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W.P.No.1437 of 2023 and batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.Nos.1437 of 2023, 7159, 7160, 7161, 7163, 7164, 7166 and 7167 of
2020
and
W.M.P.Nos.1527 of 2023, 8544, 8545, 8546, 8548, 8549, 8550, 8556 of
2020

W.P.No.1437 of 2023

- 1.The Union of India,
Represented by Director General of Posts,
Dakbhan, New Delhi.
- 2.The Chief Post Master General,
Tamil Nadu Circle,
Chennai – 600 002.
- 3.The Post Master General,
Southern Region,
Madurai – 625 002.
- 4.The Senior Superintendent of Post Offices,
Madurai Division, Madurai – 625 002.
- 5.The Assistant Superintendent Posts,
Madurai North Sub - Division,



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Madurai – 625 001.

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6.The Assistant Superintendent Posts,
Madurai South Sub - Division,
Madurai – 625 001.

7.The Inspector of Post,
Solavanthan Sub Division,
Vadipatti – 625 218.

... Petitioners

Vs.

1. A.Saravanan

2.G.Chellapandian

3. K.Muniyandi

4.M.Arunagiri

5.D.Ponnammal

6.K.Arivalagan

7.A.Arumugam

8.C.Deepalakshmi

9.K.Kathirvel

10.S.Vanila

11.S.Sudha

12.A.Chellapandi

13.P.Karthikeyan



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14.V.Karuppasamy

15.T.Krishnan

16.C.Chellan

17.The Registrar,
The Central Administrative Tribunal,
Chennai Bench, Chennai - 600 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the entire records of the impugned order dated 26.04.2019, passed in O.A.No. 1655 of 2016, on the file of the Hon'ble Central Administrative Tribunal, Madras Bench and quash the same.

For Petitioners : Mr.ARL.Sundaresan
Additional Solicitor General of India
Assisted by Mr.C.Kulanthaivel
(in all 8 W.Ps)

For R1
(in W.P.No.7161/2020 **and**
R17 in W.P.No.1437/2023) : Tribunal

For R2
(in W.P.Nos.7161, 7159,7160
7163, 7164, 7166 & 7167/2020)
and : Mr.R.Malaichamy
For R1 to R12, R14 to R16
(in W.P.No.1437/2023)

For R13
(in W.P.No.1437/2023) : Not ready in notice.



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3. Temporary, contract employments, daily wage casual stopgap arrangements would not provide any right to claim permanent absorption or regularisation, which is otherwise not in accordance with the recruitment rules in force. The benefits of regularisation and permanent absorption is to be extended to the employees only under the recruitment rules. Mere length of services rendered as an outsider, contract employees, etc., would not confer any right to claim permanent absorption in the sanctioned post in the time scale of pay. Terms and conditions and the nature of appointment plays pivotal role in taking a decision, whether an employee is entitled for regularisation or permanent absorption. Mere length of service, if taken into consideration for permanent absorption or regularisation, it will result in infringing the right of meritorious candidates, who all are longing to secure public employment through open competitive process. All such backdoor, illegal, irregular appointments, if resulted in permanent absorption, it will offend the equality clause enunciated under the Constitution of India.

4. Keeping in mind the above legal principles, let us consider the facts of the present cases.



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5. In nutshell, the respondents/employees in all the writ petitions were engaged as outsiders in Postal department. They were engaged on leave vacancies and their engagement was on hourly basis. They were not appointed in accordance with the recruitment rules nor appointment orders were issued to them in accordance with the service rules. They were engaged by the respective Head of Post Office concerned and their services are utilized as stopgap arrangements. However, such stopgap arrangements on hourly basis was allowed to continue by the Postal Department for fairly a long period. Whenever need arises for engagement of such outsiders, more specifically, when the regular employees on leave, the services of these outsiders are utilized by the Postal Department and the salary has been paid on hourly basis.

6. The respondents/employees would submit that they were continuously engaged as outsiders for fairly a longer period and a scheme was framed pursuant to the directions of the Central Administrative Tribunal in the year 1993. Accordingly, a dovetailed list was prepared and these outsiders were absorbed as regular employees in a phased manner. All the respondents/employees in the present batch of writ petitions were engaged in



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the year 1993 and thereafter. Some employees were appointed even prior to the year 1993. Since they are continuing as outsiders, they instituted Original Applications before the Central Administrative Tribunal to include their names in the Dovetailed list and consequently, extend the benefit of permanent absorption in the available vacancies in Postal Department.

