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W.A.No.2163 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.2163 of 2021

and

C.M.P.No.13651 of 2021

1. Government of Tamil Nadu,
Represented by Secretary to Government,
School Education Department,
Fort St. George,
Chennai – 600 009.

2. The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.

3. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

... Appellants

Vs.

1. P. Karthikeyan

2. V. Jayamani

3. S. Palanisamy



W.A.No.2163 of 2021

4.T.Satheesh Kumar

5.C.Deepa

6.T.Maheswaran

7.P.Arulmurugan

8.A.Saraswathi

9.K.Rathinam

10.C.Jeyaraj

11.D.Senthilkumar

12.G.Sadasivam

13.R.Sreetharan

14.G.Murugan

15.K.V.Chitra

16.S.Sarala

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 27.11.2019 made in W.P.No.30913 of 2019 and allow this writ appeal.

For Appellants : Mr.U.M.Ravichandran
Special Government Pleader

For R1 & R16 : Mrs.S.Suneetha

For R2 to R15 : No Appearance



W.A.No.2163 of 2021

J U D G M E N T

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[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The ‘State’ preferred the present writ appeal. The respondents were appointed as Secondary Grade Teachers on consolidated pay basis in G.O.Ms.No.100 dated 27.06.2023. Subsequently, the Government took a policy decision to regularise the consolidated pay employees appointed in the cadre of Secondary Grade Teachers. Accordingly, the services of the respondents were regularised from 01.06.2006. Not satisfied with the regularisation with effect from 01.06.2006, the respondents filed the writ petition to regularise their services with effect from their initial date of appointment as Secondary Grade Teachers in the year 2003.

2. The Writ Court relied on the order passed in the ***W.P.No.4991 of 2015*** in the case of ***T.Kunju Krishnan and others Vs. Government of Tamil Nadu*** dated 30.07.2019. Relying on the said judgment, the benefit of retrospective regularisation from the date of initial appointment was granted by the Writ Court. Challenging the same, the present writ appeal is filed.



W.A.No.2163 of 2021

3. Mr.U.M.Ravichandran, learned Special Government Pleader appearing on behalf of the appellants / 'State' would submit that the said order dated 30.07.2019 passed in W.P.No.4991 of 2015 has been reversed by the Division Bench of this Court in W.A.No.3904 of 2019 dated 13.01.2020. Thereafter, the Secondary Grade Teachers filed Review Application No.60 of 2020 in W.A.No.3904 of 2019 before the Division Bench of this Court and the said Division Bench recalled the order dated 13.01.2020 passed in W.A.No.3904 of 2019. Challenging the said order, Special Leave Petition (SLP) was filed, which was admitted and pending before the Hon'ble Supreme Court of India. However, the learned Special Government Pleader appearing on behalf of the State would submit that no stay was granted by the Hon'ble Supreme Court.

4. In view of the fact that the Division Bench order dated 13.01.2020 is recalled and review order passed by the Division Bench is under challenge before the Hon'ble Supreme Court, we are inclined to consider the merit of the case. The learned Single Judge allowed the writ petition based on the order passed by the learned Single Judge in W.P.No.4991 of 2015. Therefore, the principles governing the grant of regularisation and permanent absorption



W.A.No.2163 of 2021

is to be considered by this Court on merits.

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5. The legal principles governing regularization and permanent absorption are no more *res integra*. The Constitution Bench of Hon'ble Supreme Court of India settled the legal principles in the case of ***State of Karnataka Vs. Uma Devi*** reported in ***(2006) 4 SCC 1***.

6. The appointment to the public posts are to be made scrupulously in accordance with the Service Rules in force. Equal opportunity in public employment is the constitutional mandate. Back door appointments at no circumstances be regularised, depriving the right of eligible candidates to get an opportunity to participate in the open competitive process under the Constitutional Scheme of recruitments.

7. Equal opportunity in public employment is a mandate under the Constitution. In the event of grant of regularisation of irregular or illegal appointments, the Fundamental Right of a citizen to get equal opportunity is infringed. Thus, the Constitution Bench in unequivocal terms held that all appointments are to be made under Constitutional Scheme and mere length of



W.A.No.2163 of 2021

services as temporary employee cannot be a ground to seek regularisation of services.

8. The Constitution Bench in the case of *Uma Devi* in unequivocal terms held in paragraph 54 that any judgments / decisions running counter to the principles settled by the Constitution Bench in the *Uma Devi's* case, denuded to loose its status as precedent. Therefore, based on any other judgments, the regularisation or permanent absorption of illegal or irregular or back door appointments cannot be regularised.

9. The Hon'ble Supreme Court of India in subsequent judgment in the case of *Secretary to Government School Education Department, Chennai Vs. R.Govindaswamy and Others* reported in *2014 (4) SCC 769* reiterated the principles by referring the case of *State of Rajasthan and Others Vs. Daya Lal and Others* reported in *(2011) 2 SCC 429* that the High Courts in exercising power under Article 226 of the Constitution will not issue directions for regularization, 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



W.A.No.2163 of 2021

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 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.

10. The Hon'ble Supreme Court of India further continued by stating that mere continuation of service by 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 the service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. The Hon'ble Supreme Court further emphasised that sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.



W.A.No.2163 of 2021

11. Therefore, Courts cannot grant regularisation or permanent absorption merely based on misplaced sympathy, which would infringe the Fundamental Right of all other lakhs and lakhs of youth of our great Nation, who all are aspiring to secure public employment through open competitive process under constitutional scheme.

12. In the present case, the respondents were admittedly appointed as Secondary Grade Teachers on consolidated pay and the Government took a policy decision to grant the benefit of regularisation of services. Thus, the regularisation itself was granted by way of concession to these employees. The initial appointment of the respondents as Secondary Grade Teachers were not made through Teachers Recruitment Board in accordance with the Recruitment Rules in force. Thus, their initial appointments were not in accordance with the Service Rules. Under these circumstances, regularisation granted by way of concession cannot be expanded by giving retrospective regularisation.

13. When the initial appointment was found to be irregular and the Government sympathetically granted regularisation with effect from the date



W.A.No.2163 of 2021

of passing of the Government order, now the respondents cannot claim retrospective regularisation from the date of their initial appointment as Secondary Grade Teachers on consolidated pay. Therefore, the order relied on by the Single Judge passed in W.P.No.4991 of 2015 dated 30.07.2019 is running counter to the legal principles settled by the Hon'ble Supreme Court of India in the matter of regularisation and permanent absorption of employees in accordance with the Service Rules in force. Consequently, the present order impugned is also to be held as not in consonance with the principles.

14. In view of the facts and circumstances, the order impugned passed in W.P.No.30913 of 2019 dated 27.11.2019 is set aside and the Writ Appeal stands allowed. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

[S.M.S., J.] [C.K., J.]
06.06.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes



WEB COPY



W.A.No.2163 of 2021

S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

Jeni

W.A.No.2163 of 2021

06.06.2024