



W.A.(MD) No.1377 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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and
C.M.P.(MD)No.10666 of 2023

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Secretariat, Chennai.
- 2.The Director of School Education,
Chennai-600 006.
- 3.The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.

... Appellants/Respondents

-vs-

A.Perumal

... Respondent/Writ Petitioner

PRAYER: Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 11.11.2021 made in W.P.(MD)No.10777 of 2019 on the file of this Court.

For Appellants

: Mr.D.Sadiqraja
Additional Government Pleader



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JUDGMENT

[Judgment of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

This Writ Appeal is directed against the order of the learned Single Judge, dated 11.11.2021 in W.P.(MD)No.10777 of 2019 in and by which the writ petition filed by the respondent was allowed. In the said writ petition, the respondent prayed for regularization of his service on completion of 10 years of service with effect from 07.08.2001 as per the orders passed by this Court in W.P.(MD)No.1364 of 2007, dated 28.04.2008 with all consequential benefits.

2. The case of the writ petitioner was that upon being sponsored by employment exchange, he was selected and appointed as part time scavenger on consolidated pay for a remuneration of Rs.100/- per month with effect from 07.08.1991. Thereafter, eventhough the Government passed G.O.Ms.No.528, directing their appointment in regular time scale of pay, there was a ban on appointment. Eventhough the said ban was not applicable to the post of scavenger in which, the writ petitioner was working, still his case was not considered. Therefore, the petitioner approached this Court by way of W.P. (MD)No.1364 of 2007 and this Court following an order in the earlier writ petition in W.P.No.4101 of 2007, dated 24.01.2008 directed the appellants to



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regularize the service of the writ petitioner on completion of 10 years. Eventhough the appellants/respondents have preferred a panel list for regularization on 31.03.2001, they did not pass consequential order regularizing the service of the writ petitioner. Thereafter only with effect from 01.07.2008, the writ petitioner was appointed as 'Night Watchman' in the time scale of pay. Eventhough he was granted the time scale of pay, no order of regularization of the service was passed. Therefore, the petitioner approached this Court again by way of W.P.(MD)No.19245 of 2015 and the appellants/respondents were directed to regularize the service of the petitioner in the light of the earlier order in W.P.(MD)No.1364 of 2007. But, however, even thereafter since there was no orders of regularization of service was passed, the present writ petition was filed.

3. The learned Single Judge after taking into account G.O.Ms.No.22, dated 28.02.2006 and that in respect of similarly placed persons, this Court in W.P.(MD)No.11707 of 2006 passed an order on 22.12.2006 to regularize their services upon completion of ten years of service and subsequently the matter being carried in appeal in W.A.(MD)No.391 of 2007 and by a judgment dated 25.10.2007, the writ appeal having also been dismissed, in view of the grant of relief in similar cases, allowed the writ petition and directed the appellants/respondents to regularize the service of the respondent/writ



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petitioner with effect from 07.08.2001 with all arrears of salary and consequential benefits. Aggrieved by the same, the present writ appeal is filed.

4. Mr.D.Sadiq Raja, the learned Additional Government Pleader appearing on behalf of the appellants would submit that firstly G.O.Ms.No.22 will not be applicable in case of a part time employee. This question has already been considered by the Hon'ble Division Bench of this Court in **State of Tamil Nadu Vs. M.Seeniammal and others**¹. Therefore, would submit that there was no question of regularization of the services of the writ petitioner. He would submit that by virtue of the judgment of the Hon'ble Supreme Court of India in **Uma devi case**, the petitioner cannot claim the benefit of regularization. In any event referring to the judgment of the Hon'ble Supreme Court of India in **Secretary to Government, School Education Department, Chennai and Ors Vs. R.Govindasamy and others**², he would submit that the order of the learned Single Judge requires interference.

5. We have considered the submissions made by the learned Additional Government Pleader and perused the material records of the case.

1 2014 (5) CTC 474

2 (2014) 4 SCC 769



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6. It can be seen that the writ petitioner was engaged as a scavenger only for a sum of Rs.100/- per month by an order dated 02.08.1991. His services has been continuously availed from the year 1991 without any break. We further find that by merely calling the appointment as part time scavenger, the work by itself does not become part time. This apart, the rights of the writ petitioner vis-a-vis the respondent got crystallized in the earlier writ petition in W.P.(MD)No.1364 of 2007 itself, this Court after considering the case of the parties passed the following order.

“5. In similar circumstances, this Court in W.P.No.4101 of 2007 dated 24.01.2008 directed the fourth respondent thereon to regularise the service of the writ petitioners on their completion of 10 years of service with time scale pay.

6. Since the petitioner is placed in a similar position, I direct the respondent to regularise the service of the petitioner as Sweeper or Sanitary Worker with time scale pay within a period of six weeks from the date of receipt of the order.”

7. Therefore, when the said order has become final, it is too late in the day for the appellants to contend that the petitioner is not entitled for regularization. This apart even the judgment relied upon by the learned Additional Government Pleader in **R.Govindasamy and Others** cannot be pressed into service in the instant case because the appellants/respondents themselves have prepared a regularization panel proposing to regularize with



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effect from 07.08.2001. But however due to some administrative delay, the order could not be given effect. The service of the respondent/writ petitioner as a scavenger has to be more carefully considered and given the nature of the work, the argument about part time employment is untenable. This apart, it can be seen that the learned Single Judge has also taken into consideration, the later Division Bench Order in W.A.(MD)No.457 of 2018 fixing a time limit and therefore, considering the fact that the petitioner was directed to be regularised in the service and considering the fact that several other similar cases also the benefit has been granted, the ratio in the judgment of **Uma Devi Case** cannot be pressed into service when the government itself has framed a scheme and similarly placed employees have regularised.

8. In that view of the above reasons, we are unable to agree with any of the submissions made by the learned Additional Government Pleader and this Writ Appeal is without any merits and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

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NCC : Yes / No
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