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W.P.No.19521 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 27.11.2024**

**CORAM:**

**THE HONOURABLE MR. JUSTICE BATTU DEVANAND**

**W.P.No.19521 of 2018**

Kamalammal @ Kamala

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PETITIONER

Vs

- 1 The Principal  
Motilal Fomra Sanatana  
Dharma Higher Secondary School,  
No. 17, Old No. 26, Managappan Street,  
Sowcarpet, Chennai – 600 079.

- 2 The Director  
Education Department,  
DPI Complex, College Road,  
Chennai – 600 005.

- 3 The Secretary To Government  
Education Department,  
Fort St. George, Chennai – 600 009.

...

RESPONDENTS

**PRAYER:** The writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to regularise the service of the petitioner with retrospective effect from 01.04.1982 and to pay all consequential benefits including arrears of pay.

(PRAYER AMENDED VIDE ORDER DT 29.09.2023 MADE IN WMP.3049/2023 IN WP.19521/2018 BY CVKJ)



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For Petitioner ... Ms.N.Beulah John Selvaraj

For Respondent ... Mr.T.S.Baskaran  
No.1

For Respondent ... Mr.A.M.Ayyadurai  
Nos.2 & 3 Government Advocate

### **ORDER**

This writ petition has been filed seeking to issue a Writ of Mandamus directing the first and second respondents to regularise the service of the petitioner with retrospective effect from 01.04.1982 and to pay all consequential benefits including the arrears of pay.

2.The case of the petitioner is that she was employed as a Full time worker (Sweeper) on 01.04.1982 in the first respondent school for sanitary work, which is an aided School. Thereafter, the petitioner was forced to do attender work including to bring tea, coffee and to go to the bank to deposit cheques or cash a routine daily. The petitioner used to go to the School 9 'o' clock in the morning and return home in the evening 5.30 p.m. She was employed as a permanent employee. She was the only person to do the cleaning works in all the four floors. The petitioner



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has to clean the entire office rooms, class rooms and grounds. She worked for more than 35 years in service without belmish. The petitioner retired from service on August, 2016. The petitioner was the only person appointed to do sanitary work in that school. The petitioner was given salary of Rs.655/- initially and it was increased periodically and her last drawn salary was Rs.4,200/-. On 07.07.2017, the first respondent School called the petitioner and informed her that she need not come to job until they will invite her for a meeting with committee members and later, it was informed to the petitioner that she has attained the age of superannuation and as such, her services are not required any more. The petitioner worked continuously from the year 1982 to 2016 and she was signing in the attendance register everyday. The petitioner submitted a representation to the respondents to get all monetary benefits considering her long term service of 35 years in the first respondent School. As there is no response, the petitioner has constrained to file this writ petition.

3.On behalf of the first respondent School, a counter affidavit has been filed. It is averred in the counter affidavit that the petitioner was working as a part-time Sweeper in their School from 01.07.1987 to



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08.07.2017. The first respondent School is a Government Aided School.

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The petitioner was paid wages by the Government as per the wage fixed by the Government and revised time to time as per the Government norms and the Government have paid the consolidated wages to the petitioner as part- time Sweeper till August 2016. Later, the claim bill of the petitioner was returned by the second respondent Education Department stating that the petitioner had crossed the retirement age of 60 years. However, the petitioner was permitted to continue his work with the first respondent School from September, 2016 to August, 2017 and wage for the said period was paid by the first respondent School. Since the services of the petitioner was not satisfactory due to her old age, the first respondent School relived the petitioner from service.

4.It is also averred in the counter affidavit that the first respondent School received a representation from the petitioner seeking for retirement benefits. On receipt of the same, the first respondent School sent a letter dated 22.11.2017 to the second respondent Education Department seeking for a clarification as to whether the petitioner is eligible for retirement benefits, but they have not received any reply and



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as such, the first respondent is unable to dispose the representation of the petitioner. It is further stated that since the first respondent School is a Government aided School, with regard to the retirement benefits sought by the petitioner, the first respondent School cannot take independent decision without any orders from the second respondent Education Department.

