



W.P.No.3462 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.3462 of 2024

1. S.Padmini
2. P.Wilfred
3. R.Selvaradha
4. V.Vasanthi
5. G.K.Santha
6. C.Jebarani Annamuthu
7. R.Chidambaram
8. G.Angammal
9. G.Muthuraman
10. C.Muthu Natchiyar
11. P.Athiramalingam
12. V.Vanaja
13. M.K.Rajaselvam
14. S.Edward Rajan
15. V.Rajeswari
16. K.Poothan
17. S.Tamilanban
18. S.Sudalaimani
19. S.Sankaralingam
20. V.Savithri
21. K.Vasantha Fernando
22. K.Adirai
23. S.Joyce
24. N.Gomathinayagam
25. R.Prema
26. A.Ramalakshmi
27. N.Gopal
28. C.Petchiammal



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29. K.Charndramohan
30. S.Jessie
31. R.Devasenapathi
32. R.Mariammal
33. Esther Inba Jothi
34. A.Subbiah
35. T.Paul Murugan
36. M.Karruppasamy
37. S.Rajeswari
38. V.Shantha
39. S.Alagusundari
40. A.Govindaraj
41. C.Shanthi
42. T.Santhanavel
43. K.Petchimuthu
44. E.Stellabai
45. D.Parvathy
46. G.Amutha Rani
47. R.Lakshmanan
48. B.Mariappan
49. S.Janaki
50. P.Shanthi
51. S.Muthuselvi
52. S.Kutralam
53. T.Balamurugan
54. S.Hermes Mascarenhas
55. N.Chandramohan
56. M.Pandi
57. K.M.Poorani
58. V.Madasamy
59. A.Packialakshmi
60. J.Umadevi
61. S.Chandra
62. V.Saraswathi
63. T.Saraswathi
64. T.Latha

... Petitioners

-Vs-



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1. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Joint Secretary,
Personnel and Administrative Reforms Department,
Secretariat, Fort.St.George,
Chennai-600 009.
3. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Revenue Department,
Secretariat, Fort St.George,
Chennai-600 009.
4. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St.George,
Chennai-600 009.
5. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai-600 009.
6. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Agricultural Production Commissioner Department,
Secretariat, Fort St.George,
Chennai-600 009.
7. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Treasuries and Accounts Department,



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Secretariat, Fort St.George,
Chennai-600 009.

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8. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Commercial Taxes, Registration and Stamp Act,
Weights and Measures, Debt Relief including
legislation on Money Lending, Chits and
Registration of Companies,
Secretariat, Fort St.George,
Chennai-600 009.
9. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Civil Supplies and Consumer Protection Department,
Secretariat, Fort St.George,
Chennai-600 009.
10. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Animal Husbandry, Dairying Fisheries and
Fishermen Welfare Department,
Secretariat, Fort St.George,
Chennai-600 009.
11. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai-600 009.
12. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Public Works Department,
Secretariat, Fort St.George,
Chennai-600 009.



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13. The District Collector,
Tuticorin District,
Tuticorin.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the first respondent to pass appropriate orders regularizing the services of the petitioners from the date of their initial appointment on contract basis vide G.O.Ms.No.85, Personnel and Administrative Reforms (Per G) Department dated 04.07.2003 issued by the Chief Secretary to Government, State of Tamil Nadu and read with G.O.Ms.No.698, Revenue Department, dated 20.12.2005 issued by the third respondent and grant all other benefits to the petitioners by taking into consideration of the service rendered by them to the Government.

For Petitioners : M/s.C.Uma

For R1 to R10, R12
and R13 : Mr.Veluchamy
Additional Government Pleader

For R11 : Mrs.S.Mythereye Chandru
Special Government Pleader

ORDER

This Writ Petition has been filed for direction directing the first respondent to pass appropriate orders regularizing the services of the petitioners from the date of their initial appointment on contract basis vide G.O.Ms.No.85, Personnel and Administrative Reforms (Per G) Department dated 04.07.2003 issued by the Chief Secretary to Government, State of Tamil



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Nadu and read with G.O.Ms.No.698, Revenue Department, dated 20.12.2005

issued by the third respondent and grant all other benefits to the petitioners by taking into consideration of the service rendered by them to the Government.

2. Heard the learned counsel on either side and perused the materials available on record.

3. Similarly placed persons approached this Court for the very same direction in W.P.Nos.27900 of 2018, 11923 and 13033 of 2013. This Court, by an order dated 15.03.2023 allowed the writ petitions. Though writ appeal filed as against the order passed by this Court, no interim order has been obtained by the respondents.

4. This Court, in W.P.Nos.27900 of 2018, 11923 and 13033 of 2013 dated 15.03.2023 held as follows:-

“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,



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Personnel and Administrative Reforms Department, dated 21.06.2004, 1000 temporary 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.

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



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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 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 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. ...

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.

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



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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 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.”

5. Therefore, the first respondent is directed to pass appropriate orders regularizing the petitioners' services from the date of their initial appointment on contract basis vide G.O.Ms.No.85, Personnel and Administrative Reforms (Per G) Department dated 04.07.2003 issued by the Chief Secretary to Government, State of Tamil Nadu and read with G.O.Ms.No.698, Revenue Department, dated 20.12.2005 issued by the third respondent, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that the petitioners are not entitled for regular time scale of pay from the date of their initial appointment.



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6. In the result, this writ petition is allowed. There shall be no order as to costs.

15.02.2024
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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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To

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6. The Principal Secretary to Government,
The State of Tamil Nadu,
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