



W.P. No.14570 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.11.2023

Pronounced on: 02 .02.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P. No.14570 of 2020
and WMP.No.18062 of 2020

C.Rajendran

.. Petitioner

Versus

- 1.Union of India,
Rep. By the Post Master General,
Central Region, Tamil Nadu Circle,
Trichirappalli 620 001.
2. The Senior Superintendent of Post Offices,
Tiruchirappalli Division,
Tiruchirappalli 620 001.
3. The Assistant Superintendent of Post Officer,
Tiruchirappalli East Sub Division,
Tiruchirappalli 620 001.

.. Respondents



W.P. No.14570 of 2020

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus after calling for the concern records relating to the order dated 02.06.2020 in OA.No.661 of 2015 passed by the Central Administrative Tribunal, Chennai Bench and quash the same and consequently direct the respondents to regularize the services of the petitioner with effect from 19.03.2008 with all consequential monetary and other benefits.

For petitioner : Mr.M.Gnanasekar

For respondents : Mr.Venkataswamy Babu, Standing Counsel

ORDER

D.KRISHNAKUMAR, J

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the order dated 02.06.2020 in OA.No.661 of 2015 passed by the Central Administrative Tribunal, Chennai and consequently direct the respondents to regularize the services of the petitioner with effect from 19.03.2008 with all consequential monetary and other benefits.



W.P. No.14570 of 2020

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2. (i) It is the case of the petitioner that he was engaged as a part time contingent Labour in DMSS, Trichy by the second respondent vide order dated 15.12.1997 and he worked as a part time contingent Chowkidar continuously for a period of 17 years. On 06.01.2005, the second respondent issued an order of termination stating that the appointment was made in contravention of DG's instruction. Challenging the same, the petitioner filed OA.No.42 of 2005 before the Tribunal. The Tribunal vide order directed the petitioner to give a representation against the notice of termination. However, the respondents terminated the petitioner on 30.05.2006. Then the petitioner filed OA No.437 of 2006 and the Tribunal allowed the said OA with liberty to the respondents to pass orders after final decision is taken by this Court in a similar case in WP.No.33152 of 2005.

ii) In the meanwhile, the respondents vide order dated 03.04.2008, appointed the applicant as Gramin Dak Sevak Mail Packer (GDS Mail



W.P. No.14570 of 2020

Packer) at DMMS. Though the petitioner continuously worked as GDS Mail Packer w.e.f. 19.03.2008 for a period of seven years, his services had not been regularised. Hence, the petitioner filed OA No.501 of 2012 seeking regularization, which was disposed of directing the respondents to consider him as a special case. In spite of giving representation, the respondents did not appoint him as per the order of the Tribunal, hence, he filed Contempt Application No.310/26/2015. However, the Tribunal rejected his request for regularization.

iii) According to the petitioner, a similarly placed person, Manimegalai, who is the applicant in OA.No.235 of 2005, was granted the relief of regularization but the petitioner has been discriminated. Hence, he filed the present OA. The Tribunal dismissed the said OA holding that the petitioner's post viz., GS Mail Packer is not similar to the post one hold by the applicant in OA.No.253 of 2005 and the petitioner herein was appointed only as a stop gap arrangement. Challenging the same, the present Writ Petition has been filed.



W.P. No.14570 of 2020

3. The learned counsel for the petitioner submitted that the second respondent appointed the petitioner as GDS Mail Packer w.e.f. 19.03.2008 and he continued to work as a Driver on officiating basis. However, without issuing any notice, the petitioner was not allowed to work w.e.f. 09.04.2015. However, the similarly placed persons like him namely Manimegalai and others filed OA.No.235 of 2005, which was allowed by the Tribunal and the same was confirmed in WP.No.33152 of 2005. Consequently, their services were regularized, but the petitioner was singled out. Hence, he requested the Department to reinstate him into service and regularize his service w.e.f. 19.03.2008 in the post of GDS Mail Packer.

