



W.P.No.26649 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18/12/2023
Pronounced on	8/3/2024

C O R A M

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.26649 of 2015

a n d

M.P.No.1 of 2015

1. V. Jeyakumar Raja

2. Dr.P.Vengatesh

3. N. Lenin

...

Petitioners

Vs

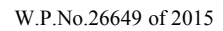
1. The Government of Tamil Nadu
rep. By The Secretary to Government
Youth Welfare & Sports Development Department
Fort St. George
Chennai 600 009.

2. The Sports Development Authority of Tamil Nadu
rep. By its Member Secretary
No.116 A Periyar EVR High Road
Nehru Park
Chennai 600 084.

...

Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of mandamus to direct the respondents to



For Petitioners	...	Mr.S.Ayyadurai assisted by Mr.M.Ezhumalai
For respondents	...	Ms.C.Sangamithirai Special Government Pleader for R.1. Mr.S.Santhosh Kumar for R.2.

This writ petition is filed seeking to direct the respondents to regularize the services of the petitioners with effect from the initial date of their joining the service of the second respondent on contract basis, i.e., 1/10/2004, 1/12/2004 and 13/12/2004, respectively and fix them in an appropriate scale and pay the arrears and re-fix their seniority in the list of seniority of coaches bearing No.8100/AO-1/2014 dated 1/8/2014.



2. Sports Development Authority of Tamilnadu is established for the purpose of dissemination of knowledge in Sports, inculcation of the spirit to involve and train oneself in sports among the people of the State of Tamilnadu. The petitioners have joined the services of the second respondent on 1/10/2004, 1/12/2004 and 13/12/2004, respectively, as District Coaches on contract basis, in the permanent vacancies which are vacant.

3. The services in the second respondent are being governed by the Sports Development Authority of Tamil Nadu Service Rules, 1988. The selection of coaches shall be as per Rule 11 of the said Rules by Selection Committee comprising of the Member Secretary an expert in the sports as the co-opted member and another member of the Executive Committee of the authority. No regular appointments were made since 1992 and since 2001 onwards, coaches were being appointed on contract basis. In all, 146 posts of Coaches were vacant in the second respondent.

4. As the regular appointments were not made, 84 coaches in various disciplines including the petitioners were appointed on contract basis. A Notification was issued dated 17/10/2007 to appoint the existing contract



coaches on a regular basis, if their names were recommended by the employment exchange and fulfill all the criteria.

5. The petitioners and other existing coaches have given their willingness to work on a regular basis. However, instead of appointing them on regular basis, their contract period was extended from 20/2/2009 to 30/11/2011. At the same time, coaches belonging to Scheduled Castes were made permanent in the last week of February 2009. The petitioners and others were similarly placed persons were protested against the action of the second respondent in appointing only SC/ST candidates on regular basis in February 2009 in the name of clearing the back log of vacancies for them, ignoring the petitioners and other similarly placed persons.

6. Basing on the protest, the respondents have ultimately decided to call for the verification of certificates of all other candidates as per the order dated 13/1/2012. On 15/5/2012, orders have been issued terminating the contract employment of the petitioners and others and on the very same day, orders have been issued appointing them on permanent basis. The petitioners have raised an objection for regularizing their services with effect from 18/5/2012 instead of the initial date of joining service in 2004.



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7. The orders of regularizing the services were given in the month of July 2015 regularising the services with effect from 18/5/2012. A representation has been given by the petitioners to the respondents to regularise their services with effect from 2004, however, the said representation has not been considered. Hence the present writ petition.

8. The Principal Secretary/Member Secretary, Sports Development Authority of Tamil Nadu has filed a counter, wherein it is stated that all the three petitioners were initially engaged as contract coaches on consolidated pay of Rs.5,000/- p.m., without sponsoring the petitioners name from Employment Exchange on execution of an agreement that they do not have any right for regularization.

9. When the Employment Exchange was addressed for sponsoring eligible candidates, Employment Exchange had sent the list of eligible candidates during the initial recruitment process during 2009 and approval of the State Government was also sought for. At that time, it was informed that the public authorities, who were recruiting more than 50 persons to their permanent services, should get the approval of the Staff Committee.



Therefore, necessary approval was sought for by the second respondent.

By the time the approval was granted by the Government, vide Letter dated 7/1/2012, validity of the list sent by the Employment Exchange, had lapsed. Therefore, fresh Notification was sent to the Professional and Employment Exchange, Chennai. In the meanwhile, period of contract of the petitioners was extended. As per the rules in force, the backlog posts (SC & ST) were filled up through Employment Exchange.

10. It is further stated in the counter affidavit that the services of the petitioners cannot be regularized from the date of contract period, since they were engaged as coach without being sponsored by employment exchange and without notification being published in the newspaper. The seniority list of coaches is prepared as per the date of joining duty in the post of coaches in the regular capacity and the said fact was informed to the petitioners, vide letter dated 1/8/2014.

11. Heard Mr.S.Ayyadurai, learned counsel for the petitioner, Ms.C.Sangamithirai, learned Special Government Pleader for the first respondent and Mr.S.Santhosh Kumar, learned counsel for the second respondent.



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12. There is no dispute that the petitioners who are qualified coaches were appointed by the second respondent in the year 2004 on contract basis. Subsequently, as per the Notification issued by the Government, petitioners have given their willingness and thereby, in the year 2015, services of the petitioners were made permanent with effect from 18/5/2012.

13. The grievance of the petitioners is that in the last week of February 2009, services of the candidates belong to SC & ST are regularized and that regularizing the services of the candidates belong to SC & ST alone and not regularising the services of the petitioners amounts to discrimination. It is also submitted further that since Notification was issued on 17/10/2007, services of the petitioners should have been regularized at least from 2007 if not from 2004.

