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Writ Petition No.761 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-12-2024

CORAM

**THE HONOURABLE MR JUSTICE BATTU DEVANAND**

**WP. 761 of 2018**

C.KALYANI,  
SANITARY WORKER, ST.PAULS GIRLS HIGHER  
SECONDARY SCHOOL, MAYILADUTHURAI,  
NAGAPATTINAM DISTRICT

PETITIONER(S)

Vs

1.THE SECRETARY TO GOVERNMENT  
SCHOOL EDUCATION DEPARTMENT,  
FORT ST. GEORGE, CHENNAI-09

2. THE DIRECTOR OF SCHOOL  
EDUCATION, COLLEGE ROAD, CHENNAI-06

3. THE COLLECTOR  
NAGAPATTINAM DISTRICT

4. THE HEAD MISTRESS  
ST.PAULS GIRLS HIGHER SECONDARY SCHOOL,  
MAYILADUTHURAI, NAGAPATTINAM DISTRICT

RESPONDENT(S)

**PRAYER** : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the Government Letter issued in Letter no.33770/Nee.Va.3(2)/2016-4 dated 05.09.2017 passed by the 1<sup>st</sup>



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respondent and quash the same and consequently direct the respondents to regularise the petitioner's service from the date of the petitioner's initial appointment.

**For Petitioner(s):**

M/S.S.ILAMVALUDHI

**For Respondent(s):**

Mr.A.M.Ayyadurai,G.A. FOR R1, R2 & R3

Ms. A.ARUL MARY for M/s.FATHER XAVIER  
ASSOCIATES, FOR R4

**ORDER**

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records in connection with the Government Letter issued in Letter no.33770/Nee.Va.3(2)/2016-4 dated 05.09.2017 passed by the 1<sup>st</sup> respondent and quash the same and consequently direct the respondents to regularise the petitioner's service from the date of the petitioner's initial appointment.

2.The case of the petitioner is that she was employed as a Sanitary worker on consolidated basis in the year 1987 in the fourth respondent school for sanitary work, which is an aided School. Later, the 4<sup>th</sup> respondent School was upgraded as Higher Secondary School. According to the



petitioner, right from 1987, she was drawing the same scale of pay and there is no periodical increments even specified by the Collector applicable to the various departments. The petitioner was the only Sweeper cum Scavenger working with meager pay. She is continuously serving the school as Scavenger for the past 37 years without any regularization of service. In this regard, the she sent several representations dated 26.02.2013, 20.02.2013, etc. to the respondents 1 & 2 requesting to regularise the services of the petitioner. Since, no action has been forthcoming by the respondents, the petitioner has constrained to file a Writ Petition in W.P.No.18196 of 2013, which was disposed of by this Court, vide order dated 11.11.2016, directing the respondents therein, to consider and dispose of the representation of the petitioner within four weeks. Pursuant to the said order, the 1<sup>st</sup> respondent, vide order dated 05.09.2017, rejected the claim of the petitioner, which prompted the petitioner to come forward with the present Writ Petition.

3. A detailed counter affidavit has been filed on behalf of the 2<sup>nd</sup> respondent, wherein, it is stated that the petitioner came to be appointed by the school management purely on temporary basis on monthly consolidated wage as the time of work per day will be about 2 to 3 hours daily. There is



no sanctioned post of Sweeper/Sanitary worker in the 4<sup>th</sup> respondent school.

Further, no proposal has been sent by the school management and no sanction has been accorded for such post in the 4<sup>th</sup> respondent school.

Further, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have no power to regularize the services of the petitioner or to create new post in the 4<sup>th</sup> respondent school. Hence, the petitioner was duly informed vide impugned letter dated 13.09.2011 that her claim cannot be considered. It is further stated that in fact, guidelines were issued vide G.O.Ms.No.22, P & AR Department dated, 28.2.2006 as regards to absorption of those employees working on full time daily wages in various Government Departments. Subsequently, clarification orders have been issued vide G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated 27.06.2013 to the effect that the guidelines issued in G.O.Ms.No.22, dated 28.2.2006 are not applicable in respect of part time sweepers. Therefore, as per the policy decision of the Government, the services of the part time employees cannot be regularized. With these averments, the 2<sup>nd</sup> respondent sought for dismissal of the Writ Petition.

4.A counter affidavit has also been filed on behalf of the 4<sup>th</sup> respondent, wherein, it is stated that regarding G.O.Ms.No.385,



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Finance(Pay Cell) Department dated 01.10.2010, is relating to awarding of Special Grade and Selection Grade to daily employees, who are working in Government Departments. The averments referring to proceedings of DEO dated 28.10.2010 is regarding direction of the DEO to the petitioner to submit her request to the Correspondent of the 4<sup>th</sup> respondent school. However, the Correspondent of the 4<sup>th</sup> respondent school has no authority to regularise the services of the petitioner. The authorities of the Education Department are the competent authority to regularize the services of the petitioner. The representations were submitted to the Director of School Education by the 4<sup>th</sup> respondent is only to help the petitioner to get her service regularized since she has been serving the 4<sup>th</sup> respondent school for the past 37 years without any regularization. With these averments, the 4<sup>th</sup> respondent would urge this Court to pass appropriate orders.

