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W.P.No.25552 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HONOURABLE MRS. **JUSTICE R.KALAIMATHI**

W.P.No.25552 of 2012

B.Mani

... Petitioner

VS.

1. The Secretary to Government
School Education Department,
For St.George,
Chennai-9.
2. The Director of School Education,
College Road,
Chennai 6.
- 3.The District Educational Officer,
Nagarcoil,
Kanyakumari District.
- 4.The Headmaster,
Government Higher Secondary School,
Kulasekarapuram,
Kanyakumari District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for all the connected records pertaining to the passing of the order dated 22.02.2011 in proceedings Na.Ka.No.101765/A5/C2/2010-1 on the file of the 2nd



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respondent and quash the same and consequently direct the 2nd and 3rd respondents to regularize his services from the date of his first appointment i.e. on 06.03.1990 and thereby grant all service and monetary benefits to him.

For Petitioner : Mr.B.R.Bancijerold
for M/s.Edwin Jeyakumar

For Respondents : Mr.T.M.Rajangam
Govt.Advocate.

ORDER

The proceedings in Na.Ka.No.101765/A5/E2/2010-1 dated 22.02.2011 on the file of the second respondent is under challenge and consequently to direct the third respondent to regularize the services of the petitioner from the date of his first appointment i.e. 06.03.1990 and to grant all service and monetary benefits.

2. The petitioner, B.Mani submits that he was appointed as a part time Sweeper by the third respondent, District Educational Officer, Nagercoil, Kanyakumari District in his proceedings in Na.Ka.No.AA6/4632/89 dated 06.03.1990. His monthly salary was fixed at Rs.100/- per month and it was



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increased upto Rs.750/- and his appointment was made by the respondent as per the seniority list sponsored by the District Employment Officer, Nagercoil. The petitioner further submits that he was continuously working in the said school and put in more than 10 years of service. Since the petitioner sent a representation to the respondents to regularize his service, the same was not considered.

3. The petitioner further submits that as per the letter of the Secretary to the Government and the Director of School Education in his proceedings Na.Ka.No.545/R8/2000 dated 30.06.2000 issued instructions to his Subordinate Officers, to take action to regularize the appointment in respect of the temporary appointment made through the Employment Exchange in the year 1990.

4. Heard Mr.B.R.Benci jerold, learned counsel appearing for the petitioner and Mr.T.M.Rajangam, learned Government Advocate appearing for the respondents.

5. The petitioner counsel for the petitioner contended that as per G.O.Ms.No.22 Personnel and Administrative Reforms Department, dated



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28.02.2006, his services should have been regularized with effect from the date of completion of 10 years of service with all monetary and service benefits. But, the third respondent did not take steps to regularize his services.

6. To buttress his arguments, the learned counsel for the petitioner has placed reliance on the following cases:-

- i) ***Jaipal vs. State of Haryana, (1988) 3 SCC 354***
- ii) ***Surendra Kumar Gyani vs. State of Rajasthan, (1992) 4 SCC 464;***
- iii) ***Urmila Devi vs. State of Bihar, 1999 SCC (L&S) 642;***
- iv) ***Ramakrishna Kamat vs. State of Karnataka, (2003) 3 SCC 374;***
- v) ***Mahendra L.Jain vs. Indore Development Authority, (2005) SCC 154***

7. Mr.T.M.Rajangam, learned Government Advocate submits that as per the Government letter No.34799/R1/2006-12, School Education dated 16.07.2009 and as per G.O.(Id)No.37, School Education (R2) Department dated 08.12.2007, wherein it has been stated that the vacancy of Night Watchman and Sweeper have to be filled up by out sourcing. Hence, such vacancies cannot be filled up by regularizing the service of the part time



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employees.

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8. It appears that the petitioner was appointed as Sweeper in the Government Higher Secondary School, Kulasekarapuram, Kanyakumari District on temporary basis. G.O.(Ms.) No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006 was issued by the Government for bringing the daily wage employees who have completed 10 years of service in the Government Department in time scale of pay on the conditions as follows: "

"The Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 1.1.2006 be regularised by appointing them in the time scale of pay of the post."

9. Meanwhile, with regard to the regularisation of services of full time daily wage employees working in Government Departments in supersession of the orders issued in the above said Government Order, another Government Order was issued in G.O.Ms.No.74 Personnel and Administrative (F) Department dated 27.06.2013 with retrospective effect



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from 01.01.2006, it has been observed as under:-

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- (i) This order shall be deemed to have been come into force with retrospective effect from 01.01.2006.
- (ii) The services of the full time dally wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and completed 10 (ten) years of service as an 01.01.2016 shall be regularized against regular vacancies in the sanctioned cadre strength;
- (iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed.
- (iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23(a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services;
- (v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularization;
- (vi) The Part-time and casual employees are not entitled to the concession referred to at para (ii) above;
- (vii) The services of the full time dally wage employees who have completed 10 years of service after 01.01.2006 shall not be regularized;
- (viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules against them person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the above said Instructions are followed without fail



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and lapses if any found, responsibility will be fixed against them;

(ix) All the proposals for regularisation of the services of full time daily wage employees should be sent to the Government even in cases where relaxation of rules are not involved."

