



W.P.Nos.12171 & 20735 /2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.12171 & 20735 of 2021

1. P.M.Sehu Shahul Hameed
2. K.S.Mohideen Abdul Kader
3. M.Jesima
4. K.K.Meharunnisa
5. S.U.Yasmin
6. K.A.Mohamed Ismail
7. T.Kuthalingam
8. H.Diwan Razeeda
9. S.Razeetha Begum
10. S.A.Sheik Mohideen
11. Y.Ali Fathu Beevi

... Petitioners in W.P.No.12171/2021

1. Rajaselvam
2. D.AlwinBeschi
3. J.AntonyPrema Bella
4. A.Nagarajan
5. P.Srinivasan
6. D.Selvam
- 7.M.Vadivelu
8. S.Chandrasekaran
9. R.Barathan
10. J.A.Arockia Arul Kumar
11. C.Subramanian
12. M.Vaideghi
13. V.Kumarasamy

... Petitioners in W.P.No.20735/2021



W.P.Nos.12171 & 20735 /2021

/vs/

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1. The Government of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Fort St. George,
Chennai – 600 009.
2. The Director of School Education,
DPI Campus,
College Road, Chennai – 600 006.
3. The Director of Elementary Education,
School Education,
DPI Campus,
College Road, Chennai – 600 006. ... Respondents in both W.P's.

Writ Petitions are filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the first respondent to regularize the services of the petitioners from their initial date of appointments till 01.06.2006 with all consequential monetary and service benefits.

For Petitioner	...	Mr.S.Mohanavadivelan
(in both W.P's.)		
For Respondents	...	Mr.P.Gurunathan
(in both W.P's.)		Additional Govt. Pleader for R1 to R3



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COMMON ORDER

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The petitioners have filed these writ petitions seeking a writ of mandamus to direct the first respondent to regularize their services from their initial date of appointments till 01.06.2006 with all consequential monetary and service benefits

2. The petitioners were appointed as Secondary Grade Teacher/Junior Secondary Grade Teacher / Junior grade B.T.Assistant / Physical Education Teachers between the years 2003 to 2006 on consolidated pay of Rs.3000/-, Rs.4000/- and Rs.4500/- from the year 2004. The Government took a policy decision to absorb the petitioners in various Panchayat Union Schools, High Schools and Higher Secondary Schools in the vacancies available as on 01.06.2003 and to re-designate them as Junior Secondary Grade Teacher / Junior Grade B.T.Assistant / Junior Grade P.G.Assistant on consolidated pay. However there is no corresponding amendment in the Service Rules and an executive order alone was given to down grade the post. In the said order it is stated that those persons who have been appointed to the down graded post shall be



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entitled to be regularized after the completion of five years in the consolidated pay.

2.1 As per the Government Order in G.O.Ms.No.55 dated 02.06.2004 the petitioners would not be eligible for regularization for a period of five years. Subsequently, another Government Order in G.O.Ms.No.99, School Education (Budget-2) Department dated 27.06.2006 was issued following the Government Order in G.O.Ms.No.100 Education (Budget) Department dated 27.06.2003, to regularise the services of petitioner and similar other persons who have been regularized with effect from 01.06.2006 irrespective of their date of appointment.

3. Mr.S.Mohanavadivelan, the learned counsel for the petitioners, submitted that the two year services of the petitioners were not considered either for the Selection Grade or for the Special Grade or for awarding any increment or fixing pay; those persons who have been appointed just one day prior to the issuance of G.O.Ms.No.100 Education (Budget) Department dated 27.06.2003 are getting all service benefits. However the



petitioners are not able to get any benefit; the petitioners have participated in competitive exam and had undergone a thorough selection process; since differential treatment has been given to two similarly placed persons, it is violative of the right to equality. The writ petitions are filed to regularize the service of the petitioners from the initial date of their appointment.

4. Mr.P.Gurunathan, the learned Additional Government Pleader, submitted that on 09.03.2019 the petitioners gave representation and it is under consideration; the petitioners were appointed outside the scope of normal recruitment procedure and such contract services cannot be regularized; the Hon'ble Supreme Court in ***State of Rajasthan and Ors. Vs. Daya Lal & Ors., reported in AIR 2011 SC 1193*** have considered the scope of regularization of irregular or part time appointments in all possible eventualities and laid down the principles as under:

“ (i) The 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 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 adhoc daily-wage employee, under cover of some interim orders or 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 5 Page 6 cannot be grounds for passing any order of 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.

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

5. The petitioners claim regularization only in view of the policy decision taken by the Government to regularize the services of those persons who have completed five years of service. It is not disputed that the petitioners and other similarly placed persons have been absorbed in service with effect from 01.06.2006. Since the similarly placed persons have approached the Court and obtained positive directions, the petitioners' case can also be considered in the same line.



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6. Accordingly, these Writ Petitions are disposed by directing the respondents to consider the petitioners' representation and pass orders in the light of the earlier Government Orders and judicial pronouncements made in this regard, within a period of four weeks from the date of receipt of a copy of this order. No costs.

21.02.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To:

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Government of Tamil Nadu,
School Education Department,
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2. The Director of School Education,
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College Road, Chennai – 600 006.
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R.N.MANJULA ,J.

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W.P.No.27483 of 2021

21.02.2024