5.Heard Ms.S.Ilamvaludhi, learned counsel appearing for the petitioner and Mr.T.Sampath Kumar, learned Government Advocate appearing for the respondents 1 to 3 and perused the materials available on record.



6.It is an admitted fact that the petitioner was appointed as part time

Sanitary Worker in the 4<sup>th</sup> respondent School on 02.03.1987 on daily wages.

It is also an admitted fact that the 4<sup>th</sup> respondent School is a Government Aided School. The petitioner has been serving in the 4<sup>th</sup> respondent school for the past 37 years. It is also an admitted fact that the Head Mistress of the 4<sup>th</sup> respondent school vide letter dated nil.02.2013, requested the Director of School Education Officer to appoint part time Sweeper as a regular time scale Sweeper. It is an admitted fact that the petitioner alone has to attend this sanitary work and other work daily. In view of these facts, it has to be accepted that the petitioner was doing this sanitary work in the 4<sup>th</sup> respondent School is of a permanent in nature. The need for the service of the petitioner was continuous. This Court noted on several occasions that this practice of the Government in employing persons on daily wage basis in works of permanent in nature, amounts to exploitation of these persons, who are engaged to do lower works. It is also to be noted that though the petitioner was engaged as a Sanitary worker to do Sweeper work in the 4<sup>th</sup> respondent school, the nature of work done by the petitioner would go to establish that it is permanent in nature.



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7. In view of the same, this Court is of the considered opinion that the benefit of regularisation has to be considered basing on the nature of the work attended by the petitioner for the past 37 years and considering the nature of the work attended by the petitioner in the 4<sup>th</sup> respondent school for the period more than 37 years, this Court is of the considered opinion that the respondents have to regularise the service of the petitioner and to grant of benefits, for which, she is legitimately entitled. The opinion of this Court is fortified by the reliance placed by the learned counsel appearing for the petitioner.

8. A Division Bench of this Court in W.A.No.1458 of 2019 (*M. Shanmugam and Ors. Vs. Government of Tamil Nadu and Ors.*), while dealing with a case wherein, the request for regularisation was rejected by the Government in the case of similarly situated persons, held as under:

“17. In the case on hand of the appellants were appointed in the years 1999 and 2000 and they are serving even today which shows that the work that is done by the appellants is of a permanent character. Though they were originally appointed as Hand Pump Fitting Assistants, they are now being engaged as Overhead Tank Operators.



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Therefore, the need for the services of the appellants continuous. This practice of the Government in employing persons on daily wage basis in works of permanent in nature amounts to exploitation of labour. We have several labour beneficial enactments in the statute books and without an exception all such labour beneficial enactments exempt Governments and Local Bodies from the sweep of those enactments. Though the exemptions were granted with the avowed object of protecting public functionaries and saving public money, we find that such exemptions are being used unreasonably to exploit citizens by employing them on a daily wage basis.

18.The very fact that there is so much of literature in the form of judicial pronouncements relating to daily wage employees itself would show that this practice has come to stay. It would be very easy for us to condemn the Government for having adopted such practices and also confirm the order of the Writ Court. If we have to do that, we feel, we will fail in our duty to render justice as a constitutional Court.

19.No doubt, the judgments relied upon by the Writ Court namely, Umadevi, R.Govindaswamy and A.Singamuthu condemn the practice of regularization. We



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should also point out both Umadevi and Singamuthu dealt with the case of part time employees and not full time employees. We also find that we will be aiding the practice of the Government to have daily rated employees and replace them with their men whenever there is a change in the political fortunes thereby, making public employment a tool in the hands of politicians to enhance their political fortunes.

20.We have come across several cases where such temporary daily wage employees are removed from services and replaced by others depending upon the political situations relevant at that point of time. Fortunately, for these appellants despite swinging of the the political pendulum, they have been continuing to work. Even though their initial service was protected by the order of the Tribunal, atleast from 01.12.2010 till date for nearly 12 years, there was no protection for their services by means of any order of Court.

21.The Hon-ble Supreme Court even after the judgment in Umadevi had held that in appropriate cases, it will be open to regularize the services of temporary daily rated employees if it is shown that the nature of the work done by them was permanent and they were served for more than 10 years. This Court has also issued several directions



in this regard.

