



W.A.Nos.2748 of 2023 etc., batch

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.07.2024

DELIVERED ON : 08.08.2024

CORAM:

**THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR,
ACTING CHIEF JUSTICE**

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**W.A.Nos.2748, 2753, 928, 911, 908, 904, 913,
1022, 1056, 1055, 1034, 903 and 918 of 2023
and CMP.Nos.23140, 23083, 9093, 9125, 9133, 9185, 925,
10207, 10514, 10336, 91012 and 9062 of 2023**

W.A.No.2748 of 2023

The Executive Officer,
Modakurichi Town Panchayat,
Erode District.

... Appellant

-vs-

1.A.Murali

2.The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

3.The Director of Town Panchayat,
Kuralagam, 4th Floor, Chennai-108.

4.The District Collector,
Erode District, Erode.

... Respondents



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PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 15.03.2022 made in W.P.No.9299 of 2020 respectively.

For Appellant : Mr.N.Neelakandan,
Additional Government Pleader
assisted by
Mr.C.Selvaraj

For Respondents : Mr.N.Manokaran for R1 in W.A.No.928, 911,
908, 913, 1056, 1022, 904, 903, 1055, 1034

and

918 of 2023
Mr.M.Guruprasad for R1 in W.A.2748 of 2023

Mr.V.Manoharan, Additional Govt. Pleader
for R2 to R4 in W.A.Nos.928, 908, 913, 1056,
1034, 1055, 2748 and 2753 of 2023 and
R2 and R3 in W.A.Nos.911, 1022, 903, 904
and 918 of 2023.

COMMON JUDGEMENT

KRISHNAKUMAR, J.

The Executive Officer of the respective panchayat is the appellant herein.

The first respondent in these appeals are the writ petitioners. They filed the writ petitions for a Mandamus directing the respondents therein to regularize their



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services from the date of initial appointment as Tractor Driver under the fourth respondent Town Panchayat in the regular time scale of pay with all attendant and monetary benefits within a reasonable time by considering their representations. The writ petitions were allowed with a direction to the respondents to initiate suitable action towards regularisation of the service of the writ petitioners by sanction of regular post, if not already sanctioned, as Tractor Driver from the date of his initial appointment in the fourth respondent/Panchayat. Aggrieved by the same, the respective panchayats have filed these appeals.

2. The post of Tractor Driver is classified as Class-VI, Category-1 in the Tamil Nadu Town Panchayat (Establishment) Rules, 1988. The post can be filled up by both direct recruitment and also by promotion by appointing persons working as NMRs or on daily wages. The qualification prescribed for regular appointment is possession of Heavy Transport Vehicle Licence and experience of driving for atleast three years. The writ petitioners are fully qualified to be considered for appointment on regular basis. According to them, regularising their service would be beneficial to the administration, as he is sufficiently experienced



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in handling the post, discharging his duties diligently and efficiently. According to the writ petitioners, the respondents has already sanctioned several posts in all categories in respect of the 4th respondent /appellant Panchayat and as far as the post of Tractor Driver is concerned, sanctioned posts are available and after introduction of Solid Waste Management Scheme in all the Panachayat in the State, the requirement of Tractor drivers has considerably increased which led to the sanctioning of the posts. There are always shortage of permanent man power in the posts. In the said circumstances, the petitioners have made representations seeking regularisation of their service having admittedly served the Panchayat continuously for several years.

3. A representation was submitted on behalf of the writ petitioners on 17.09.2020. Subsequently, by communication dated 22.09.2020, the appellant / 4th respondent rejected the request of the writ petitioners on the ground that they were appointed in the year 2013 only on contract basis and that in the appointment order, it was mentioned that the petitioners should not request for regularisation of his service and further, till date the Government has been



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factually refuted by the petitioners stating that the 4th respondent has not taken into consideration the G.O.(Ms) No.205, Rural Development Department dated 23.03.1989 and G.O.(Ms.) No. 37, Municipal Administration and Water supply (T.W.I) Department dated 01.02.2011 into picture and has simply rejected his representation stating that the post of permanent tractor driver is not introduced in the respondents appellants Town Panchayat. Challenging the rejection order, the writ petitioners were filed. The writ petitions were allowed with a direction to the respondents to initiate suitable action towards regularisation of the service of the writ petitioners by sanction of regular post, if not already sanctioned, as Tractor Driver from the date of his initial appointment in the fourth respondent/Panchayat. Aggrieved by the same, the respective panchayats have filed these appeals.

4. Mr.N.Neelakandan, learned Additional Advocate General appearing for the appellants have placed heavy reliance on the First Bench decision of this Court dated 04.08.2020 in W.A.Nos.288 ad 598 of 2020 [The Government of Tamil Nadu, Municipal Administration and Water Supply Department, Chennai and Others v. S.Chenthil], filed by similarly placed persons, wherein it was opined that



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no direction for creation of a post could have been given, which should have been left to be decided by the Government keeping in view of the nature of the proposals as also the requirements of the Town Panchayats and directed the Government to decide and pass orders in accordance with law, keeping in view the requirement and purpose of post of Town Panchaya. However, the Writ Court has failed to consider the same and therefore, prays for interference. The learned Additional Advocate General further contended that the contract drivers were engaged for Solid Waste Disposal only for particular hours and therefore, they cannot seek regularization at all and also relied upon the decisions in ***Secretary to Government, School Education Department, Chennai v. R.Govindaswamy and Others [(2014) 4 SCC 769]*** and the ***State of Tamil Nadu v. J.Manikandan and Others [Order dated 16.06.2023 made in W.A.No.959 of 2020]***.

