



W.P.No.25 of 2022 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.25, 30, 32, 34 & 36 of 2022

and

W.M.P.Nos.30, 33, 34, 37, 39, 41 of 2022

W.P.No.25 of 2022:-

M.Gopal

...Petitioner

-Vs-

1. The Government of Tamilnadu
Rep. by its Chief Secretary,
Secretariat, Chennai – 600 009.
2. The Principal Secretary,
Rural Development & Panchayat
Raj Department,
Govt. of Tamil Nadu,
Secretariat, Chennai – 600 009.
3. The Director of Rural Development
& Panchayat Raj,
Panagal Maaligai, Saidapet,
Chennai – 600 015.
4. The District Collector,
Thiruppur District,
Thiruppur – 641 604.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records culminated in the impugned proceedings in Na.Ka.No.21521/2021/P1, dated 23.07.2021 passed by the third respondent and quash the same and consequently direct the respondents to regularize the service of the petitioner from the date of appointment, with all service benefits like time-scale pay, seniority and promotion, within the time fixed by this Court.

In all WPs.

For Petitioner : No appearance

For Respondents : Mr.V.Veluchamy
Additional Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the order dated 23.07.2021 passed by the third respondent, thereby rejected the request made by the petitioners for regularization of their service.

2. The case of the petitioners is that in order to recruit to the post of Computer Assistant, the candidates were called for from the employment exchange. They were subjected for written examination and the petitioners were appointed on a consolidated salary of Rs.4,000/- per month in the post of Computer Assistant, under the National Rural Employment Guarantee Act, enacted by the Central Government of India.



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The nature of the duty of the petitioners is that online workload, which include, registration of name of workers, issue a job cards, demand of work, issue of reason for variation, receipt of funds from District and disbursement of Village Panchayats, work profile, payment of wages, registration of complaints and redressal. The petitioners were appointed as Computer Assistant from the year 2008 to 2010.

3. Therefore, they submitted representation to regularize their service. Though their salary was increased to the tune of Rs.12,000/- per month as consolidated salary, their service were not regularized. Therefore, the petitioner approached this Court for direction and this Court directed the respondents to consider the case of the petitioners based on their representation and pass appropriate orders in accordance with law. However, the request made by the petitioners was rejected on the ground that they were employed under the scheme on temporary basis and they were paid consolidated salary. There is no rule and there is no fixation of regularization of service. Aggrieved by the same, the petitioners filed the present writ petitions.

4. Heard the learned Additional Government Pleader appearing respondents and perused the material placed before this Court.



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WEB COPY 5. On perusal of Counter filed by the fourth respondent revealed that as per the guidelines issued in G.O.Ms.No.153 Rural Development and Panchayat Raj Department, dated 20.10.2006, the petitioners were recruited as Computer Assistant under the Mahathma Gandhi National Rural Employment Guarantee Scheme (hereinafter referred to as “MGNREG Scheme”) with a condition that their position will exist till the existence of the scheme or the necessity of the posts ceases whichever is earlier. The existence of the said Computer Assistant post is a tenure based and exclusively for MGNREG Scheme. There is no sanctioned Computer Assistant post with scale of pay in Rural Development and Panchayat Raj Department and this tenure based post is outside the purview of the department.

6. That apart, there is no service rules and scope, regularization within the scheme itself is not possible. Though the petitioners relied upon the government order in G.O.No.151, Social Welfare and Nutritious Meal Programme (SaNa4) Department, dated 16.10.2008, the said order is to grant time scale of pay to the consolidated pay differently abled persons and working against a departmental sanctioned post in the



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government department. Therefore, the said government order cannot be exercised to the petitioners, since they were not employed in the government department in the sanctioned post.

7. Further it is also relevant to rely upon the judgment of the Hon'ble Supreme Court of the India in the case of ***Secretary, State of Karnataka & ors Vs. Umadevi and ors***, in ***Civil Appeal No.1989 of 2006*** dated ***10.04.2006***, which held as follows :-

“36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued



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permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure



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established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

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43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the



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statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.”

8. In the case on hand, the petitioners were appointed on consolidated salary that too as temporary staff. In the scheme itself, the post of Computer Assistant is a scheme oriented, tenure based, consolidated pay post and not a time scale post. Therefore, this tenure based scheme post is outside the purview of the department. There is no sanctioned Computer Assistant post with time scale of pay in the Rural Department and Panchayat Raj Department. Therefore, the petitioners are not entitled for regularization of their service and this Court finds no infirmity or illegality in the order passed by the third respondent. The writ petitions itself devoid of merits and liable to be dismissed.

9. Accordingly, all the writ petitions are dismissed.



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Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

13.03.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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