



W.A.No.3566 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.3566 of 2019
and
C.M.P.No.22909 of 2019

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

2. The Additional Director General of Police
Cum Inspector General of Prisons,
Chennai - 8.

... Appellants

Vs.

K.Muthuvijayarani

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 28.07.2017 passed in W.P.No.18681 of 2014.

For Appellants : Mr.T.Chandrasekaran
Special Government Pleader

For Respondent : Mr.R.Thomas



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J U D G M E N T

(Judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)

The present intra-court appeal has been instituted challenging the order dated 28.07.2017 passed in W.P.No.18681 of 2014.

2. The respondent was engaged as Female Escort Warder on daily wage basis. Admittedly, the respondent was engaged on need basis and without break in service. The details of the services rendered by the respondent as daily wage Female Escort Warder is as under:

Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Total	Break in service
2000	-	-	-	-	-	-	-	-	-	-	-	12	12	19
2001	30	28	18	25	2	26	30	29	28	28	15	18	277	88
2002	22	-	23	28	29	30	30	18	13	25	22	9	249	116
2003	15	-	-	-	27	30	29	27	30	27	26	28	224	141
2004	30	29	30	29	27	28	28	20	26	30	29	30	336	29
2005	30	26	29	28	18	26	21	28	28	30	29	29	322	43
2006	28	19	-	-	-	-	-	-	-	-	-	-	47	12

3. The respondent filed a writ petition seeking regularization and permanent absorption in the post of Female Escort Warder from the date of her



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initial appointment along with all attendant benefits. The writ court allowed the writ petition by granting the benefits of regularization and permanent absorption from the date of initial appointment. Thus, the State preferred the present writ appeal.

4. It is mainly contended by the appellants that the respondent was appointed as Female Escort Warder purely on daily wage basis and she was not appointed against a sanctioned post. The services of the respondent was utilised on need basis and wages are paid based on the duty attended. Even at the time of appointment, Rule relating to reservations was relaxed. Therefore, the claim of the respondent for regularization was rejected by the Government, in view of the conditions stipulated in G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013 and G.O.Ms.No.710, Home (Prison-2) Department dated 17.08.2005.

5. Mr.T.Chandrasekaran, learned Special Government Pleader appearing on behalf of the appellants would mainly rely on the Constitution Bench Judgment of the Hon'ble Supreme Court of India in the case of ***State of Karnataka v. Uma Devi*** reported in 2006 (4) SCC 1 and the legal principles



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carved out by the Hon'ble Supreme Court in the case of ***State of Rajasthan Vs.***

Daya Lal, reported in ***2011 (2) SCC 429***.

6. The Hon'ble Supreme Court time and again reiterated that daily wage employees, who all are not appointed against the sanctioned post and not following the Service Rules cannot be absorbed on permanent basis. Equal opportunity in public employment being a constitutional mandate, appointments are to be made strictly in accordance with Recruitment Rules in force. Violations of Recruitment Rules would result in infringement of basic right of other eligible candidates, who all are longing to secure public employment through open competitive process. The principles carved out by the Constitution Bench in ***Uma Devi's case*** are binding precedent and the one-time measure to be undertaken, in view of para.53 of the Judgment cannot be followed in perpetuity, so as to regularise irregular, illegal and back door appointments.

7. In the present case, the respondent was not appointed against the sanctioned post. Services are utilised on need basis and wages are paid for duty attended. Rule relating to reservation was not followed at the time of



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appointment of the respondent. Therefore, the Government relying on the Policy rejected the claim for regularisation and permanent absorption. It is useful to extract the Judgment of the Hon'ble Supreme Court in the following cases:

“13) the Supreme Court of India Bench consisting of Justice Dr.B.S.Chauhan, and A.K.Sikri has passed an order on 21st February 2014, in the Secretary to Government, School Education Department, Chennai Vs. Thiru R. Govindaswamy & others in CA Nos. 2726-2729/2014 allowing the appeals and disposing the appeals in favour of the Government. The Bench relied on the judgment passed in State of Karnataka & Ors V.Umadevi & Ors, AIR 2006, SC 1806, Union of India & Ors. Vs. A.S.Pillai & Ors., (2010) 13 SCC 448 and State of Rajasthan & Ors V.Dayala Lal & Ors., AIR 2011 SC 1193 passed by the Supreme Court and observed among others as follows:-

*"Even temporary, adhoc or daily wage services 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 the sanctioned post. **Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.***

*(iv) **Part time employees are not entitled to seek***



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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."

In State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806 - The Hon'ble Apex Court observed that,

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed."

In Union of India & Ors. v. A.S.Pillai & Ors., (2010) 13 SSC 448. observed that,

"Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularization would not arise."

And further the Hon'ble Supreme Court of India, in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193 has ordered that,



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"8(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 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 the constitutional scheme.

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(v) xxx 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 priority in salary with government employees.

14) The Hon'ble Supreme Court of India (2010) 2 SCC 59 in Union of India v. M.K.Sarkar observed as follows:-

"25. There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. This Court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also on the



reasoning that they have been denied the benefits which have been illegally extended to others. (see Chandigarh Admin. V. Jagjit Singh, [1995] 7 SCC 745, State of Haryana v. Ram Kumar Mann, [1997] 3 SCC 321, State of Bihar v. Kameshwar Prasad Singh, [2000] 9 SCC 94 and Union of India v. International Trading Co., [2003] 5 SCC 437."

"26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief."

In view of the various Judgments of Apex Court of India as referred to above, no regularisation is permissible in exercise of the statutory powers conferred under Article 162 of the Constitution of India, if the appointment have been made in contravention of the statutory Rules."

8. In view of the fact that the respondent was not appointed against a



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sanctioned post in accordance with the Recruitment Rules, the benefit of regularization or permanent absorption cannot be granted. The learned Single Judge has not considered the legal principles settled by the Constitution Bench of the Apex Court, which were reiterated in subsequent Judgments.

9. Thus, we are inclined to interfere. Consequently, the Writ Order in W.P.No. 18681 of 2014 dated 28.07.2017 is set aside and the Writ Appeal stands **allowed**. No costs. Connected miscellaneous petition is closed.

[S.M.S., J.] [C.K., J.]
30.07.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

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