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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-06-2024

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**THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM
And
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN**

WP No.14534 of 2024

J.Abdul Malick

.. Petitioner

-VS-

1.The Registrar-General,
High Court Madras,
Chennai-600 104.

2.The Principal Sessions Judge,
City Civil Court,
Chennai-600 104.

3.The Principal Judge,
Family Court,
Chennai-600 104.

4.The Principal Secretary to Government,
Secretariat,
Fort St. George,
Chennai-600 009.

.. Respondents



Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents herein to regularise the petitioner's service in the post of Office Assistant in the Office of the third respondent in the light of the G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated 27.06.2013 and as per the proceedings of the first respondent vide Roc.No.1939/1997/G3 dated 25.02.2021.

For Petitioner : Mr.R.Dhanasekar
For Respondents-1 to 3 : Mr.S.S.Arjunan
For Respondent-4 : Mr.S.John J.Raja Singh,
Additional Government Pleader.

ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The relief sought for in the present writ petition is to direct the respondents to regularise the services of the writ petitioner in the post of Office Assistant in the Office of the third respondent based on G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated



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2. The writ petitioner was engaged as daily rated employee as Scavenger cum Sweeper. The order of appointment issued by the learned Principal Judge, Family Court, Chennai dated 07.05.1990 reveals that he was appointed as daily wage employee on temporary basis and his services are liable to be terminated. Admittedly, the petitioner was not appointed in the sanctioned post.

3. The learned counsel for the petitioner would submit that recommendations were made by the learned Principal Judge, Family Court as well as by the High Court to the Government for sanctioning post or for conversion of post. Since the recommendations are not considered by the Government, the petitioner is constrained to move the present writ petition.

4. The learned counsel for the respondents 1 to 3 would oppose by stating that the petitioner was appointed as daily wage employee on temporary basis and he was not appointed in accordance with the Service Rules in force. There was no sanctioned post during the relevant point of



time and therefore, the initial appointment of the petitioner was irregular.

Thus, he cannot seek the benefit of regularisation or permanent absorption.

Accordingly, the present writ petition is to be rejected.

5. The learned Additional Government Pleader would rely on the judgment of the Hon'ble Division Bench of this Court passed in **W.A.No.1483 of 2013 dated 20.02.2018**, wherein, the facts are identical.

The Division Bench held as follows:

"4. Before the writ court, the appellants 1 and 2 filed separate affidavits contending that there was no sanctioned post of Water Supply Assistant. According to the appellants, the first respondent was engaged on daily wages as a Water Supply Assistant, without there being any recruitment rule. It was contended that as there was no post of Water Supply Assistant sanctioned for Maruthancode village Panchayat, the first respondent is not entitled for regularisation.

5. The learned Single Judge, taking into account the contention taken by the first respondent, issued a mandamus directing the appellants to regularise his services.

6. There is nothing on record to show that the first respondent was appointed against a sanctioned post. Even according to the first respondent, his father donated land to the



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local body, subject to the condition that he should be given appointment. The then President of Maruthancode Village Panchayat appears to have appointed the first respondent on daily wages. The question of regularization would arise only in case the appointment was against a sanctioned post. The first respondent has no case that there was a sanctioned post of Water Supply Assistant and he has been working ever since his appointment against such sanctioned post. The fact that the first respondent was working from 30 September, 1999 would not give him a right for regularization unless there is a Government Order directing the regularization of such employees. There was no order quoted by the learned Single Judge in the matter of regularization of Water Supply Assistants who were appointed without there being a substantive post. We are, therefore, of the view that the learned Single Judge was not correct in regularising the services of the first respondent."

6. Considering the arguments as advanced between the learned counsel appearing on behalf of the petitioner, the learned Additional Government Pleader for the fourth respondent and the learned counsel appearing on behalf of respondents 1 to 3 to this *lis* on hand, the legal principles governing the regularisation and permanent absorption has been settled by the Constitutional Bench of the Hon'ble Supreme Court of India in



the case of **State of Karnataka Vs. Uma Devi [2006 (4) SCC(1)]**.

Following the said legal position, the Hon'ble Supreme Court has reiterated the principles in the case of **Secretary to Government, School Education Department Vs. R.Govindaswamy & Others [2014 (4) SCC 769]**. The Apex Court relying on the earlier Judgment in the case of **State of Rajasthan & Others vs. Dayal Lal & Others [2011 (2) SCC 429]**, wherein, issued certain directives to the High Court. The directives of the Apex Court found in SCC p.435, para 12 indicates that:

"(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 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 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



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*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 regularisation in the absence of a legal right.**"*

7. Close reading of the Judgment of the Constitutional Bench would be sufficient to form an opinion that all appointments to the public posts are to be made under the Constitutional Schemes and by following the Recruitment Rules in force. Appointments are to be made against sanctioned posts and irregular, illegal or back door appointments cannot be regularised by the Authorities as well as by the Courts. Equal opportunity in public employment is the constitutional mandate. The fundamental rights of the eligible candidates cannot be allowed to be infringed by regularising illegal or irregular appointments. Therefore, regularization and permanent absorption of illegal and irregular appointments would result in unconstitutionality and would cause infringement of the fundamental rights of the eligible candidates, who are aspiring to secure public employment



through open competitive process under the Constitutional Scheme.

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8. In view of the fact that the initial appointment of the writ petitioner was not in accordance with Recruitment Rules in force and he was appointed as daily wage employee on temporary basis, the petitioner is not entitled to seek regularisation or permanent absorption. More-so, the petitioner was not appointed in the sanctioned post.

9. For all these reasons, the petitioner cannot seek the benefit of regularisation. Any Government Order or judgment running counter to the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in **Uma Devi's case**, cannot be followed as precedent. Even the Government is expected to take decisions contrary to the judgment of the Constitution Bench of the Hon'ble Supreme Court of India, since it becomes law of the land. Therefore, by considering the Government Orders, which were passed based on certain facts or otherwise, the relief of permanent absorption, cannot be granted by the Courts in exercise of powers of judicial review under Article 226 of the Constitution of India.



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10. It is brought to the notice of this Court that special time scale of pay has already been granted to the writ petitioner from 6th July 2015, based on G.O.Ms.No.525 dated 06.07.2015. There is no impediment for the petitioner to receive the said time scale of pay as per the Government Order cited supra.

11. With the above clarifications, the present writ petition stands dismissed. However, there shall be no order as to costs.

(S.M.SUBRAMANIAM,J.) (C.KUMARAPPAN,J.)

19-06-2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

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