



W.A.(MD) No.1967 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.11.2023

CORAM

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

W.A.(MD) No.1967 of 2023

S.Premanand

... Appellant/Writ Petitioner

-Vs.-

1.The Secretary,
Animal Husbandry,
Dairying and Fisheries Department,
Secretariat, Chennai – 600 009.

2.The Director,
Fisheries Department,
Nandanam,
Chennai – 35.

3.The Deputy Director,
Fisheries Department (Regional),
Nagercoil,
Kanyakumari District – 629 001.

4.The Assistant Director of Fisheries,
Simon Colony,
Colachel Post – 629 251,
Kanyakumari District.

... Respondents/Respondents



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PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 20.03.2023 made in W.P.(MD)No.12584 of 2020 on the file of this Court.

For Appellant : Mr.S.M.Saravanakumar

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

J U D G M E N T

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

The intra-Court appeal on hand has been instituted against the order dated 20.03.2023, passed in W.P.(MD)No.12584 of 2020.

2. The writ petitioner is the appellant before us. The Writ Petition was instituted, seeking regularisation of services in the time scale of pay by appointing the petitioner in the sanctioned post of Office Assistant.

3. Admittedly, the appellant was engaged as a temporary watchman on daily wage basis. He was allowed to continue as such for several years. The Government issued G.O.Ms.No.74, Personal



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Administrative Reforms (F) Department dated 27.06.2013. Relying on the said Government Order, the appellant instituted the Writ Proceedings, seeking the relief of regularisation. Government imposed several conditions in G.O.Ms.No.74, dated 27.06.2013, for grant of regularisation. More so, certain conditions or eligibility criteria, if runs counter to the principles settled by the Constitution Bench of the Supreme Court in the case of *Secretary, State of Karnataka v. Umadevi* reported in **(2006) 4 SCC 1**, then the Court cannot grant the relief of regularisation.

4. All appointments are to be made under the constitutional schemes and by following the procedures as contemplated under the recruitment rules. Equal opportunity in Public Employment is the constitutional mandate. Back door appointments, if permitted, will lead to an unconstitutionality and deprive the eligible candidates, who all are aspiring to secure public employment through open competitive process. This being the spirit of Constitution Bench judgment, any judgment or Government Order running counter to the principles settled by the Constitution Bench denuded to loose its status as precedent and the Courts cannot follow such judgments, including the judgment of the Two Judges Bench of the Supreme Court of India.



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5. In the present case, the learned Single Judge has rightly adopted the principles and granted the relief to the appellant to continue as temporary watchman, if he is otherwise engaged by the Department on need basis. That being the relief granted to the appellant, we are not inclined to grant any further relief, for which the appellant is not entitled.

6. Learned counsel for the appellant made a submission that the appellant is entitled for special time scale of pay which is applicable for the temporary employees. If any such Government Order is in force as of now, the petitioner is liberty to approach the authorities in the manner known to law.

7. Accordingly, the order dated 20.03.2023, passed in W.P. (MD)No.12584 of 2020 is confirmed and the Writ Appeal is dismissed.
No costs.

NCC :Yes/No
Index :Yes/No
SJ

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