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W.P.No.22023 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2024

CORAM:

THE HONOURABLE DR.JUSTICE D. NAGARJUN

W.P.No.22023 of 2015

D. Raghu S/o. Late D. Devaiah.

... Petitioner

vs.

1. The Deputy General Manager (B & O),
State Bank of India,
Administrative Unit, HR Section,
Kurinji Complex, State Bank Road,
Coimbatore – 641 018.

2. The Chief Manager,
State Bank of India Main Branch,
Udhagamandalam – 643 001,
Nilgiris District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to appoint the petitioner as armed security guard in the regular vacancy in the time scale of pay with all service benefits.

For Petitioner : Mr. R. Prem Narayan

For Respondents : Mr. K. Chandrasekaran.



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JUDGMENT

(Judgment of the Court was made by DR. D. NAGARJUN, J.)

This Writ petition has been filed to issue a Writ of Mandamus directing the respondents to appoint the petitioner as armed security guard in the regular vacancy in the time scale of pay with all service benefits.

2. The petitioner after his retirement as Havildar from EME, Indian Army, was appointed on a temporary basis as Armed Security Guard on 06.12.2003 in the 2nd respondent bank. He was given an employment for 178 days from 06.12.2008 and he was given an oral assurance for regularization. From 15.11.2010 to 30.06.2012, he was employed on regular basis by the 2nd respondent and he worked for 539 days. He attended an interview on 04.09.2010 as his name was sponsored by the Security Officer and also Ex-Serviceman Board.

3. However, suddenly the petitioner was asked to work under contract and his name was transferred to pay rolls of a contractor. According to the petitioner, he was illegally terminated on 06.03.2014



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without compliance of rules, thereby he has filed this Writ petition.

4. The respondents have filed a counter affidavit stating that the petitioner was working under the contractor namely M/s. Stalwat Securities India Ltd., Coimbatore and that the 2nd respondent never gave any promise to the petitioner that he would be absorbed as an employee of the 2nd respondent bank and that the petitioner did not succeed in the interview and hence he cannot be absorbed as a permanent employee.

5. Heard both sides and perused all the records available.

6. The petitioner is seeking a direction to the respondents to appoint him as Armed Security Guard in the regular vacancy of the 2nd respondent bank in the time scale of pay. The petitioner is a retired Havildar from EME, Indian Army. Initially, he was given appointment as Security Guard in the 2nd respondent's bank. It is submitted by the learned counsel for the petitioner that the petitioner was allowed to work for 539 days on regular basis in the 2nd respondent's bank. However, the contention of the respondent is that the petitioner had worked under a contractor by name



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M/s. Stalwat Securities India Ltd., Coimbatore and that he was not appointed in the services of the respondent bank at any point of time. It is also submitted that the respondent never gave any assurance for absorbing the petitioner on regular basis and that he had attended to the interview for regular appointment conducted by the Security Officer and also Ex-Serviceman Board, however the petitioner was not succeeded in the interview and hence he could not be selected on merits.

7. The learned counsel for the respondents has relied upon the judgment in *Secretary, State of Karnataka and others v. Umadevi(3) and others reported in (2006) 4 SCC*, in which in Para Nos.43 and 44, it is held as follows:-

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the Scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any



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right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the Court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment



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would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of “equal pay for equal work” is different from the concept of conferring permanency on those who have been appointed on adhoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after *Dharwad decision* the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those



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directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality”.

8. The petitioner attended interview for regular post of Armed Security Guard has not cleared the interview, thereby he was not considered for permanent appointment. The petitioner has to fulfill all the criteria for recruitment for the post of Security Guard including the age. The petitioner was interviewed on 04.09.2010. According to the petitioner, as on the date of his interview, he was eligible to be taken as Security Guard based on his age. However, as of now, according to respondents, the petitioner is over-aged. This Writ petition is being disposed of after 14 years from the date on which the petitioner attended the interview. Therefore, even if otherwise the petitioner is eligible, still he cannot be considered on account of his age.



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9. In view of the discussion above, considering from all the angles, the petitioner cannot be directed to be absorbed as Security Guard in 2nd respondent's bank.

10. In view of the above, this Writ petition is dismissed. There shall be no order as to costs.

09.02.2024

mjs

Internet : Yes

Index:Yes/No

Neutral Citation:Yes/No

To

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2. The Chief Manager,
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