5. On behalf of the second and third respondents, a counter affidavit has been filed. It is averred in the counter affidavit that the petitioner was appointed as a part-time Sweeper in the first respondent School on 01.07.1987. The first respondent School is a Government Aided School. It is further averred that the petitioner was appointed as part-time Sweeper by the management of the first respondent School and the petitioner was relieved by the management during the month of August, 2017. Hence, he is not eligible for grant of any pension and other benefits like regular staff of Government Aided School. It is also averred that in the light of the judgment of the Apex Court in ***State of Karnataka Vs. Umadevi*** reported in ***2006 (4) SCC 1***, the adhoc appointees without sanctioned post appointed in violation of rules cannot be treated as



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regular appointees, as they are not entitled for any regularisation and other benefits like regular Government servants.

6.Heard Ms.N.Beulah John Selvaraj, the learned counsel appearing for the petitioner and Mr.T.S.Baskaran, learned counsel appearing for the first respondent School and Mr.A.M.Ayyadurai, learned Government Advocate appearing for the second and third respondents and perused the materials available on record.

7.It is an admitted fact that the petitioner was appointed as part-time Sweeper in the first respondent School on 01.04.1982. It is also an admitted fact that the first respondent School is a Government Aided School. The petitioner was paid wage by the Government as per the wages fixed by the Government and revised the same time to time as per the Government norms. After serving more than 35 years, the petitioner retired from service. It is also an admitted fact that the School building is consisting of four floors and the petitioner has to clean the entire office rooms, class rooms and grounds in all the four floors and forced to do the attender work and to bring tea, coffee and to deposit cheques or cash in a



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bank a routine daily, as there is no second Sweeper to do sanitary work.

It is an admitted fact that the petitioner alone has to attend this sanitary work and other work daily. In view of these facts, it has to be accepted that the petitioner was doing this sanitary work in the first respondent School is of a permanent in nature. The need for the service of the petitioner was continuous. This Court noted on several occasions that this practice of the Government in employing persons on daily wage basis in works of permanent in nature amounts to exploitation of these persons, who are engaged to do lower works. It is also to be noted that though the petitioner was engaged as a part-time Sweeper to do sanitary work in the first respondent School, the nature of work done by the petitioner would go to establish that it is permanent in nature.

8. In view of the same, this Court is of the considered opinion that the benefit of regularisation has to be considered basing on the nature of the work attended by the petitioner and considering the nature of the work attended by the petitioner in the first respondent school for the period more than 35 years, this Court is of the considered opinion that the respondents have to regularise the service of the petitioner and to



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grant of benefits, for which, she is legitimately entitled. The opinion of this Court is fortified but the reliance placed by the learned counsel appearing for the petitioner.

9.A Division Bench of this Court *in W.A.No.1458 of 2019 (M.Shanmugam and Ors. Vs. Government of Tamil Nadu and Ors.)*, while dealing with a case wherein the request for regularisation was rejected by the Government in the case of similarly situated persons, held as under:

*“ 17.In the case on hand of the appellants were appointed in the years 1999 and 2000 and they are serving even today which shows that the work that is done by the appellants is of a permanent character. Though they were originally appointed as Hand Pump Fitting Assistants, they are now being engaged as Overhead Tank Operators. Therefore, the need for the services of the appellants continuous. This practice of the Government in employing persons on daily wage basis in works of permanent in nature amounts to exploitation of labour. We have several labour beneficial enactments in the statute books and without an exception all such labour beneficial enactments exempt*



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*Governments and Local Bodies from the sweep of those enactments. Though the exemptions were granted with the avowed object of protecting public functionaries and saving public money, we find that such exemptions are being used unreasonably to exploit citizens by employing them on a daily wage basis.*

