



W.P.No.9565 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.9565 of 2022
and
W.M.P.No.9300 of 2022

1.Panchavarnam

2.Malarkodi

3.Rajammal

4.Sangeetha

5.Boologam

6.Kannagi

7.Andal

8.Senthilvadvu

9.Dhanalakshmi

10.Valliammal

11.Kamala

12.Santha

13.Govindammal

14.Venugopal



W.P.No.9565 of 2022

15.Amudha
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16.Mallika

17.Uma

18.Chandra

19.Dhayalan

20.Kasiammal

21.Leemarose

22.Padmavathi

23.Vaijyanthi Mala

24.Mageshwari

25.Vanitha

26.Pattu

27.Sumathi

28.Kuppu

29.Viruthambal

...Petitioners

-Vs-

1.The State of Tamil Nadu,
Represented by the Secretary to Government,
Education Department,
Fort St.George, Chennai – 600 009.

2.The Director of School Education,



W.P.No.9565 of 2022

(Higher Secondary),
College Road, Chennai – 600 006.

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3.The Chief Educational Officer,
Tiruvannamalai,
Tiruvannamalai District.

4.The District Educational Officer,
Tiruvannamalai,
Tiruvannamalai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, to direct the Respondents to regularize the service of the Petitioners in the light of the order passed by the 1st Respondent in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and G.O.No.74 Personnel and Administrative Reforms (F) Department, dated 27.06.2013 with effect from the date of their initial appointment with all mandatory and service benefits.

For Petitioners : Mr.B.Gopalakrishnan

For Respondents : Mr.A.M.Ayyadurai
Government Advocate

ORDER

This Writ Petition has been filed for a direction directing the respondents to regularize the service of the petitioners in the light of G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and G.O.No.74 Personnel and Administrative Reforms (F) Department, dated 27.06.2013 with effect from the date of their initial appointment with all



W.P.No.9565 of 2022

mandatory and service benefits.

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2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioners were selected and appointed to post of sweepers/sanitary workers in the Educational Department. However, their services were not regularized so far. Though the Government of Tamil Nadu passed various orders for regularizing the services of all the part time sweepers/sanitary workers in G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and G.O.Ms.No.74 Personnel and Administrative Reforms (F) Department, dated 27.06.2013, the Education Department failed to implement the Government Orders. Therefore, the petitioners made several representations to regularize their services with effect from the date of their initiation of appointment with all attendant service benefits and continuity of service.

4. A perusal of the counter filed by the respondents revealed that all the petitioners were appointed as Part Time Sweepers without following proper procedure laid down by the Tamil Nadu Service Rules. The appointment in the



W.P.No.9565 of 2022

basic service, which is governed by the Tamil Nadu Basic Service Rules, states that for the post of Sweepoer, the mode of appointment has been clearly defined with reference to Rule No.1 Constitution Rule, Rule No.2 Appointing authority, Rule No.3 Appointment, Rule No.3A Reservation of Appointments and Rule No.4 Selection of direct recruits. These rules were not followed while appointing the petitioners as part time sweepers/sanitary workers. They were paid consolidated salary from the contingency fund allotted for the office. Therefore, the appointment is not regular or direct appointment. The Government Orders referred by the petitioners are applicable only to the incumbents who were appointed with reference to the Tamil Nadu Basic Service Rules.

5. The Hon'ble Supreme Court of India repeatedly held that the Courts should not issue a direction for regularization 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 regularized. Back door entries, appointments contrary to the constitutional scheme and / or appointment of ineligible candidates cannot be regularized. Mere continuation of service by a temporary or adhoc or daily-wage employee, under cover of some interim orders of the Court, would not confer upon him any right to be



W.P.No.9565 of 2022

absorbed into service, as such service would be “litigious employment”. Further, even temporary, adhoc 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. Further, 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. Therefore, the persons appointed on a temporary and part time basis are not entitled for regularization on par with full time employees, who completed ten years of continuous service. As per G.O.Ms.No.74 (P and AR) Department, dated 27.06.2013, the services of the full time daily wage employees, who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and completed ten years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength. Whereas the petitioners are concerned, they were appointed as part time employees and not appointed in consultation with Employment Exchange and also not appointed against the regular vacancies.

6. Therefore, the regularization of service of the petitioners against the



W.P.No.9565 of 2022

existing Service Rules of the State Government will be a violation of Article 14 and 16 of the Constitution of India.

7. Therefore, this Writ Petition is devoid of merits and is liable to be dismissed. Accordingly, this Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

02.01.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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W.P.No.9565 of 2022

G.K.ILANTHIRAIYAN. J.

mn

To

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Fort St.George, Chennai – 600 009.
- 2.The Director of School Education,
(Higher Secondary),
College Road, Chennai – 600 006.
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