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W.A. No.922 of 2021 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**
and

THE HONOURABLE MR.JUSTICE **C.KUMARAPPAN**

W.A.Nos.915, 919, 922, 946 and 959 of 2021
and

C.M.P. Nos.5405, 5424, 5429, 5671 and 5882 of 2021

W.A.No.915 of 2021

- 1.State of Tamil Nadu rep. By its
Secretary to Government,
School Education Department,
Fort St. George, Chennai – 9.
- 2.The Director of School Education,
College Road, Chennai – 6.
- 3.The Joint Director of School Education
(Higher Secondary), College Road,
Chennai – 6.
- 4.The Chief Educational Officer,
Trichy – 8.
- 5.The District Educational Officer,
Trichy – 8.

... Appellants

-VS-

- 1.C.Umamaheswari
- 2.The Secretary and Correspondent,
The Higher Secondary School for Girls,
Srirangam, Trichy – 6.
- 3.A.Charles Prabakar

... Respondents



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W.A.No.919 of 2021

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- 1.State of Tamil Nadu rep. By its
Secretary to Government,
School Education Department,
Fort St. George, Chennai – 9.
- 2.The Director of School Education,
College Road, Chennai – 6.
- 3.The Joint Director of School Education
(Higher Secondary), College Road,
Chennai – 6.
- 4.The Chief Educational Officer,
Trichy – 8.
- 5.The District Educational Officer,
Trichy – 8.

... Appellants

-VS-

- 1.R.Venkateswaran
- 2.The Secretary and Correspondent,
E.R. Higher Secondary School,
Chinthamani, Trichy – 2.
- 3.A.Charles Prabakar

... Respondents

W.A.No.922 of 2021

- 1.State of Tamil Nadu rep. By its
Secretary to Government,
School Education Department,
Fort St. George, Chennai – 9.
- 2.The Director of School Education,
College Road, Chennai – 6.
- 3.The Joint Director of School Education
(Higher Secondary), College Road,
Chennai – 6.



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4.The Chief Educational Officer,
Panagal Buildings, Saidapet,
Chennai – 15.

5.The District Educational Officer (North),
Egmore, Chennai – 8.

... Appellants

-VS-

1.G.Vanitha

2.The Correspondent,
I.C.F. Aided Higher Secondary School,
I.C.F. Colony, Chennai – 38.

3.V.Selvam

... Respondents

W.A.No.946 of 2021

1.State of Tamil Nadu rep. By its
Secretary to Government,
School Education Department,
Fort St. George, Chennai – 9.

2.The Director of School Education,
College Road, Chennai – 6.

3.The Joint Director of School Education
(Higher Secondary), College Road,
Chennai – 6.

4.The Chief Educational Officer,
Trichy – 8.

5.The District Educational Officer,
Trichy – 8.

... Appellants

-VS-

1.S.P.S.R.Arul Josephine Mary



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2.The Correspondent,
St. Joseph's Girls Higher Secondary School,
Ponmalaipatti, Trichy – 4.

3.A.Charles Prabakar

... Respondents

W.A.No.959 of 2021

- 1.State of Tamil Nadu rep. By its
Secretary to Government,
School Education Department,
Fort St. George, Chennai – 9.
- 2.The Director of School Education,
College Road, Chennai – 6.
- 3.The Joint Director of School Education
(Higher Secondary), College Road,
Chennai – 6.
- 4.The Chief Educational Officer,
Thiruvellore.
- 5.The District Educational Officer,
Thiruvellore.
- 6.The Headmaster,
Government Higher Secondary School,
Maddur, Tiruttani Taluk,
Thiruvellore District – 631 206.

... Appellants

-VS-

1.S.Suresh Balaji
2.S.Babu
Respondents

...

Prayer in W.A.No.915 of 2021: Writ Appeal filed under
Clause 15 of the Letters Patent against the order dated 05.08.2019
made in W.P.No.8794 of 2007.



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Prayer in W.A.No.919 of 2021: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 05.08.2019 made in W.P.No.6679 of 2007.

Prayer in W.A.No.922 of 2021: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 15.07.2019 made in W.P.No.7711 of 2007.

Prayer in W.A.No.946 of 2021: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 05.08.2019 made in W.P.No.7725 of 2007.

Prayer in W.A.No.959 of 2021: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 15.07.2019 made in W.P.No.7713 of 2007.

For Appellants : Mr.U.M.Ravichandran,
Spl. Govt. Pleader
in all the Writ Appeals

For Respondents : Mr.J.Raja Rao
for R1 in all the Writ Appeals
Mr.J.Vasu
for R2 in W.A.No.959 of 2021

COMMON JUDGMENT

[Judgment of the Court was delivered by
S.M.SUBRAMANIAM,J.]

The first respondent in the respective writ appeals filed the



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Cases 429, wherein it was held as follows:-

"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under [Article 226](#) of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization of services of an employee which would be violative of 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an 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 regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing



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any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization 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.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

21. Thus, it is evident that a Mandamus cannot be normally issued to regularise the service of an employee or to absorb an employee or to continue the service of an employee. A refusal to issue such a relief of Mandamus will not offend the constitutional guarantee contained under Articles 14 and 16 of The Constitution of India. In the present case, the appellants herein have rightly refused to regularise the service of the



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first respondent in these appeals. While so, we are inclined to interfere with the order passed by the learned single Judge in the writ petitions filed by the first respondent in these writ appeals.'

2. In view of the judgment of the Hon'ble Supreme Court, the benefit of regularisation or permanent absorption cannot be granted in violation of Service Rules. More so, the writ petitioners were appointed as part time Vocational Instructors and therefore they are not eligible for regularisation and permanent absorption. The Constitution Bench of the Supreme Court in the case of **Secretary, State of Karnataka Vs. Uma Devi** reported in **(2006) 4 SCC 1** settled the principles regarding the regularisation and permanent absorption. The benefit of time scale of pay has not been granted to the writ petitioners on account of the fact that the previous occupants of the post of Vocational Instructors expired and on such expiry the posts are to be reverted back to the Government as per the Rules. Since the writ petitioners were not accommodated in sanctioned posts, they are not eligible for time scale of pay. That apart, permission has not been obtained from the Government for appointing the writ petitioners in sanctioned posts.



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3. For all these reasons, the orders impugned dated 05.08.2019 passed in W.P.Nos.8794, 6679 and 7725 of 2007 and dated 15.07.2019 passed in W.P.Nos.7711 and 7713 of 2007 are set aside. Accordingly, the writ appeals are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.) (C.K.J.)
07.06.2024

Index: Yes/No
Neutral Citation: Yes/No
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**S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.**

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