*18.The very fact that there is so much of literature in the form of judicial pronouncements relating to daily wage employees itself would show that this practice has come to stay. It would be very easy for us to condemn the Government for having adopted such practices and also confirm the order of the Writ Court. If we have to do that, we feel, we will fail in our duty to render justice as a constitutional Court.*

*19.No doubt, the judgments relied upon by the Writ Court namely, Umadevi, R.Govindaswamy and A.Singamuthu condemn the practice of regularization. We should also point out both Umadevi and Singamuthu dealt with the case of part time employees and not full time employees. We also find that we will be aiding the practice of the Government to have daily rated employees and replace them with their men whenever there is a change in the political fortunes*



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*thereby, making public employment a tool in the hands of politicians to enhance their political fortunes.*

*20. We have come across several cases where such temporary daily wage employees are removed from services and replaced by others depending upon the political situations relevant at that point of time. Fortunately, for these appellants despite swinging of the the political pendulum, they have been continuing to work. Even though their initial service was protected by the order of the Tribunal, atleast from 01.12.2010 till date for nearly 12 years, there was no protection for their services by means of any order of Court.*

*21. The Hon'ble Supreme Court even after the judgment in Umadevi had held that in appropriate cases, it will be open to regularize the services of temporary daily rated employees if it is shown that the nature of the work done by them was permanent and they were served for more than 10 years. This Court has also issued several directions in this regard.*

*22. No doubt, the exploitation of this daily rated employees by the Government should be stopped. But, at the same time, if we refuse to regularize the persons like*



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*the appellants, who have put in 20 years of service as daily rated employees, we would only by encouraging exploitation by the state. If the private individual running an industry with 20 employees cannot have temporary employees and the Tamil Nadu Industrial Employees (Conferment Permanent Status) Act would apply to them, we see no reason to allow those persons, who are working under the State or its wings to suffer the temporary employment for a span of 10 years and more.*

*23.The learned Government Advocate would submit that if we direct regularization of the appellants that would open the flood gates. We are alive to that fact. The Government is guilty of exploitation of atleast these four individuals for more than 22 years now. If their service had been regularized, they would have been entitled to various benefits including increments, Dearness Allowance etc. The Government should be a model employer. We find that the Government has been a worse employer in the case of these four appellants and it had been exploiting them for more than 22 years. Whatever is the difference between the daily wages that has been paid to the appellants and what should have been paid to them if they had been permanent*



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*employees would be the illegal gain made by the Government at the cost of these appellants. We should not be misunderstood as being sentimental or emotional, we are only sympathetic. Sympathetic to the cause of such persons, who are exploited by the mighty state.*

*24.We therefore, have no hesitation in setting aside the order of the Writ Court and directing regularization of the appellants with effect from the date on which they completed 10 years in service. We make it clear that the appellants would be entitled to monetary benefits only from the date on which they came before this Court in W.P.No.32112 of 2018 i.e., on 03.12.2018.*

*25.In fine, this Writ Appeal is allowed, the order of the Writ Court is set aside. There will be a direction to the respondents to regularize the service of the appellants with effect from the date on which they had completed 10 years of service from the date of their initial appointment. It is made clear that the appellants would be entitled to monetary benefits of such regularization only from 03.12.2018. In the circumstances, we spare costs with the fond hope that the Government will discontinue exploitation of its*



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*citizens by employing them as daily rated employees atleast in future.”*

10.A Full Bench of this Court, while answering the reference made to it in *W.P.No.23823 of 2023 (M.Sivappa Vs. The State of Tamil Nadu and Ors.)*, held as under:

*“36.Having considered the entire literature that is available in the form of various pronouncements of this court, as well as the Hon'ble Supreme Court, we find it difficult to accept the judgment of the Division Bench in State of Tamil Nadu. By its Secretary, Public Works Department. And another Vs.S.John Charles and others, as one laying down the law to the effect that the Government is free to appoint persons either in part-time or on a full-time temporary basis to permanent posts and oust them out at it whims and fancies and we conclude that such unbridled exercise of indiscretions by the State Government would amount to exploitation.*