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22.No doubt, the exploitation of this daily rated employees by the Government should be stopped. But, at the same time, if we refuse to regularize the persons like the appellants, who have put in 20 years of service as daily rated employees, we would only be encouraging exploitation by the state. If the private individual running an industry with 20 employees cannot have temporary employees and the Tamil Nadu Industrial Employees (Conferment Permanent Status) Act would apply to them, we see no reason to allow those persons, who are working under the State or its wings to suffer the temporary employment for a span of 10 years and more.

23.The learned Government Advocate would submit that if we direct regularization of the appellants that would open the flood gates. We are alive to that fact. The Government is guilty of exploitation of atleast these four individuals for more than 22 years now. If their service had been regularized, they would have been entitled to various benefits including increments, Dearness Allowance etc. The Government should be a model employer. We find that the Government has been a worse employer in the case of these four appellants and it had been exploiting them for more



than 22 years. Whatever is the difference between the daily wages that has been paid to the appellants and what should have been paid to them if they had been permanent employees would be the illegal gain made by the Government at the cost of these appellants. We should not be misunderstood as being sentimental or emotional, we are only sympathetic. Sympathetic to the cause of such persons, who are exploited by the mighty state.

24.We therefore, have no hesitation in setting aside the order of the Writ Court and directing regularization of the appellants with effect from the date on which they completed 10 years in service. We make it clear that the appellants would be entitled to monetary benefits only from the date on which they came before this Court in W.P.No.32112 of 2018 i.e., on 03.12.2018.

25.In fine, this Writ Appeal is allowed, the order of the Writ Court is set aside. There will be a direction to the respondents to regularize the service of the appellants with effect from the date on which they had completed 10 years of service from the date of their initial appointment. It is made clear that the appellants would be entitled to monetary benefits of such regularization only from 03.12.2018. In the circumstances, we spare costs with the fond hope that the



Government will discontinue exploitation of its citizens by employing them as daily rated employees atleast in future.”

9.A Full Bench of this Court, while answering the reference made to it in W.P.No.23823 of 2023 (*M.Sivappa Vs. The State of Tamil Nadu and Ors.*), held as under:

“36.Having considered the entire literature that is available in the form of various pronouncements of this court, as well as the Hon-ble Supreme Court, we find it difficult to accept the judgment of the Division Bench in State of Tamil Nadu. By its Secretary, Public Works Department. And another Vs.S.John Charles and others, as one laying down the law to the effect that the Government is free to appoint persons either in part~time or on a full~time temporary basis to permanent posts and oust them out at it whims and fancies and we conclude that such unbridled exercise of indiscretions by the State Government would amount to exploitation.

37.We are of the considered opinion that 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 regularisation de hors the nomenclature that is given to the appointment.

38. In fine, we hold

(a). If it is 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 full-time, the employee would be entitled to the benefit of regularisation de hors 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.

39. We conclude that the judgments in State of Tamil Nadu. By its Secretary, Public Works Department. And another Vs. S. John Charles and others, and State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others Vs. K. Rajakrishnan,



cannot be taken as laying down an inflexible rule of law that any part-time or temporary employee who has completed 10 years of service on 28.02.2006 will not be entitled to regularisation. The benefit of regularisation will depend on the nature of the job and the fact that whether the post falls within any one of the 86 categories mentioned in the Special Rules for Tamil Nadu Basic Service.”

10.The learned counsel appearing for the petitioner also placed a copy of the Tamil Nadu Basic Service Special Rules issued vide G.O.Ms.No.1962, Public (Services~ G) Department dated 25th June 1971 (Corrected up to 31.05.2007) to establish that the post of sanitary worker and Sweeper are included in the Tamil Nadu Basic Service Rules. Admittedly, the Sanitary Workers were included at category 8 in Class IV and Sweepers were included at category 12 in Class IV of the services included in the Tamil Nadu Basic Service Rules.

11.In view of the fact that the petitioner worked as a part time Sanitary Worker in the 4<sup>th</sup> respondent School, which is in permanent nature and comes within 8 categories of posts included in the Tamil Nadu Basic



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Service Rules and as the petitioner has completed more than 37 years of service, the judgement of the Full Bench is squarely applicable to the facts of the petitioner's case and as such, the petitioner is entitled for regularization with effect from 02.03.1987.

12.For the aforesaid reasons, this Writ Petition is allowed with a direction to the respondents to regularise the service of the petitioner with effect from 02.03.1987 with all consequential benefits, including arrears of pay and further directed the respondents to complete the entire process within a period of six weeks from the date of receipt of a copy this order and settle all the dues to the petitioner.

No costs.

Internet:Yes/No

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Index:Yes/No

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To

1. THE SECRETARY TO GOVERNMENT  
SCHOOL EDUCATION DEPARTMENT, FORT ST.  
GEORGE, CHENNAI-09

2. THE DIRECTOR OF SCHOOL  
EDUCATION, COLLEGE ROAD, CHENNAI-06

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**BATTU DEVANAND, J**

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