7. In the context of the above facts, Mr.ARL.Sundaresan, learned Additional Solicitor General of India appearing on behalf of the petitioners would contend that 1993 scheme itself is a one time arrangement made pursuant to the directions issued by the Central Administrative Tribunal. Such one time arrangement need not be followed by the Department in perpetuity for permanent absorption of all the outsiders, which would result in an unconstitutionality. The scheme dated 23.12.1993 and the letter of the Postal Directorate dated 06.06.1988 would reveal that certain terms are stipulated for preparing Dovetailed list of eligible outsiders for bringing them under regular establishment. However, cut-off dates are fixed for ascertaining the eligibility of outsiders for the purpose of inclusion of their names in the Dovetailed list.



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8. The learned Additional Solicitor General of India would submit that the respondents/employees relied on the judgment of the Hon'ble Division Bench of this Court in the case of *Union of India Vs. A.Suguna* reported in **(2006) 1 CTC 25**, wherein the benefit of permanent absorption was extended to the outsiders. Relying on the said judgment, the Central Administrative Tribunal disposed of the Original Applications filed by the respondents/employees herein, which resulted in filing of the present writ petitions. The judgment of the Hon'ble Division Bench is of no avail to the respondents/employees in view of the fact that the Constitution Bench in the case of *Secretary, State of Karnataka and others Vs. Uma Devi and others*, reported in **2006 4 SCC 1** (hereinafter referred to as "*Uma Devi's case*") settled the legal principles regarding the regularisation and permanent absorption of temporary, casual, daily rated employees. Therefore, the Central Administrative Tribunal has committed an error in applying the Hon'ble Division Bench judgment of the Madras High Court without considering the subsequent judgment of the Constitution Bench of the Hon'ble Supreme Court in *Uma Devi's case (cited supra)*. Therefore, the orders of the Tribunal are to be set aside.



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9. Mr.R.Malaichamy, learned counsel appearing on behalf of the respondents/employees in all the writ petitions would oppose by stating that the respondents/employees are eligible for permanent absorption based on the scheme of the year 1993. They were in service for about 20 to 25 years as outsiders. Therefore, their long services is to be recognized for the purpose of providing permanent absorption. When the scheme has been approved by the petitioners/Postal Department and based on the scheme, the benefit of permanent absorption was extended to many such similar outsiders/employees, the respondents/employees alone cannot be denied the said benefit.

10. Mr.R.Malaichamy, would refer few communications to establish that the respondents/employees are continuously engaged by the Postal Department and they have served as such and as per the directions of the higher officials in the Postal Department. That being so, their right for permanent absorption need not be denied and the Central Administrative Tribunal relied on the judgment of the Hon'ble Division Bench of this Court in the case of ***Union of India Vs. A.Suguna (cited supra)*** and several other judgments are also delivered relying on the principles laid down in the case of ***Union of India Vs. A.Suguna (cited supra)***.



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11. Mr.R.Malaichamy, learned counsel appearing on behalf of the respondents/employees would refer the judgment of the Hon'ble Supreme Court of India in the case of ***State of Karnataka & Ors Vs. M.L.Keshari***, reported in ***AIR 2010 SUPREME COURT 2587*** decided on 03.08.2010.

12. We have considered the arguments of the learned Additional Solicitor General of India and the learned counsel for the respondent/employees.

13. In the context of the legal principles set out in the preliminary paragraphs, the irregular, illegal and backdoor appointments would not provide any right to secure permanent absorption or regularisation in view of the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in ***Uma Devi's case (cited supra)***. Whether an exception can be carved out in the present cases also, a question to be considered. The Hon'ble Supreme Court of India in the case of ***State of Rajasthan and others Vs. Dayalal and others***, reported in ***(2011) 2 SCC 429***, the judgment delivered after ***Uma Devi's case (cited supra)*** summarises the principles regarding permanent absorption and regularisation as under:



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“12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(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.

(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."

[See State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , M. Raja v. CEERI Educational Society [(2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334] , S.C. Chandra v. State of Jharkhand [(2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897] , Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [(2007) 15 SCC 680 : (2010) 1 SCC (L&S) 742] and Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .]

14. As far as the Hon'ble Division Bench judgment of the Madras High Court relied on by the respondents/employees as well as the Central Administrative Tribunal in the impugned order for granting the relief, the said judgment cannot be followed as a precedent in view of the specific ruling of the Constitution Bench of the Hon'ble Supreme Court of India. In paragraph 54 of ***Uma Devi's case (cited supra)*** in unequivocal terms clarifies that those decisions, which runs settled in this case or counter to the principles settled in ***Uma Devi's case (cited supra)*** will stand denuded of their status as precedent.