*37.We are of the considered opinion that wherever the posts are permanent in nature and they come within 86 categories of posts which form the Tamil Nadu Basic*



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*Service, temporary or part-time employment should be avoided and those persons, who have been appointed to such posts and who have completed 10 years of service as on 28.02.2006 would be entitled to regularisation de hors the nomenclature that is given to the appointment.*

*38.In fine, we hold*

*(a). If it shown that the appointment is made to anyone of the 86 categories of posts enumerated in the Tamil Nadu Basic Service immaterial of the fact that whether such appointment is part-time or full-time, the employee would be entitled to the benefit of regularisation de hors G.O.Ms.No.74 dated 27.06.2013.*

*(b).If it is shown that the nature of employment is temporary and the requirement will cease to exist after a particular time, like those appointments that are made under various welfare schemes, it will then be open to the Government to engage temporary employees or part-time employees.*

*39.We conclude that the judgments in State of Tamil Nadu. By its Secretary, Public Works Department.*



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***And another Vs.S.John Charles and others, and State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others Vs. K.Rajakrishnan, cannot be taken as laying down an inflexible rule of law that any part-time or temporary employee who has completed 10 years of service on 28.02.2006 will not be entitled to regularisation. The benefit of regularisation will depend on the nature of the job and the fact that whether the post falls within any one of the 86 categories mentioned in the Special Rules for Tamil Nadu Basic Service.”***

11.The learned counsel appearing for the petitioner also placed a copy of the Tamil Nadu Basic Service - Special Rules issued vide G.O.Ms.No.1962, Public (Services- G) Department dated 25<sup>th</sup> June 1971 (Corrected up to 31.05.2007) to establish that the post of sanitary worker and Sweeper are included in the Tamil Nadu Basic Service Rules. Admittedly, the Sanitary Workers were included at category 8 in Class IV and Sweepers were included at category 12 in Class IV of the services included in the Tamil Nadu Basic Service Rules.



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12. In view of the fact that the petitioner worked as a part-time Sweeper with the first respondent School to do Sanitary work, which is permanent in nature and comes within 86 categories of post included in the Tamil Nadu Basic Service Rules and the petitioner has completed more than 35 years of service, the judgement of the Full Bench is squarely applicable to the facts of the petitioner's case and as such the petitioner is entitled for regularisation with effect from 01.04.1982.

13. Admittedly, the petitioner was relieved from the service from the month of August, 2016 on attaining Superannuation. In the considered opinion of this Court, the claim of the petitioner for regularisation of his service would not cease on her retirement. On this aspect, it is worthwhile to take support of the finding of the Division Bench of this Court in *V.V.Sivanandam Vs. Principal, Pondicherry Engineering College, Pillaichavady, Pondicherry* reported in *2010 (1) C.L.T. 651* and the relevant para No.3 is extracted herein under:

***“3.No doubt, on retirement of the individual from service, his claim regarding regularisation of his***



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***services would not cease to exist, since until and unless his services are regularised, he will not become eligible to receive pension and such other terminal benefits for the period he worked. Therefore, the merits and demerits of the claim of the petitioner ought to have been considered by the learned single Judge”***

14. For the aforesaid reasons, this writ petition is allowed with a direction to the respondents to regularise the service of the petitioner with effect from 01.04.1982 with all consequential benefits, including arrears of pay and further directed the respondents to complete the entire process within a period of six weeks from the date of receipt of a copy this order and settle all the dues to the petitioner.

Internet: Yes/No

27.11.2024

Index: Yes/No

sms

To

1 The Principal  
Motilal Fomra Sanatana  
Dharma Higher Secondary School,  
No. 17, Old No. 26, Managappan Street,  
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**BATTU DEVANAND,J.**

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