



WP.No.7087 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

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and

WMP.Nos.7170 to 7174 of 2023

1. A.J.Ethiraj
2. J.Manoj Kumar
3. S.Mohamed Ansari
4. S.Mehallan
5. S.Marimuthu
6. J.Rupan Kumar
7. V.Tamilsangili
8. K.Essakkiammal
9. J.Androse Yesudhas
- 10.K.Pradeep Kumar
- 11.S.Kodikathakumaran
- 12.P.Muniappan
- 13.R.Shenbagam
- 14.A.Ziaulhaq
- 15.S.Senthil Kumar

... Petitioners

Vs.

1. The Government of Tamil Nadu,
Represented by its Secretary,
Law Department,
St. Fort George, Chennai-600 009.
(R1 is not necessary party vide this order dated 24.07.2024)
1. The Principal Secretary to Government,



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Home (Courts) Department,
Fort St. George, Secretariat,
Chennai-9.

(R1 has been suo-motu impleaded vide this order dated 24.07.2024)

2. Tamil Nadu State Legal Services Authority,
Represented by its Member Secretary,
North Fort Road, High Court Campus,
Chennai-600 104.

3. C.Kaviarasan
4. S.Jayalakshmi
5. P.Lokesh
6. Tmt.S.Maheswari
7. Thiru.S.Kumaresan
8. V.Mahesh
9. Tmt.M.Lathika
- 10.A.Vignesh Kumar
- 11.V.Senthil Kumar
- 12.B.Tarun Jain
- 13.Mohammed Ali
- 14.S.Arunkumar
- 15.M.Saranya
- 16.S.Sundaramoorthy
- 17.R.Shalini
- 18.R.Karuppusamy

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the record in Order:TNSLSA.No.8080/E/2022 dated 12.10.2022 on the file of 2nd respondent and quash the same as illegal, incompetent and further direct the respondents to promote the petitioners to the post of Junior Administrative Assistant.

For Petitioners : Mr.P.Senthil Dhandapani



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For Respondents : Mr.S.John J. Raja Singh
AGP for R1
Mr.Om Prakash
Senior Counsel
for Mr.Naveen Kumar Murthi for R2
No Appearance-R3 to R18

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The *lis* on hand has been instituted questioning the legal validity of the appointment of the respondents 3 to 18 to the post of Junior Administrative Assistants in the services of the Tamil Nadu State Legal Services Authority. Perusal of the impugned appointment order reveals that in exercise of the powers under Sub-Section (5) of Section 6 and Sub-Section (5) of Section 9 of “The Tamil Nadu Legal Services Authorities Act, 1987” [hereinafter shall be referred to “Act”], read with Sub-Rule 2 Rule 13 of the Tamil Nadu District Legal Services Authorities Rules, 1997, the Hon'ble Acting Chief Justice/Patron-in-Chief and the Hon'ble Executive Chairman of the Tamil Nadu Legal Services Authority have ordered provisionally to appoint the respondents 3 to 18 to the post of Junior Administrative Assistant in the existing vacancy in the pay band of Rs.19,500-62,000/- as per Pay Matrix Level-8 with all admissible allowances under the orders and Rules now in



2. Section 6(5) of the Act enumerates that “the State Authority may appoint such number of Officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court, for the efficient discharge of its functions under this Act”. The provision unambiguously clarifies that the State Legal Services Authority may appoint such number of officers as may be prescribed by the State Government. Therefore, the State Government is the Authority to sanction the posts for the State Legal Services Authority. The State Government has to disburse the salary to the employees appointed by the State Authority under Section 6(5) of the Act.

3. Section 6(5) of the Act empowers the State Authority to appoint such number of officers and other employees as may be prescribed by the State Government. Therefore, the appointment order impugned dated 12.10.2022 cannot be construed as contract appointment. Though certain conditions are stipulated stating that the appointment is purely temporary and liable to be terminated, the said appointments are capable of being considered



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as regular appointment by declaring probation of the respondents 3 to 18. Even contract appointments to the public posts are to be made by following due procedures as contemplated and by following established principles as settled by the Hon'ble Supreme Court of India.