4. The learned counsel for the respondents by filing counter affidavit and additional counter affidavit submitted that the post of Gramin Dak Sevak Mail Packer was newly created in the Departmental Mail Motor Services, Tiruchirappalli by the second respondent by redeploying the post of Gramin Dak Sevak Mail Deliverer. As it is a newly created post, the petitioner was utilized to work in the said newly created post purely on temporary basis. The petitioner was appointed neither following the due



W.P. No.14570 of 2020

process of law as per the recruitment rules nor issued with engagement order by the third respondent/engaging authority. As such he was utilized as an outsider to work in the said post on stop gap arrangement purely on temporary basis. The petitioner was utilized on needy basis only and he was not engaged in any part time / full time regular arrangements in the establishment of DMMS, Tiruchirappalli. He was paid hourly wages as prescribed by the District Collector, Tiruchirappalli at the end of work assigned to him on the given day. However, the said Manimegalai comes under the category of casual labourer. Hence, the petitioner is not entitled to get the benefit as given to the said Manimegalai. Therefore, he seeks to dismiss this Writ Petition.

5. Heard Mr. M.Gnanasekar, learned counsel for the petitioner and Mr. Venkatasmy Babu, learned Standing Counsel appearing for the respondents and perused the materials available on record.

6. It is not in dispute that the petitioner was appointed as a part time contingent labour (outsider driver) on temporary basis in DMSS, Trichy on



W.P. No.14570 of 2020

15.12.1997 and subsequently appointed as GDS Mail Packer w.e.f.

19.03.2008 and worked till 09.04.2015 and relieved from service w.e.f.

10.04.2015. The petitioner has filed several applications before the tribunal and submitted representations to the respondents for regularisation of his service on par with similarly placed person namely Thangammal & others.

Finally as against the rejection order dated 08.04.2015 passed by the 2nd respondent, the petitioner has filed an application in O.A.No. 661 of 2015.

By order dated 02.06.2020, the tribunal has dismissed the said application observing as follows;

“6. We had gone through the pleadings and impugned order (Annexure A-34) dated 08.04.2015. The respondent had given a detailed reply stating the various reasons due to which the applicant's case for regularisation cannot be accepted. The present post in which the applicant was engaged is not similar to the one held by the applicant in O.A.No. 253 of 2005. So, the applicant who is a GDS Mail packer is not entitled to get the benefit given to Thangammal (O.A.No. 253 of 2005 confirmed by order in W.P.No.33153 of 2005) case. There are rules which require merit as the sole criterion for appointment as GDS. The applicant was appointed only as a stop gap arrangement. Further, the engagement of the applicant as GDS Mail packer (A-16) was not in furtherance of the order of the Tribunal and he was engaged as per his representation dated 22.02.2002 for the same. So, the said engagement was not in consequence to any order passed by the Tribunal. We find nothing to interfere in the



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W.P. No.14570 of 2020

impugned order passed in this case”



W.P. No.14570 of 2020

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7. The primordial contention of the petitioner is that based on the order passed by the tribunal in O.A.No. 235 of 2005, the similarly placed persons namely Manimegalai and 3 others were granted the relief of regularisation and the petitioner herein alone was singled out, which is a clear violation of his fundamental right under Article 14 of the Constitution of India.

8. In the counter affidavit filed by the respondents, it is stated that the persons mentioned by the petitioner namely C. Manimegalai, P.Pandiyan, R. Bakya Seeli, A.Kumaragurubaran, C.Selvam and A.Kumaragurubaran were appointed as casual labourers conferred with temporary status and the eligible full time causal labourers were absorbed as Multi Tasking Staff erstwhile Group D cadre. Whereas the petitioner herein was engaged as outsider on stop gap arrangement on temporary basis as and when need arose. Therefore the case of the petitioner is not similar to the one C.Manimegalai as claimed by the petitioner.



W.P. No.14570 of 2020

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9. In this context, it is useful rely upon the judgment delivered by the Hon'ble Division Bench of this Court in ***WA.Nos. 69 to 72 & 74 of 2019, dated 16.06.2023 (Secretary to Government for Women and Child Welfare Department, Puducherry Vs.S. Anbu) reported in 2023 (6) CTC 673***. In the said Judgment, one of us (DKKJ) by following the various decision of the Hon'ble Supreme Court in detail, held that giving directions for regularisation or absorbtion of daily wage temporary employees appointed without following prescribed procedures amounts to violation of Articles 14 & 16 of Constitution of India. The relevant portion of the judgment is extracted hereunder;

“18. After ***Uma Devi's case*** the principles were as follows:

18.1. A claim based on mere legitimate expectation or reasonable expectation without anything more cannot ipso facto give a right to invoke the principles. (***Union of India and another Vs. Arul mozhi Iniarasu and others; reported in 2011 (9) SCR 1 Supreme Court***). In the decision in ***Umadevi's case*** also it is clearly laid down that in such cases, theory of legitimate expectation cannot be invoked.