10. The said Government Order pertains to the regularisation of the services of full time daily wage employees working in Government Departments. In W.A.Nos.606 and 2830 of 2019, a direction was given by the Hon'ble Full Bench of this Court to take the date of the Government Order passed in G.O.Ms.No.74 Personnel and Administrative (F) Department dated 27.06.2013 as the cut of date for completion for the persons who have completed 10 years of service.

11. In **State of Mysore vs. V.Narayanappa** reported in (1967) 1 SCR 128, the Hon'ble Supreme Court held that if a person who is appointed, is irregular and the employees who have continued to work for ten years or more but without the intervention of orders of the Courts or of Tribunals, the question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court.



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12. In ***D.S.Nakara vs. Union of India***, reported in (1983) 1 SCC 305,

it has been observed by the Hon'ble Apex Court in heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The employment cannot be on exploitative terms, whereas Umadevi laid down that there should not be back door entry and every post should be filled by regular employment.

13. The Full Bench of Hon'ble Supreme Court in Secretary, ***State of Karnataka and Others vs. Umadevi 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[(1967) 1 SCR 128 : AIR 1967 SC 1071], R.N. Nanjundappa[(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for



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ten years or more but without the intervention of orders of the 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 abovereferred 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 the 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 regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme”.

14. In Umadevi's case, a direction was given to the effect that the Union of India, State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed persons, who have worked for 10 years or more in duly sanctioned posts but not under cover of orders of the Courts or of Tribunal 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



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employees or daily wagers are being now employed. Further, the Hon'ble Supreme Court has fixed a time line of six months to commence the said process. It is relevant to note that the Hon'ble Supreme Court has also observed that the regularisation, if any already made, but not sub judice, need not be reopened.

15. In ***State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another v. A.Singamuthu***, reported in **2017 (4) SCC 113**, the Apex Court dealt with the part time Masalchis appointed on temporary basis and held that G.O.Ms.No.22 dated 28.02.2006 would apply for the regularisation of full-time employees alone and not part-time employees.

16. Recently the Hon'ble Full Bench of this Court in a reference in ***M.Sivappa vs. State of Tamil Nadu rep.by its Principal Secretary, Rural Development Department and 4 Others*** in **W.P.No.23823 of 2023** dated 26.02.2024, it has observed that if it is shown that the appointment is made to anyone of the 86 categories. The relevant portion of the said



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Judgment is extracted as follows:-

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“wherever the posts are permanent in nature and they come within 86 categories of posts which form the Tamil Nadu Basic Service, temporary or part time employment should be avoided and those persons, who have been appointed to such posts and who have completed 10 years of service as on 28.02.2006 would be entitled to regularization *de hors* the nomenclature that is given to the appointment.

- (a) If it shown that the appointment is made to anyone of the 86 categories of posts enumerated in the Tamil Nadu Basic Service immaterial of the fact that whether such appointment is part-time or fulltime, the employee would be entitled to the benefit of regularisation *dehors* G.O.Ms.No.74 dated 27.06.2013.
- (b) If it is shown that the nature of employment is temporary and the requirement will cease to exist after a particular time, like those appointments that are made under various welfare schemes, it will then be open to the Government to engage temporary employees or part-time employees”.

17. Reverting to the case of the petitioner that he was appointed as part time sweeper on temporary basis by the proceedings of the third respondent viz., District Educational Officer in Na.Ka.No.AA6/4632/89 dated 06.03.1990. As per proceedings in Na.Ka.No.6843 A1/2000 dated 12.10.2000 of the District Educational Officer, Nagercoil, one Mrs.K.Sumangala was appointed as full time Sweeper based on the



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proceedings in Na.Ka.No.0327298/R8 dated 04.07.2000 of the Director of School Education. it has been stated that the kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. As the petitioner was appointed through the Employment Exchange by the District Educational Officer, it can be never taken as back-door entry. The petitioner joined duty as Sweeper in the Government Higher Secondary School, Kulasekarapuram on 12.03.1990 and he was continuously working in the said school and left from 24.07.2002.

18. Taking note of the fact that the petitioner has completed 10 years of service, without considering the principles enunciated by the Hon'ble Supreme Court in the above mentioned case the third respondent has not considered the request to regularize the service of the petitioner based on the directions of this Court in W.P.No.8439 of 2007 dated 15.07.2010, is liable to be quashed and thereby quashed.

19. Based on the aforestated discussions,

- i) respondent Nos.2 and 3 are directed to regularize the service of the petitioner from the date of his appointment on 06.03.1990
- ii) to grant monetary benefits from 06.03.1990 to 24.07.2002 .
- iii) The petitioner may give an application to this



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effect preferably within a period of four weeks from the date of receipt of a copy of this order.

iv) On receipt of such application, the respondent Nos. 2 and 3 shall complete the above exercise, within a period of eight weeks from the date of receipt of such requisition of the petitioner.

20. This writ petition stands allowed. There is no order as to costs.

15.07.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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R.KALAIMATHI, J.,

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