4. The appointments of respondents 3 to 18 came to be challenged in the present writ petition by the writ petitioners mainly on the ground that they are serving as Office Assistants in the 2nd respondent-Authority and they are permanent employees. They are eligible for the promotion to the post of Junior Administrative Assistants and that apart, the petitioners are eligible to participate in the process of recruitment to the post of Junior Administrative Assistants, if any recruitment notification is issued. In other words, their right to participate in direct recruitment process is also denied. Thus, they are constrained to institute the present writ proceedings.

5. Mr.P.Senthil Dhandapani, learned counsel for the petitioners would submit that the right of the petitioners to consider their name for promotion to the post of Junior Administrative Assistants has been denied. The petitioners are in verge of promotion and by making illegal appointments, their



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opportunities are taken away. The respondents 3 to 18 were appointed even without issuing recruitment notification or any publication. The appointments are made merely by receiving individual applications and without conducting any selection process. Therefore, the petitioners are deprived of equal opportunity to participate in the recruitment process for appointment to the post of Junior Administrative Assistants.

6. Mr.P.Senthil Dhandapani, learned counsel for the petitioners would further submit that the very same Tamil Nadu Legal Services Authority, in the year 2017-2018 issued recruitment notification to appoint Junior Administrative Assistants and Office Assistants in District Legal Services Authorities. When the 2nd respondent had issued recruitment notification for selection and appointment to the post of Office Assistants and Junior Administrative Assistants in the year 2017 and 2018, they have not issued any such recruitment notification for the year 2019 and 2020, when the respondents 3 to 18 were appointed to the post of Junior Administrative Assistants. Thus, the appointment of respondents 3 to 18 are made without following the procedures as established. Therefore, the appointment orders ought to be set aside.



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7. The learned Senior Counsel Mr.Om Prakash, assisted by Mr.Naveen Kumar Murthi, learned counsel appearing on behalf of the 2nd respondent would oppose by stating that the State Legal Service Authority is empowered to appoint employees in consultation with the Chief Justice of the High Court. In the present case, the State Authority appointed the respondents 3 to 18 due to administrative exigencies on temporary basis. Their services are yet to be regularised. Therefore, the petitioners have not established any cause of action for entertaining the writ petition. The petitioners could not able to establish that they are aggrieved on account of the appointment of the respondents 3 to 18 to the post of Junior Administrative Assistants. Thus, the writ petition is to be rejected.

8. We have considered the arguments as advanced between the learned counsel for the petitioners, the learned Senior Counsel on behalf of the 2nd respondent and the learned Government Pleader appearing on behalf of the first respondent.

9. The governing principles in the matter of appointment and



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regularization are settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of *State of Karnataka v. Umadevi and others*, reported in *(2006) 4 SCC 1* and in subsequent judgments. Importantly, in the matter of judicial appointments, the Hon'ble Supreme Court has issued guidelines in the case of *Renu and others Vs. District and Sessions Judge and others* reported in *AIR 2014 SC 2175*. The above two judgments are binding precedents. Therefore, the appointments in judicial Administrations are to be made scrupulously following the procedures as contemplated and by following the principles established.

10. Equal opportunities in public employment is the constitutional mandate. Illegal, irregular and back door appointments would result in infringement of the fundamental rights of lack and lack of eligible candidates, who all are aspiring to secure public employment through open competition process. The constitutional principles in public appointments are well narrated and settled in *Umadevi's* case [cited supra] and reiterated by the Hon'ble Supreme Court in *Renu's* case [cited supra]. The relevant paragraphs of *Renu's* case are extracted hereunder:-

“8. As Article 14 is an integral part of our system, each and every State action is to be tested on the touchstone of equality. Any



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appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments rendered by this Court in Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386] , State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] , Prabhat Kumar Sharma v. State of U.P. [(1996) 10 SCC 62 : 1996 SCC (L&S) 1331] , J.A.S. Inter College v. State of U.P. [(1996) 10 SCC 71 : 1996 SCC (L&S) 1339] , M.P. Housing Board v. Manoj Shrivastava [(2006) 2 SCC 702 : 2006 SCC (L&S) 422] , M.P. State Agro Industries Development Corpn. Ltd. v. S.C. Pandey [(2006) 2 SCC 716 : 2006 SCC (L&S) 434] and State of M.P. v. Sandhya Tomar [(2013) 11 SCC 357] .

9.

10. *In Suresh Kumar v. State of Haryana [(2003) 10 SCC 276] this Court upheld the judgment of the Punjab and Haryana High Court wherein 1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. The High Court reached the conclusion that process of selection stood vitiated because there was no advertisement and due publicity for inviting applications from the eligible candidates at large.*

11.