18.2. There is no fundamental right to be absorbed in service. In ***Umadevi's case*** also the Apex Court refused to accept the



argument that the right to life protected by Article 21 of the Constitution of India would include right to employment. At present, right to employment itself is not a fundamental right. The absorption certainly would not be a fundamental right.

18.3. The Hon'ble Supreme Court in the case of ***State of Rajasthan v. Dayal Lal and Others [AIR 2011 SC 1193]*** held as follows:

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issued 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



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W.P. No.14570 of 2020

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.

(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.”

18.4. Absorption, regularization, permanency of casual, daily wagers etc. appointed/recruited de-hors the constitutional scheme of public employment is impermissible and violative of article 14 and 16 of constitution. (*Chief Executive Officers, Pondichary Khadi Industry v/s Aroquia Radja – 2013 1 CLR 1057- SC*). In *Umadevi's case* also it has been held that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the



WEB COPY



W.P. No.14570 of 2020

appointee. This means proper competition amongst the needy candidates would also be necessary.

18.5. The Hon'ble Supreme Court in the case of ***Secretary to Government, School Education Department, Chennai v. R.Govindaswamy and others [(2014) 4 SCC 769]***, has observed as follows:

“8.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:

“(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



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W.P. No.14570 of 2020

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.

(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) “

19. Reiterating the principles laid down in ***Govindswamy's case***, Supreme Court of India emphatically held that the High Courts, in exercising power under Article 226 of the Constitution of India 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.

20. The Hon'ble Supreme Court in the decision in ***Union of India v. Ilmo Devi and another [2021 SCC Online 899]***, has followed its earlier decision in ***Daya Lal's case***, which was subsequently reiterated in ***Gowindaswamy's case***, has held as follows:

28. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

29. Applying the law laid down by this court in the aforesaid decisions, the directions issued by the High Court in the impugned judgment and order, more particularly, directions in paragraphs 22 and 23 are unsustainable and beyond the power of the judicial review of the High Court in exercise of the power under Article 226 of the Constitution. Even otherwise, it is required to be noted that in the present case, the Union of India/Department subsequently came out with a regularization policy dated 30.06.2014, which is absolutely in consonance with the law laid down by this Court in the case of Umadevi (supra), which does not apply



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W.P. No.14570 of 2020

to the part-time workers who do not work on the sanctioned post. As per the settled preposition of law, the



WEB COPY



W.P. No.14570 of 2020

regularization can be only as per the regularization policy declared by the State/Government and nobody can claim the regularization as a matter of right dehors the regularization policy. Therefore, in absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time Safai Karamcharies, even otherwise, they were not entitled for the benefit of regularization under the regularization policy dated 30.06.2014. (emphasis supplied)

The Hon'ble Supreme Court in the aforesaid decision in *Ilmodevi case* has categorically held that regularization can be only as per the regularization policy declared by the State/Government and nobody can claim regularization as a matter of right dehors the regularization policy. “

10. In the case on hand, since the petitioner herein has not been appointed in the regular posts and he was engaged as Gramin Dak Sevak Mail Packer, Departmental Mail Motor Service, which is only a temporary post, in the light of the decision cited supra, the relief sought for by the petitioner seeking regularisation based on the continuous service worked by him in the department is legally unsustainable. The impugned order of the tribunal is perfectly valid and does not warrant any interference by this Court and the writ petition is liable to be dismissed.



W.P. No.14570 of 2020

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11. In fine, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K., J] [P.D.B., J]
02.02.2024

Speaking order: Yes/No
Index : Yes/No
ak/pvs

To

1. The Post Master General,
Union of India,
Central Region, Tamil Nadu Circle,
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