



W.A.(MD)Nos.1104 and 1105 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.10.2023

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THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD)Nos.1104 and 1105 of 2016

1.The Vice Chancellor,
Tamil Nadu Agricultural University,
Coimbatore – 641 003.

2.The Registrar,
Tamil Nadu Agricultural University,
Coimbatore – 641 003.

3.The Professor and Head,
Horticultural Research Station,
Pechiparai,
Kanyakumari District.

... Appellants / Respondents 2 to
4 in both the Writ Appeals

Vs

C.Raju

.. 1st Respondent / Petitioner in
W.A.(MD) No.1104 of 2016

R.Jeyaraj

.. 1st Respondent / Petitioner in
W.A.(MD) No.1105 of 2016

The Agricultural Production Commissioner
and Secretary to Government,
Agricultural (AU) Department,
Secretariat,



W.A.(MD)Nos.1104 and 1105 of 2016

Chennai – 600 009.

.. 2nd Respondent / 1st Respondent
in both the Writ Appeals

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COMMON PRAYER:- Writ Appeals filed under Clause 15 of Letters Patent Act, to set aside the common order dated 29.01.2014 made in W.P. (MD)Nos.4334 and 4335 of 2012 on the file of this Court.

For Appellant in both
the Writ Appeals

: Mr.T.Sakthikumaran
for M/s.A.Thirumurthy

For Respondents

: Mr.P.R.Prithiviraj
for R1 in both Writ Appeals

Mr.T.Amjadkhan
Government Advocate
for R2 in both Writ Appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

These appeals have been filed against the common order dated 29.01.2014, passed in W.P.(MD)Nos.4334 and 4335 of 2012, granting the benefit of regularization in favour of the first respondent employees.

2. Admittedly, the first respondent employees were engaged as daily wage employees and were continuously working for long years. Pursuant to the Government Order, the daily wage employees were brought under the regular establishment in the time scale of pay. The first



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respondents in these Writ Appeals also claimed the said benefits, but that was not considered. Therefore, the Writ Petitions were instituted. The learned Single Judge, considering the Government Order and taking note of the fact that the benefit of regularization was extended to other employees, directed the authorities to regularize the services of the writ petitioners.

3. Learned counsel appearing for the appellants would mainly contend that a proposal was submitted by the Tamil Nadu Agricultural University to Government for the purpose of regularization of the daily wages employees and the Government negatived the claim on 24.11.2011 mainly on the ground that the intial appointments of these daily wage employees were not in accordance with the recruitment rules in force and therefore, the illegal appointments cannot be regularized or brought under regular establishment.

4. In this context, the learned counsel for the appellants relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India and others v. Ilmo Devi and another*** reported in **2021 SCC Online SC 899** and relevant paragraphs are under:-



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“25. The observations made in paragraph 9 are on surmises and conjunctures. Even the observations made that they have worked continuously and for the whole day are also without any basis and for which there is no supporting evidence. In any case, the fact remains that the respondents served as part-time employees and were contingent paid staff. As observed above, there are no sanctioned posts in the Post Office in which the respondents were working, therefore, the directions issued by the High Court in the impugned judgment and order are not permissible in the judicial review under Article 226 of the Constitution. The High Court cannot, in exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts.

26. Even the regularization policy to regularize the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue Mandamus and/or issue mandatory



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directions to do so. In the case of *State of Maharashtra v. R.S. Bhonde*, [(2005) 6 SCC 751], it is observed and held by this Court that the status of permanency cannot be granted when there is no post. It is further observed that mere continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularization is done.

27. In the case of *State of Rajasthan Daya Lal* [(2011) 2 SCC 429] in paragraph 12, it is observed and held as under:-

“12. We may at the outset refer to the following wellsettled 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 the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which



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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), 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



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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.

[See *State of Karnataka v. Umadevi* (3) [(2006) 4 SCC 1], *M. Raja v. CEERI Educational Society* [(2006) 12 SCC 636], *S.C. Chandra v. State of Jharkhand* [(2007) 8 SCC 279], *Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand* [(2007) 15 SCC 680] and *Official Liquidator v. Dayanand* [(2008) 10 SCC 1.]

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



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5. The Constitution Bench of the Hon'ble Supreme Court of India in *State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1]* in unequivocal terms held that illegal appointments cannot be regularized. All appointments are to be made under the Constitutional Schemes by following the recruitment rules in force. Back door entries would cause infringement of right of equality to secure employment by the eligible persons and therefore, the practise of appointing daily wage employees and regularising their services would result in infringement of right of lakh and lakh of youths of our great nation longing to secure public employment through open competitive process.

6. However, it is brought to our notice that the case of the first respondents in these Writ Appeals was already considered by the appellant University and their services are regularized and they are brought under the regular time scale of pay with effect from 04.02.2019. Since the grievances of the first respondents in these Writ Appeals were redressed and they have no further right to claim any retrospective benefits in view of the fact that their initial appointments were not in accordance with the service rule requires, we do not entertain the other grounds raised by the first respondents.



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7. Accordingly, the common order dated 29.01.2014, passed in

W.P.(MD) No.4334 and 4335 is set aside and the Writ Appeals stand allowed. No costs.

[S.M.S.J.] & [V.L.N.J.]
06.10.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No

SJ

To

The Agricultural Production Commissioner
and Secretary to Government,
Agricultural (AU) Department,
Secretariat,
Chennai – 600 009.



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