12. *The principles to be adopted in the matter of public appointments have been formulated by this Court in M.P. State Coop. Bank Ltd. v. Nanuram Yadav [(2007) 8 SCC 264 : (2007) 2 SCC (L&S) 883] as under :*

“(1) The appointments made without following the



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appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.”



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13. A similar view has been reiterated by the Constitution Bench of this Court in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753 : AIR 2006 SC 1806] , observing that any appointment made in violation of the statutory rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. “Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.” The Court further rejected the prayer that ad hoc appointees working for long be considered for regularisation as such a course only encourages the State to flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.

14.

15.

16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.

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35. *In view of the above, the appeal stands disposed of with the following directions:*

(i) All the High Courts are requested to re-examine the statutory rules dealing with the appointment of staff in the High Court as well as in the subordinate courts and in case any of the rule is not in conformity and consonance with the provisions of Articles 14 and 16 of the Constitution, the same may be modified.

(ii) To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance with the statutory rules so made. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab initio irrespective of any class of



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the post or the person occupying it.

(iii) The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab initio and would remain unenforceable and unexecutable except such appointments which are permissible to be filled up without advertisement e.g. appointment on compassionate grounds as per the rules applicable. Before any appointment is made, the eligibility as well as suitability of all the candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc. if any.

(iv) Each High Court may examine and decide within six months from today as to whether it is desirable to have centralised selection of candidates for the courts subordinate to the respective High Court and if it finds it desirable, may formulate the rules to carry out that purpose either for the State or on zonal or divisional basis.

(v) The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the



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menace of ad hocism.”

11. In concluding paragraph 35, the Hon'ble Supreme Court in unequivocal terms reiterated that all the vacancies ought to be filled up in strict compliance of the statutory Rules so made. **In case, any appointment is made in contravention of the statutory Rules, the appointments would be void, *ab initio* irrespective of any class of the post or the person occupying it.** In paragraph 35(iii) of the judgment stipulates that **“the post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State”**. Any vacancy filled up without advertising as prescribed in the judgment, shall be void *ab-initio* and would remain unenforceable and inexecutable except such appointments which are permissible to be filled up without advertisement. The exception provided by the Hon'ble Supreme Court would indicate that the appointment on compassionate grounds as per the scheme applicable is to be given without publishing any advertisement. Therefore, the only exception to the Constitutional scheme of appointment is the scheme of compassionate ground and all other appointments including daily wages, contract, temporary and regular are to be made by scrupulously following the recruitment Rules and



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by following the principles established by the Constitution Bench judgment and the ratio laid down in *Renu*'s case [cited supra].

12. In paragraph 14 of *Renu*'s case [cited supra], the Hon'ble Supreme Court relied on the decision rendered in the case of *State of Orissa and another Vs. Mamata Mohanty* reported in (2011) 3 SCC 436, wherein the Apex Court held that **“Therefore, it is a settled legal proposition that no person can be appointed even on temporary or ad hoc basis without inviting applications from all eligible candidates”**. The direction was issued in order to meet out the constitutional requirement under Article 14 and 16 of the Constitution of India. The Apex Court further reiterated that **“a person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment, mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merits.”**

13. The Constitution Bench of the Hon'ble Supreme Court of India in



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Umadevi's case [cited supra] held that the judgments granting regularisation or permanent absorption in violation of the constitutional scheme of appointment cannot be followed as a precedent. In paragraph 54 of the judgment, the Constitution Bench reiterated that those decisions, which run counter to the principles settled in *Umadevi's* case or in which directions running counter to the principles settled in the judgment will stand denuded of their status as precedent.

14. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily the law thus laid down. The Hon'ble Supreme Court said that the orders, which are inconsistent with the legal conclusions arrived at by the Courts in the judgment not only create confusion, but also **tent** to user in arbitrariness highlighting the statement, that equity tents to vary with the Chancellors Court. It was also held that the fact that some persons had been working for a long time would not mean that they had acquired a right for permanent absorption.

15. Regarding the temporary, contract, daily wages, casual



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employments, the Apex Court in the case of ***State of Rajasthan and others Vs. Daya Lal and others*** reported in ***(2011) 2 SCC 429*** settled the principles in paragraph 8 as under:-

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While 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, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of

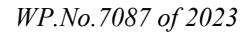


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regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.”