5. Mr.N.Manokaran and M.Guruprasad, learned counsels appearing for the first respondent / contractual Tractor Drivers would contend that impugned proceedings rejecting the request of the writ petitioners is contrary to G.O.Ms.No.23, Municipal Administration and Water Supply Department dated



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03.03.1998, which empowers the Municipal Commissioner to establish / create the driver post. The learned counsels, in support of their submissions, have also relied upon the decisions in ***Nihal Singh and Others v. State of Punjab and Others [(2013) 14 SCC 65]***, ***Amkant Rai v. State of Bihar and Others [(2015) 8 SCC 268]*** and the Division Bench judgment of this Court dated 31.01.2023 in ***W.A.No.1000 of 2018***.

6. This Court has considered the rival submissions and also perused the materials on record.

7. The primordial contention of the first respondent/writ petitioners is that they are working as Tractor Drivers under the control of the fourth respondent panchayat having been appointed in the year 2013, however their services are yet to be regularized. According to the petitioners, they have been sponsored by the Employment Exchange when they were recruited initially and they were subjected to regular selection rigour before getting appointment on daily wage basis / contract basis and their services were continued to be engaged for years together



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without conferring the benefit of regularisation.

8. The fact remains that the petitioners were engaged on contract basis in the year 2013 and they continued on contract basis on their own will and volition. There is no sanctioned posts and the nature of job of Tractor Driver is limited to dispose of the solid waste from secondary collection point to the dumping/processing yard. Though the first respondent / writ petitioners claim that they were sponsored through Employment Exchange, it is not a sanctioned posts and the services of Tractor Driver was engaged to implement the Solid Waste Management vehicle. The question of regularization does not arise in the absence of any regular vacancy or available of sanctioned post of Driver in the respective 4th respondent Town panchayats.

9. The issue raised herein is no longer res integra. The Hon'ble Apex Court in catena of judgments held that daily or contract employees, if not working against sanctioned post cannot be regularised in service and they cannot seek the benefit of regularisation.



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10. A Constitutional Bench of the Hon'ble Apex Court in the landmark decision in ***State of Karnataka and Others v. Uma Devi (3) and Others [(2006) 4 SCC 1]***, has held as follows:

“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. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.”

11. In ***Secretary to Government, School Education Department, Chennai v. R.Govindaswamy and Others [(2014) 4 SCC 769]***, wherein the Hon'ble Apex Court has held that employees were not entitled to regularisation even when they



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had put in long service because they were not working against sanctioned post. It is useful to refer to the relevant portions of the said Judgment:

“7. This Court in *State of Rajasthan & Ors. v. Daya Lal & Ors.*, AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

“8(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 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 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 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.***

(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.



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(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.

(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.” ***(Emphasis added)***

12. This Court had an occasion to deal with a similar matter [in which one of us, DKK, ACJ, is a member], in ***“The State of Tamil Nadu and Others v. J.Manikandan and Others [Order dated 16.06.2023 made in W.A.No.959 of 2020]*** wherein this Court, relying upon the decisions of the Hon'ble Apex Court, had observed that Court cannot issue mandamus to regularize the services of temporary employees. It is relevant to extract the following portions of the said judgment:

“13.1 It is also relevant to refer yet another decision of the Hon-ble Supreme Court in the case of ***Union of India and Others. Vs. Ilmo Devi and another (Civil Appeal Nos.5689 & 5690 of 2021, dated: 07.10.2021).***

13.2 In the said decision the Hon-ble Supreme Court held that even the regularisation of the services of the employees working on temporary status is a policy decision and in judicial review the Court



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cannot issue Mandamus to do so. The relevant portion of the decision is extracted hereunder:

*“8.4 The observations made in paragraph 9 are on surmises and conjunctures. Even the observations made that they have worked continuously and for the whole day are also without any basis and for which there is no supporting evidence. In any case, the fact remains that the respondents served as part-time employees and were contingent paid staff. As observed above, there are no sanctioned posts in the Post Office in which the respondents were working, therefore, the directions issued by the High Court in the impugned judgment and order are not permissible in the judicial review under Article 226 of the Constitution. **The High Court cannot, in exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts.***

8.5 Even the regularization policy to regularize the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue Mandamus and/or issue mandatory directions to do so. ?



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4. Further, the Hon-ble Supreme Court in a recent judgment in Civil Appeal Nos. 10563 to 10570 of 2017, dated 11.04.2023 in the case of ***The Government of Tamil Nadu & Another Vs. Tamil Nadu Makkal Nala Paniyalargal and Others***, has elaborately discussed its earlier decisions cited supra and held that ***“in the absence of sanctioned post, the State cannot be compelled to create the post and absorb the persons who are continuing in service of the State and set aside the judgment of the High Court wherein issued directions to create the posts and absorb the respondents therein, as the same is not sustainable in law.”*** (Emphasis supplied).

13. The aforesaid decisions squarely applies to the facts of the present case. When the initial appointment of the first respondent/writ petitioners are not made against any sanctioned posts and not in accordance with any service rules in force, this Court cannot give any positive direction for regularization. Mere continuation of long years by the respondent/employees will not confer them any vested right to claim regularization. Sympathy and sentiment cannot be a valid ground for regularization of service in the absence of any legal right.

14. In the light of the reasons assigned above, the order of the Writ Court warrants interference. These Writ Appeals stand allowed and accordingly, the order of the Writ Court stands set aside. No costs. Consequently, connected



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miscellaneous petitions are closed.

[D.K.K., ACJ.] [K.B., J.]
08.08.2024

Index : Yes / No

Internet : Yes / No

Jvm

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Common Judgment in
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