14. The learned counsel appearing for the second respondent relied on a judgment of this Court in N.DEVANATHAN AND ORS Vs. STATE OF TAMIL NADU AND ORS (W.P.No.17487 of 2015), wherein at paragraph Nos.25 to 27, it has been held thus:-



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“25. The petitioners were appointed admittedly on contract basis. The period of contract was one year. They were terminated at the end of the Academic Year. However, they continued in contract employment on account of the interim order granted by the Tamil Nadu Administrative Tribunal. Thus, the continuance of contract employment based on the interim order of the Court would not provide any right on the petitioners to seek retrospective regularisation. The Constitutional Bench of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi and Others reported in [(2006) 4 SCC 1], held that the litigious employment would not provide any ground for the persons to claim regularisation or permanent absorption. While so, retrospective regularisation cannot be claimed by the petitioners merely based on the fact that they were continuing in contract services without any



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break, which is to be construed as litigious employment.

26. Contract employees on acceptance of the terms and conditions of the contract, served in the establishment and thus, they cannot turn around and claim regularisation or permanent absorption, by merely filing a case before the Court of Law and continued in contract employment based on the interim order. Nature of the appointment and terms and conditions were agreed between the employer and employee. Thus, further right cannot be claimed or conferred, merely based on the interim order of the Court for permanent absorption, which is to be otherwise made in accordance with the Recruitment Rules in force.

27. The benefit of regularisation was granted based on the representation submitted by the contract employees and it was a concession given by way of a policy decision. While doing so, the Government has clearly stated that the contract



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employees are entitled to be regularised from the date of issuance of the Government order i.e. in G.O.(Ms.).No.170, Department of Law (Education) dated 22.07.2008. Pertinently, the contract appointments were made pursuant to the Notification issued for making contract appointment. Terms and conditions were stipulated. No doubt, the appointments were made by constituting a Selection Committee. However, the selection done for contract appointments cannot be compared with the selection to be made through the Teachers Recruitment Board in accordance with the Recruitment Rules in force. Many candidates would not prefer contract appointments for a period of one year, though they are eligible for the regular post. The rights of those candidates were deprived from participating in the process of selection. In other words, one cannot expect that all the eligible candidates would prefer contract appointments, that exactly is the reason why the contract appointees



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cannot claim regularisation or permanent absorption, which would infringe the Fundamental Rights of several other candidates, who all are aspiring to secure regular employment through open competitive process and by way of the Rule of Reservation. Equal opportunity in public employment being the Constitutional mandate, any violation in any form of the Equality Clause enunciated would result in infringement of the right of many youths of our great Nation. Thus, the contract appointees are bound by the terms and conditions of the contract. They cannot turn around and seek permanent absorption by depriving the rights of all other candidates, who were not afforded with an opportunity to participate in the open competitive process as per the rules through the Teachers Recruitment Board.”

15. On considering the entire materials on record and submissions of both sides, this Court is of the opinion that there is no justification for the



prayer sought for by the petitioners. It is the policy of the Government to take the employees either on contract basis or on out sourcing basis or recruit them on permanent basis. Normally, whenever employees are recruited either on contract or on out sourcing basis, they may issue a limited recruitment Notification or a request an out sourcing agency to provide the services of the employees on a contract basis.

16. The petitioners were given employment in back door method. Merely because the names of the petitioners were recommended by the Employment Exchange does not mean that their recruitment is proper and that they can be straight away regularised. If the Notification is given to the general public, more competent and more meritorious coaches could have been competed for the post of Coaches. Initially, the petitioners were taken on contract basis. However, when the regular coaches sought to be appointed, then, the Government has decided to regularize existing coaches who are working on contract basis instead of issuing the fresh Notification. Such a decision is beneficial to the petitioners and accordingly, services of the petitioners were regularized.



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17. However, the petitioners have started demanding to regularize their services from the date of their initial contract. The petitioners have not filed the terms of the contract between the petitioners and second respondent. The petitioners are fully aware that their services from 2004 onwards are only on contract basis and they cannot demand the Government to regularize their services. It is for the Government to evolve the policy of regularizing employees working on the contract basis.

18. It is the contention of the petitioners that as on the date of joining the second respondent as contract coaches, there were regular vacancies. In every recruitment, there will be vacancies available much earlier to the dates of Notification. Recruitment in many Departments will not be conducted regularly every year. After every recruitment, after selection, if selected candidates start demanding to regularize their services from the dates of respective vacancies whole system will get effected. Persons will get seniority only from the date of their regular services not earlier to that. There is also no agreement that their services will be regularized from 2004. There is no basis for the request of the petitioners. Therefore, merely because there were vacancies in the year 2004, the petitioners who were



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and Vice Chancellor of the Tamil Nadu Physical Education Sports University have taken the interview and selected 79 coaches.

20. The other ground on which the petitioners have been objecting their regularization, is the discrimination with the candidates of SC & ST. Reservation to the SC & ST candidates is guaranteed under the Constitution. In order to reach the mandate of the Constitution, every Department will conduct a special drive for filling back long vacancies on various cadres belonging to SC & ST candidates. Therefore, the petitioners cannot compare the regularization of the services of SC & ST candidates earlier than their regularization. Both will have to be considered on different footing.

21. In view of the above, the petitioners fail to make out any ground to consider the request of the petitioners to issue a writ of mandamus.



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22. In the result, this writ petition is dismissed. No costs.

Consequently, the connected Miscellaneous Petition is closed.

8/3/2024

mvs.

Index: Yes/No

NCC: Yes/No

To

1. The Secretary to Government
Government of Tamil Nadu
Youth Welfare & Sports Development Department
Fort St. George
Chennai 600 009.



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
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