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W.P.No.30331 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

W.P. No.30331 of 2011

and

M.P.No.1 of 2011

Tmt.Vasantha

... Petitioner

-VS-

1.The Executive Director,
The Handloom Export Promotion Council,
Nungambakkam,
Chennai-600 034.

2.The Chairman,
The Handloom Export Promotion Council,
Nungambakkam,
Chennai-600 034.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, directing the respondents herein to regularise the services of the petitioner as Class IV employee in the respondent organisation.

For Petitioner : Mr.D.Muthu Kumar
M/s.Paul and Paul Associates

For Respondents : Mr.Gokula Krishnan



for M/s.Genicon Legal

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ORDER

The petitioner herein seeks direction to regularize her services as Class-IV employee in the respondent organisation.

2. Heard Mr.D.Muthu Kumar, appearing for the counsel for the petitioner and Mr.Gokula Krishnan, learned counsel appearing for the respondents.

3. The communication of the respondent dated 30.08.2006 reads that the petitioner S.Vasanth was appointed as sweeper on 01.05.1999 and the relevant portion of the said communication is extracted hereunder:



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Hepc/VI/Admn/2006/

30.8.2006

Sub: Revision of pay to Smt Vasantha, sweeper
and Smt Dhanalakshmi – Reg.

Smt Vasantha was appointed as sweeper on 1.5.99 and she was drawing a monthly salary as detailed below with effect from

15.5.99		Rs.400/- per month for cleaning First Floor
29.12.99		Rs.450/ per month
15.2.2000	...	Rs.900- per month for cleaning entire office premises

As per office note dt.5.10.2001, Rs.1000/- was fixed per month.

It may kindly be noted that there is no revision from 2001 onwards.

She has worked for 7 years so far.

Mrs. Dhanalakshmi,

Mrs. Dhanalakshmi was appointed as scavenger on 3.10.99. She was drawing a salary as per details below with effect from

3.10.99	...	Rs.300/- p.m
1.10.2001	..	Rs.450/- p.m.

Since then there is no revision in her salary. She has worked for more than 6 years.

Previously, there were 7 toilets in the existing building. Now 12 toilets after additional construction of new building in our office premises. Now she is cleaning all toilets twice a day.

Submitted to ED to decide the quantum of amount to fixed to both and from which month.

Sd.
x x x x.

4. It is the case of the petitioner that in May 2011, the respondent organization outsourced the Sweeping and Gardening works of the Export Promotion Council. The petitioner submits that they did not pass any orders terminating her services. It appears that she did not produce the school



certificate pertaining to her educational qualification. Only at a later point of time, she obtained the record sheet. The record sheet has been issued by the Chennai Middle School, Royapettah, wherein, Vasantha has studied up to 8th Standard and she was detained in the said Class. The said certificate was issued on 21.06.2011 and the date of birth of the petitioner is mentioned as 15.04.1970.

5. It was contended by the learned standing counsel for the respondent to the effect that though the petitioner had been working under the respondent's Organisation as Sweeper, when her appointment was sought to be regularised, the Committee did not approve the same and he would further contend that she did not report duty on and from 01.05.2011. Hence, some other person was engaged as Sweeper by the respondent Council.

6. It is his further argument that she was detained in Class-VIII but as regards eligibility criteria for Class-IV post is concerned one should have studied up to 8th standard with the knowledge to read and write in English. She was not employed on regular vacancy and sought for dismissal of the writ petition.



7. The learned counsel for the respondent would contend that the qualification for the post of Sweeper is pass in the 8th standard. However it appears that the petitioner was detained in 8th standard as per the Transfer Certificate produced by the writ petitioner. It is the specific contention of the writ petitioner that it took some time for her to obtain the record that she is from the school where she studied, only she produced on 21.06.2011 and in May 2011 itself the respondent's Organisation started to outsource the Sweeping and Gardening work of the Council. She was not terminated from the employment. Admittedly, she was engaged as Sweeper for 10 years as per the communication of the respondent's Council dated 03.03.2011. The respondent Council has appointed the writ petitioner as Sweeper on 01.05.1999 and for want of her school Certificates, she was not engaged by the respondent Council. The Transfer Certificate appears to have been issued on 21.06.2011 and she had sent a requisition to the respondent Council on 30.09.2011 enclosing her Transfer Certificate. Having engaged the service of the writ petitioner for more than 10 years and thereafter , the respondent is not permitted to turn around and state that she is not qualified to be appointed as Class-IV employee. Of course, she has belatedly produced the Transfer Certificate but the fact cannot be denied that she was engaged in way back in 1999 itself.