16. In paragraph 47, the Constitution Bench reiterated that when a person enters a temporary employment or gets engagement as a contractual or a casual worker and the engagement is not based on a proper selection as recognised by the relevant Rules or procedures, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post would be made only by following a proper procedure for selection and in cases concerned in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees.



18. Promotion *per se* cannot be claimed as an absolute right by the



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employees. However, consideration for promotion is a fundamental right of an employee. Promotion cannot be a cause in *stricto sensu* in the present case as far as the petitioners are concerned. But an opportunity to participate in the direct recruitment process is undoubtedly denied not only to the petitioners, but also to all other eligible candidates, who all are aspiring to secure public employment through open competitive process. Therefore, we have no doubt in our mind that the order of appointment issued to respondents 3 to 18 are unconstitutional and running counter to the service Rules applicable and patently in violation of the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in **Umadevi's** case [cited supra] and **Renu's** case [cited supra]. No acceptable ground has been placed before us by the respondents to sustain the impugned appointment orders.

19. The learned Government Pleader would submit that as per paragraph 3 of counter affidavit filed by the first respondent, they are not necessary parties. Therefore, in the place of the first respondent, the Principal Secretary to Government, Home (Courts) Department, Fort St. George, Secretariat, Chennai-9 has been suo-motu impleaded. The learned



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Government Pleader takes notice for the first respondent. The first respondent shall also ensure that the appointments are made under the constitutional scheme.

20. Admittedly, no recruitment notification nor any publication in newspapers were made for temporarily appointing, the respondents 3 to 18 herein. The Service Rules applicable for selection and appointment have been completely flouted. None of the procedures mandated in **Renu's** case by the Hon'ble Supreme Court of India had been adopted by the Tamil Nadu State Legal Service Authority. Contrarily, by reference from influential people or by simply receiving individual applications, appointments are made against the sanctioned post, which is not only unconstitutional, but the appointments are void *ab-initio*. Equality Clause enunciated under the Constitution has been denied to eligible candidates aspiring to secure temporary / contract / regular appointments. Therefore, the temporary appointments of the respondents 3 to 18 against the sanctioned post in time scale of pay are illegal and unconstitutional appointments.

21. It is brought to the notice of this Court that few other temporary /



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contract employees are working and their appointments are also illegal, since no recruitment process had been adopted by the 3rd respondent.

22. In view of the discussion made in the aforementioned paragraphs, the following orders are passed;

- (1) The impugned appointment orders, appointing the respondents 3 to 18 to the post of Junior Administrative Assistant in proceeding TNSLSA.No.8080/E/2022 dated 12.10.2022 are quashed.
- (2) The 2nd respondent / Tamil Nadu State Legal Service Authority shall fill up the sanctioned post in accordance with the Service Rules in force and by scrupulously following the established principles for selection and appointment to the public post as laid down in *Umadevi's* case and *Renu's* case cited *supra*.
- (3) The 2nd respondent / Tamil Nadu State Legal Service Authority may engage contract employees to complete special assignments / projects or to meet out administrative exigencies. While doing so, the 2nd respondent shall follow the due procedures as laid down and by providing equal opportunity to all the eligible candidates aspiring to secure contract employment.
- (4) The 2nd respondent / Tamil Nadu State Legal Service Authority is, hereby, restrained from regularising the services of contract / temporary / daily wage employees in violation of the Service Rules



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and the legal principles settled by the Hon'ble Supreme Court of India in *Umadevi's* case and *Renu's* case. However, those contract / temporary employees may be permitted to participate in the recruitment process, if any notified and if they are otherwise qualified under the Service Rules.

23. Accordingly, the writ petition is allowed. No costs. Consequently, connected WMPs are also closed.

[S.M.S., J.] [C.K., J.]
24.07.2024

Jeni/kmi

Index : Yes

Speaking order : Yes

Neutral Citation : Yes

Note: Registry is directed to carry out the necessary amendment in the cause title forthwith.

To

1. The Principal Secretary to Government,
Home (Courts) Department,
Fort St. George, Secretariat,
Chennai-9.
2. Tamil Nadu State Legal Services Authority,
Represented by its Member Secretary,
North Fort Road, High Court Campus,
Chennai-600 104.



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