



W.A.No.3562 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2024

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN**

**W.A.No.3562 of 2019
and CMP.No.22881 of 2019**

- 1.The State of Tamil Nadu,
rep. by the Principal Secretary
to Government,
School Education (R1) Department,
Secretariat, Chennai-9.
- 2.The Director of School Education,
College Road, Chennai-6.
- 3.The District Educational Officer,
Vellore District.
- 4.The Headmaster,
Government High School,
Medur-601 204,
Ponneri Taluk,
Thiruvallur District.

.. Appellants

VS

P.Lakshmi

.. Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order dated 18.01.2018 made in W.P.No.18306 of 2013 by this Court.



WEB COPY



W.A.No.3562 of 2019

For Appellants : Mr.UM.Ravichandran
Special Government Pleader

For Respondent : No Appearance

JUDGMENT

(Delivered by Mr.ARUL MURUGAN..J)

The State has preferred this Writ Appeal challenging order dated 18.01.2018 in W.P.No.18306 of 2013, whereby, the Writ Court had directed the appellants to regularise the services of the Writ Petitioner in light of G.O.Ms.No.22 dated 28.02.2006 and G.O.Ms.No.247 dated 03.10.2012.

2. Heard Mr.UM.Ravichandran, learned Special Government Pleader for the appellants. Despite service of notice and the name being printed in the cause list, there is no appearance for the respondent.

3. The respondent/Writ Petitioner was appointed to the post of part time water woman on 01.06.1990 through the Parent-Teachers Association. According to her, since she had put in 22 years of service, claiming benefits under G.O.Ms.No.22 dated 28.02.2006, had approached the Writ Court, for regularisation of her service on completion of 10 years. The respondent had also relied on the benefits extended to the similar category of persons who had also put in 10 years of service.



W.A.No.3562 of 2019

4. The Writ Court holding that since the respondent was appointed and completed 10 years of service, entitled to the benefits covered under G.O.Ms.No.22 dated 28.02.2006 had ultimately allowed the Writ Petition directing the appellants to extend the benefits. Assailing the same, the State has preferred the Writ Appeal.

5. It is not in dispute that the Writ Petitioner was originally appointed to the post of part time water woman. It is also true that the Government had issued G.O.Ms.No.22 dated 28.02.2006, whereby the benefits were extended to the category of employees who had put in 10 years of service based on which their services were regularised.

6. The relevant portion of G.O.Ms.No.22 dated 28.02.2006 reads as follows:

'3.The Departments of Secretariat may therefore, be directed to pursue action to regularize the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 01.01.2006 as ordered in para 2 above in consultation with the respective Heads of Departments wherever necessary. In special cases wherein relaxation of rules is required proposal shall be sent to Government.'

7. Tthe same benefits were also extended in the School Education Department through G.O.Ms.No.111 dated 09.05.2012, where the employees who had completed 10 years of service were also extended the



W.A.No.3562 of 2019

similar benefits based on G.O.Ms.No.22 dated 28.02.2006.

WEB COPY

8. The issue in respect of regularisation based on G.O.Ms.No.22 was decided in several Writ Petitions and Writ Appeals and the issue was considered by the Hon'ble Supreme Court in the case of *Secretary to Government, School Education Department V. R.Govindasamy and others* ((2014) 4 SCC 769). The Hon'ble Supreme Court by referring to the earlier decisions in the case of *State of Karnataka V.Umadevi* (((2006) 4 SCC 1, *Union of India V. A.S.Pillai* ((2010) 13 SCC 448 and *State of Rajasthan V. Daya Lal* ((2011) 2 SC 429, ultimately held that part time employees in the Government institutions cannot claim parity and would not be entitled to seek regularisation.

9. The relevant portion in the case of *R.Govindasamy* (supra) reads as follows:

'5.The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularised. The issue is no more res integra.

6.In State of Karnataka v. Umadevi [AIR 2006 SC 1806], this Court held as under: (SCC p.40, para 48)

"48. ... 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



WEB COPY



W.A.No.3562 of 2019

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.”

7. In Union of India v. A.S. Pillai [(2010) 13 SCC 448], this Court dealt with the issue of regularisation of part-time employees and the Court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. 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 regularisation would not arise.

8. This Court in State of Rajasthan v. Daya Lal [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: (SCC p.435, para 12)

“(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



WEB COPY



W.A.No.3562 of 2019

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.

(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



W.A.No.3562 of 2019

salary against the State must arise under a contract or under a statute.”

WEB COPY

10. Following the decision of the Hon'ble Supreme Court in the case of *R.Govindasamy* (supra), the Division Bench of this Court, where one of us (Dr.Anita Sumanth,J) was a party, in W.A.Nos.836 and 837 of 2014 (*State of Tamil Nadu and others V. K.Rajakrishnan*) vide order dated 05.07.2023, had held that since the post of Masalchi is not one sanctioned, the benefits extended to the order passed in the Writ Petition cannot be sustained and had ultimately allowed the Writ Appeal holding at paragraphs 7 and 14, as follows:

'7.The State also draws attention to the position that the post of Masalchi is not one sanctioned and hence, the benefit granted by the learned Single Judge fell far outside what is available under the applicable Rules and Regulations.

.....

.....

.....

14.The conclusion, as above, also finds support from the judgment of the Hon'ble Supreme Court in the case of Secretary to Government School Education Department, Chennai vs Thiru.R.Govindasamy and others [Civil Appeal Nos.2726-2729 of 2014], and the cases cited therein, rendered in the context of part time employees.'

11. Admittedly, in the instant case, the respondent was appointed as a part time employee through Parent Teachers Association. In such circumstances, the claim of the respondent seeking parity and benefits on



W.A.No.3562 of 2019

par with other employees based on G.O.Ms.No.22 dated 28.02.2006 cannot be sustained. Hence, the order of the Writ Court needs interference.

12. In light of the above, the order passed by the Writ Court dated 18.01.2019 is set aside and this Writ Appeal stands allowed. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
17.12.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

Sl



WEB COPY



W.A.No.3562 of 2019

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

Sl

W.A.No.3562 of 2019
and CMP.No.22881 of 2019

17.12.2024