8. It is inferable that as on 2006, she had worked for 7 years as Sweeper.

There is yet another notice of the respondent Council dated 03.03.2011 reads that the Council has engaged one Sweeper by name Vasantha for the past 10 years and presently, she is being paid Rs.3000/- on consolidated basis as approved by the Executive Committee at its 175th EC meeting held on 14.08.2008 with a condition that her engagement may be terminated at any time by either party with or without cause by serving 30 days notice and Provident Fund at 12% is being deducted from her salary.

9. From another official note of the respondents dated 09.10.2007, it is discernible that the petitioner was also being paid bonus.

10. The petitioner was appointed on 01.05.1999 as Sweeper by the respondents as mentioned supra. As per the Recruitment Rules of the Handloom Export Promotion Council, 10 posts was permitted in Class-IV . As per petitioner's record sheet, she has studied up to 8th standard and she has rendered her services as Sweeper from the year 1999 to May 2011.

11. In B.N. Nagarajan & Ors. Vs. State of Karnataka & Ors. reported in



(1979) 3 SCR 937, the Hon'ble Apex Court has held that:

“The words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasised that when rules framed under Article 309 of the Constitution are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognised therein have not been dissented to by this Court and on principles, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only 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 and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation.”

12. The Hon'ble Supreme Court in Secretary, State of Karnataka and



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others vs. Uma devi and others reported in (2006) 4 SCC 1 has observed that:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no



further by-passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

13. In R.N.Nanjundappa Vs. T.Thimmaiah and another reported in (1972) 2 SCR 799, the Hon'ble Supreme Court has held that:

"Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

14. From the communication dated 30.08.2006, of the respondent



Council, the writ petitioner was appointed as Sweeper on 01.05.1999. It is also been observed that there was no revision in her salary since six (6) years and the salary was being fixed as a lump sum only.

15. Considering the fact that the writ petitioner was being engaged for long period i.e., from more than 10 years in order to set-right the irregularities and improprieties a direction is necessary. There is no certainty in the public employment as regards writ petitioner. In such a view of the matter and based on the observations of the Hon'ble Supreme Court, I am of the considered view that the petitioner is ordered to be absorbed in a regular service. Petitioner is not definitely at arms length. In order to eke her livelihood she accepted the employment as she was not in a position to bargain. That cannot be taken as a ground to jettison the constitutional scheme of appointment. The writ petition was filed long before. In order to bring some succour to the petitioner, in order to do complete justice, the respondent has to consider petitioner's case for regularisation. My views are fortified by the judgment of Apex Court in Uma Devi's case.

16. In this context, it is beneficial to extract the observations made by the Apex Court in *Secretary, State of Karnataka and Others v. Umadevi and Others* reported in (2006) 4 SCC 1, it has been held that "... If for any reason,



an ad-hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State."

17. As the writ petitioner was appointed as Sweeper as found in the communication of the respondent Council dated 30.08.2006, she is entitled to invoke the theory of legitimate expectation for being confirmed in the post in which she is appointed.

18. In Nanjundappa case, omnibus direction was given both to the Union of India and the State Governments inclusive of their instrumentalities to take steps to regularise as a one time measure, the service of irregularly appointed who had worked for 10 years or more in duly sanctioned posts. It is not the case of the respondent that the appointment of writ petitioner was irregular.

19. Based on the aforesaid discussions and as per the observations of the Hon'ble Supreme Court, this writ petition stands allowed. The writ petitioner may give requisition to the respondents within a period of three weeks from the date of receipt of copy of this order. On such receipt of the representation of



the writ petitioner, the respondents shall complete the exercise within a period of four weeks from the date of representation of the petitioner. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

29.10.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
Speaking Order / Non-Speaking Order
mac/ssn

To

1.The Executive Director,
Handloom Export Promotion Council,
Nungambakkam,
Chennai-600 034.

2.The Chairman,
Handloom Export Promotion Council,
Nungambakkam,
Chennai-600 034.

R. KALAIMATHI, J.

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