



W.P.Nos.6046 of 2023 etc batch cases

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.6046, 6391, 6393, 6396, 6397, 6399, 6400, 6402, 6405, 6734,
6737, 6738, 6741 & 10972 of 2023

W.P.No.6046 of 2023

G.John Anthony

...Petitioner

-Vs-

1. The Government of India,
Rep. by its Principal Secretary,
Environment, Climate Change and Forest Department,
Fort. St., George,
Chennai-600 009.
2. The Principal Chief Conservator of Forests,
Head of Forest Department,
Guindy - Velachery Main Road,
Near Kannigapuram Check Post,
Guindy, Chennai-600 032.
3. The District Forest Officer,
Dharmapuri Forest Division,
Dharmapuri District-05.

...Respondents



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Prayer in W.P.No.6046 of 2023 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to regularize the petitioner service as driver from date of completion of 10 years i.e., 01.05.2003 with all consequential service and monetary benefits. As per the G.O.(Ms).No.22 P & AR Department dated 28.02.2006 by considering petitioner's representation dated 18.05.2022.

For petitioner in
W.P.No.6046 of 2023 : Mr.S.Anbazhagan

For respondents in
W.P.No.6046 of 2023 : Dr.T.Seenivasan,
Special Government Pleader

For Petitioners in
W.P.Nos.6391 of 2023
etc., cases : Mr.C.Sivanesan

For Respondents in
W.P.No.6391 of 2023
etc., cases : Mrs.R.L.Karthika
Government Advocate

ORDER

These writ petitions have been filed for direction to the respondents to regularize their service as their respective service from the date of completion of 10 years in the respective service with all consequential monetary benefits as per G.O.Ms.No.22 P & AR Department dated 28.02.2006.



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2. In all the writ petitions issues are common in nature and claiming their right under G.O.Ms.No.22 P & AR Department dated 28.02.2006. The petitioners were initially appointed as Daily Wage Labourers and part time Sweepers on temporary basis. While being so, Government order in G.O.Ms.No.22, P& AR Department dated 28.02.2006 stated that the employees working in various Government Departments on daily wage basis who have completed more than 10 years of service as on 01.01.2006 will be regularized. Based on the said Government order, the Government direct that the services of the daily wage employees working in all Government Departments who have rendered 10 years of service as on 01.01.2006 be regularized by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned, subject to they are being otherwise qualified for the post. In pursuant to the said Government Order Heads of the Department in each department submitted necessary proposal to Government. After examining the proposals, most of the petitioners' service were regularized after the date of government order those who have already completed 10 years of service.



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Now the grievance of the petitioners is that they have to be regularized after completion of ten years of service in their respective post as per G.O.Ms.No.22, P & AR Department dated 28.02.2006. Therefore, the petitioners submitted representations in their respective departments. In this regard Hon'ble Full Bench of this Court passed an order in W.P.No.23823 of 2023 dated 26.02.2024. The relevant portion of the order is extracted hereunder :

"32. As we have already pointed out the temporary appointments are made even to teaching posts in Aided Schools and Colleges through the medium called the Parents Teachers Association and those teachers, who have been appointed to such permanent posts temporarily seek priority in appointment when a regular appointment is sought to be made. We have two sets of judgements of this Court. Ones that take the view that G.O.Ms.No.74 dated 27.06.2013 is retrospective in nature and therefore, part-time employees are not entitled to regularisation and the others, where this Court had taken a view, which appears to be more pragmatic, to the effect that parity must be ensured and the nature of the post should be looked into in order to decide, as to whether the benefit of regularisation should be made available to the employee concerned or not.

33. As we have already pointed out, we are in agreement with the view of the Division Bench in State of Tamil Nadu, by its Secretary, Public Works Department and another vs. S. John Charles and others. made in W.A.Nos.2875 of 2018 etc., wherein the Division Bench upheld G.O.Ms.No.74 dated 27.06.2013, on the ground that it is open to the Government to change its policy. The Division Bench that decided in State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others vs K.Rajakrishnan made in WA (MD) No.836 and 837 of 2014, did not



have the benefit of the other pronouncements of the other Division Benches of this court.

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34. A reference was made to the judgement of the Hon'ble Supreme Court in Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and others, reported in (2014) 4 SCC 769, which we had already pointed out, did not deal with the two Government Orders that were subject matter of consideration before the other Division Benches of this Court. In fact the Division Bench in State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others vs K.Rajakrishnan, recorded a finding that the employee therein had not completed 10 years as on 20.08.2006. The fact whether he was a part-time employee or a temporary full-time employee is not available in the report. We are therefore, unable to take the judgment of the Division Bench, in State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others vs K.Rajakrishnan, as a precedent to conclude on the retrospectivity or otherwise of G.O.Ms.No.74 dated 27.06.2013.

35. The other judgement, which is cited in the order of reference as one that would support the view. that G.O.Ms.No.74 dated 27.06.2013 is retrospective, of the Division Bench in State of Tamil Nadu. by its Secretary, Public Works Department, and another vs.S.John Charles and others. The Appeal arose out of a judgement of the learned Single Judge of this Court, which had quashed Clause 6 of G.O.Ms.No.74 dated 27.06.2013, which restricts the operation of G.O.Ms.No.22 dated 28.02.2006 only to full time employees. The power of the Government to change its policy was upheld and in the course of the order, the Division Bench has observed that the Government has not taken away the right to regularize the services subsequently provided those persons had completed 10 years of service as on 28.02.2006. The Division Bench described the action of the Government in passing G.O.Ms.No.74 dated 27.06.2013 as an attempt to streamline the scheme relating to regularisation. Even the other judgments of this court, which have been referred to by us earlier, reaffirm the view that parity should be maintained, there should be no exploitation by the Government which is a welfare State and temporary or part-time employment to permanent posts should be stopped.

36. Having considered the entire literature that is available in the form of various pronouncements of this court, as well as the Hon'ble



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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 its 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 dehors 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 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-employees. time

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."



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3. Therefore, the respondents are directed to consider the each of the petitioners' case in the light of the above Full Bench Judgement of this Court dated 26.02.2024 and pass orders on their representations within a period of twelve weeks from the date of receipt of copy of this order.

4. With the above direction, these writ petitions are disposed of.

No costs.

04.03.2024

Index : Yes/No
Speaking/Non Speaking Order
Neutral Citation : Yes/No
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To



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G.K.ILANTHIRAIYAN,J.
gvn

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