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15. Therefore, all the judgments prior to or after the Constitution Bench judgment running counter to the legal principles settled have denuded to loose its status as precedent and need not be followed by the Courts for the purpose of granting the relief of permanent absorption or regularisation.

16. The Tribunal in the impugned order relied on the judgment of the Hon'ble Division Bench of this Court, which was delivered on 24.11.2005 prior to the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India Vs. A.Suguna (cited supra)***. Thus all subsequent judgments delivered, following the said Division Bench judgment also loses its status as precedent.

17. We are aware that many such judgments are delivered by the High Courts across the country for granting the benefit of regularisation and permanent absorption. However, the spirit of Paragraph 54 of ***Uma Devi's case (cited supra)*** has not been taken into consideration the legal principles settled by the Constitution Bench.



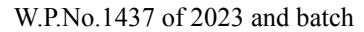
18. Regarding paragraph 53 of *Uma Devi's case (cited supra)*, it is one time benefit granted by the Constitution Bench in respect of the cases, which were pending at the time of delivering the judgment in *Uma Devi's case (cited supra)*. An exception cannot be carved out based on the one time benefit granted by the Constitution Bench in Paragraph 53 of *Uma Devi's case (cited supra)*.

19. Close reading of Paragraph 53 in the *Uma Devi's case (cited supra)* would indicate that it is a clarification made by the Hon'ble Supreme court of India. It reads by stating that there may be cases, where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts might have been made and employees have continued to work for 10 years or more, but without the intervention of orders of the Courts or Tribunals. Therefore, Paragraph 53 can be applied as one time measure, where the appointment was found to be irregular, but not illegal and the irregular appointment was made with a duly qualified person in a duly sanctioned vacant post. Such an employee continued in service for more than 10 years, then such cases can be considered as one time arrangement under Paragraph 53 of the *Uma Devi's case (cited supra)*. Even



Paragraph 53 of *Uma Devi's case (cited supra)* proceeds by stating that regularisation of the services of such employees might have to be considered on merits in the light of the legal principles settled in *Uma Devi's case (cited supra)*.

20. The restricted scope of Paragraph 53 in *Uma Devi's case (cited supra)* cannot be expanded by the Courts for granting the relief of permanent absorption or regularisation, which would otherwise unsettle the legal principles settled in *Uma Devi's case (cited supra)*. The said paragraph 53 further clarifies that the effort to regularize such irregular appointees in duly sanctioned post must be undertaken as one time measure. Therefore, one time arrangement cannot be continued in perpetuity for granting the relief of permanent absorption or regularisation. Paragraph 53 of the *Uma Devi's case (cited supra)* reiterates that the process must be set in motion within six months from the date of judgment in *Uma Devi's case (cited supra)*. Therefore, the reference to Paragraph 53 would indicate that the criterias as contemplated if complied with, then alone the one time benefit can be extended and in respect of all other backdoor irregular and illegal appointments, no such benefit can be extended by merely referring Paragraph 53 of the judgment in *Uma Devi's case (cited supra)*



23. If at all the outsiders aspire to secure permanent employment, they will have to participate in the process of recruitment, if any notified. As far



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as their initial engagement as outsiders are concerned, no recruitment rules are followed, reservation rules are not followed and other service rules relating to selection are not complied with. Therefore, such appointments if resulted in permanent absorption, it will cause gross injustice to the society at large. Therefore, we are of the considered opinion that the relief granted by the Central Administrative Tribunal in the impugned order is running counter to the legal principles settled by the Constitution Bench and also the recruitment rules, which all are applicable for regular appointments in Postal Departments for various cadres.

24. In view of the discussions made above, we have arrived an irresistible conclusion that the orders of the Central Administrative Tribunal impugned cannot sustain and consequently, the orders impugned passed in O.A.No.1655 of 2016, O.A.No.1607 of 2013, O.A.No.1296 of 2013, O.A.No.1208 of 2013, O.A.No.1293 of 2013, O.A.No.863 of 2013, O.A.No.1295 of 2013 and O.A.No.1141 of 2013 dated 26.04.2019, 06.08.2018, 06.08.2018, 06.08.2018, 29.11.2018, 29.11.2018, 06.08.2018 and 06.08.2018 respectively stand set aside.



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25. Accordingly, all the writ petitions are allowed. No costs.

Connected miscellaneous petitions are closed.

[S.M.S., J.] [M.J.R., J.]
04.12.2024

Index : Yes
Neutral Citation : Yes
Speaking order

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To

The Registrar,
The Central Administrative Tribunal,
Chennai Bench, Chennai - 600 104.



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S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

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04.12.2024