [(1999) 8 SCC 287 : 1999 SCC (L&S) 1460] would be squarely applicable.

44. *We may here also appropriately refer to another decision of this Court in G.P. Doval v. Govt. of U.P. [(1984) 4 SCC 329 : 1984 SCC (L&S) 767] wherein this Court held that regularisation of the services of a person, whose initial appointment although not in accordance with the prescribed procedure but later on approved by an authority having power and jurisdiction to do so would always relate back to the dates of their initial appointment. Para 13 is reproduced herein below: (SCC p. 341)*

"13. ... If the first appointment is made by not following the prescribed procedure but later on the appointee is approved making his appointment regular, it is obvious commonsense that in the absence of a contrary rule, the approval which means confirmation by the authority which had the authority, power and



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jurisdiction to make appointment or recommend for appointment, will relate back to the date on which first appointment is made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. That has not been done in this case."

9. Likewise, a Hon'ble Division Bench of this Court in the case of *Indian Council of Medical Research (supra)*, had taken into account the long service of temporary employees and accordingly, regularisation was directed to be made from the date of the initial appointment of such employees. The findings are as follows:-

"28. *In service jurisprudence, no post can be treated permanently as temporary. Temporary means only for a certain limited period. When a post being held by a person continues to be held for more than a certain limited period, it cannot be said that it is a temporary post. Such continuance, in a certain post, automatically takes away the character of temporary and takes the character of permanent.*

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31. *In light of the above, we are of the view that when the first respondent puts in more than 25 years of service continuously in NNMB without any break and her appointment is regular and considering her qualification and experience she was promoted to the post of Assistant Research Officer and when especially she is on the verge of retirement, her services have to be regularised with all monetary and service benefits and therefore, we agree with the view taken by the Tribunal that the services of the first respondent have to be regularised. However, we differ from the view of the Tribunal that the services of the first respondent have to be regularised from the date of filing of the Writ Petition i.e. 25.2.1998 for the following reasons.*

32. *As already stated above, it is not disputed that the first respondent was appointed on 1.4.1975 and her appointment was regular and thereafter, she was promoted as Assistant Research Officer along with four others on 24.9.1982. Since the services of the first respondent was not regularised, she gave representations even in the year 1987 to regularise her services.*



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33. *In such circumstances, the services of the first respondent have to be regularised from the date of her initial appointment, i.e. 1.4.1975. When the date of appointment is not disputed and the appointment is regular and there is no violation of any rules in such appointment, the Court cannot postpone the date of regularisation from the date of actual appointment to the date of filing of the Writ Petition or to any other date. In giving effect to the regularisation of the services, the Court can interfere when the date of appointment is in dispute and the appointment is not regular and any violation of rules is found in the appointment of the concerned, and then the Court, according to the facts and circumstances, can fix the date of effect of regularisation, otherwise, the Court cannot interfere.*

34. *In view of the above, the services of the first respondent have to be regularised from the date of her initial appointment, i.e. with effect from 1.4.1975 and in such circumstances, the order of the Tribunal in so far as the direction in respect of date of effect has to be set aside. Accordingly, the same is set aside. Consequently, while we dismissing the W.P. No. 7094 of 2001, the petitioners therein are directed to regularise*



the services of the first respondent with effect from 1.4.1975 with all monetary and service benefits."

10. The extracts in the aforesaid decisions are self explanatory and thus, the petitioners, who may not have been regularly appointed, but had stepped in to tide out the contingencies arising out of the strike and had continued their services even after the strike was called off, deserve consideration and acknowledgement. The Government ought to have realised that they should not pull the trigger against the persons, who are willing to take a bullet for them. In the backdrop of the legal position as enunciated by the Hon'ble Supreme Court, as well as the Hon'ble Division Bench of this Court and in the light of the general principle that, an act of regularisation of the services of the provisional employees should revert to the date of their initial appointment, the respondents could be directed to consider their claim in this regard.

11. Accordingly, there shall be a direction to the Secretary of the Government, Personnel Administration and Reforms Department, Government of Tamil Nadu to pass appropriate orders, regularising the



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services of all the petitioners herein from the date of their initial engagement on contract basis. However, these petitioners would not be entitled for regular time scale of pay from their date of initial appointment. Such orders shall be passed, atleast within a period of three months from the date of receipt of a copy of this order.

12. All the Writ Petitions stand allowed with the above directions.

There shall be no order as to costs.

15.03.2023

Index : Yes
Order : Speaking
Neutral Citation : Yes

DP

Note:Issue order copy on 17.03.2023



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To

- 1.The Chief Secretary to Government,
State of Tamil Nadu
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
- 2.The Joint Secretary,
Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Fort St. George,
Chennai-600 009.



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M.S.RAMESH,J.

DP

ORDER MADE IN

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& W.P.Nos.11923 & 13033 of 2013

15.03.2023