



W.A. No. 981 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM

THE HON'BLE MR. JUSTICE S.M. SUBRAMANIAM

AND

THE HON'BLE MR. JUSTICE C. KUMARAPPAN

W.A. No. 981 of 2021

&

C.M.P. No. 6079 of 2021

1. The Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai -9.
2. The Commissioner and Director of
Animal Husbandry & Veterinary Services,
Central Administrative Buildings,
(DMS Campus), Chennai.
3. The Regional Joint Director,
Animal Husbandry Department,
Nagapattinam, Nagapattinam District.



W.A. No. 981 of 2021

4. The Assistant Director,
Animal Husbandry Department,
Thirumarugal, Nagapattinam.

..Appellants

Vs.

T. Chandrakumar

..Respondent

Prayer: Writ Appeal as against the order dated 29.03.2011 passed in
W.P. No. 10963 of 2008.

For Appellants :: Mr.P. Kumaresan,
Addl. Advocate General

For Respondent :: Ms.C.Sriranjini

J U D G M E N T

*(Delivered by **S.M. SUBRAMANIAM,J.**)*

The present intra court appeal has been instituted by the State
challenging the order dated 29.03.2011 passed in W.P. No. 10963 of 2008.

2. The summation of facts which led to the filing of this writ
appeal is as hereunder:

The respondent herein/writ petitioner was working as a casual
labourer in Animal Husbandry Department on being sponsored by the



W.A. No. 981 of 2021

Employment Exchange. An appointment order dated 25.08.1992 was issued to the respondent specifying the nature of work and the salary payable to him. Aggrieved by the fact that his services were not regularised in spite of being in continuous employment, the respondent along with others approached the Administrative Tribunal by filing O.A. Nos. 2479 to 2481 of 2002 etc and the Tribunal, by common order dated 12.02.2004 issued directions to the Government to consider the claim of the respondent and others for regularisation of their services in terms of the proposal submitted by the Assistant Director and pass appropriate orders. However, no action was taken. In the meanwhile, G.O.Ms. No.22 Personnel and Administrative Reforms (F) Department dated 28.02.2006 was issued by the Government for regularisation of service of daily wages employees in all Government Departments who had rendered 10 years of service as on 01.01.2006. Subsequent thereto, G.O.Ms. No. 64 dated 03.07.2007 was issued by the Government approving 1317 vacancies of Animal Husbandry Assistants and the 2nd appellant/2nd respondent therein issued a direction on 28.02.2008 to fill up the said posts through Employment Exchange. Aggrieved by the said direction, the respondent herein/writ petitioner filed W.P. No. 10963 of



W.A. No. 981 of 2021

2008 seeking a direction not to fill up the posts of Animal Husbandry Assistants based on the letter dated 28.02.2008 issued by the 2nd appellant herein/2nd respondent therein without regularising his service in the post of Animal Husbandry Assistant. By the order under challenge, based on G.O.Ms.No.22 dated 28.02.2006 and referring to various judgments rendered by this Court with regard to the issue in question, the writ petition came to be allowed with a direction to the appellants herein/respondents therein to issue suitable orders to absorb the respondent herein/writ petitioner into regular time scale of pay as per procedure, provided he fulfills seniority and other legal requirements. Assailing the said order, the present writ appeal has been filed by the State.

3. Mr.P. Kumaresan, learned Additional Advocate General, appearing on behalf of the appellants would contend that the respondent was engaged as a casual labourer in Animal Husbandry Department on being sponsored by the Employment Exchange. According to Additional Advocate General, it is a part-time job and labourers were engaged on need basis. He would further submit that the appointment order dated 25.08.1992



W.A. No. 981 of 2021

issued to him would reveal that he was engaged for watering and sweeping work at Ganapathypuram, Government Veterinary Sub Centre and the said order also specifies that the respondent should not claim regular establishment in future. The respondent was not appointed in a sanctioned post in time scale of pay. According to the learned Additional Advocate General, the respondent was not appointed by following the Service Rules applicable in terms of temporary employees. He would further submit that when the respondent was not appointed in accordance with the Service Rules in a sanctioned post, the relief of regularisation and permanent absorption sought by him before the Writ Court was considered in violation of legal principles settled by the Hon'ble Supreme Court of India. In support of his contentions, reliance was placed on the judgment dated 07.03.2017 in Civil Appeal No. 3770 of 2017 rendered by the Hon'ble Supreme Court of India in ***Secretary to Government, Commercial Taxes and Registration Department V. A. Singamuthu.***

4. On the other hand, learned counsel appearing on behalf of the respondent would oppose the stand of the appellants by stating that when



W.A. No. 981 of 2021

the benefit of regularisation has been given to similarly placed part-time employees, it has to be extended to the respondent also. Thus, the Writ Court has rightly granted the relief and the writ appeal has to be rejected. He would also bring to the notice of this Court that the claim of one Mr.T. Vijendran, who filed W.P. No. 8302 of 2008 along with the respondent was considered and his services were regularised and only in respect of the respondent, the appellants are reluctant to implement the order passed by the Writ Court. Learned counsel for the respondent would rely upon the judgment of Hon'ble Supreme Court of India in the case of **Raman Kumar and Others V. Union of India and Others** reported in **2023 LiveLaw (SC) 520** wherein it was held as follows:

'8. *Indisputably, the appellants herein have completed service of more than ten years. Even this Court in the case of Ravi Verma and Others V. Union of India and Others (Civil Appeal Nos(s). 2795-2796 of 2018) decided on 13.03.2018 found that the act of regularizing the services of some employees and not regularizing the services of the others is discriminatory and violative of Article 14 of the Constitution of India.*

9. *Mrs. Aishwarya Bhati, learned Additional Solicitor General of India appearing on behalf of the respondents, has vehemently opposed the petition. She submits that since posts were not*



W.A. No. 981 of 2021

available, and, thereafter, Group 'D' posts have been abolished, the appellants could not have been regularized.

10. We are not inclined to accept the submission on behalf of the respondents. When the Chief Commissioner of Income Tax has himself found that 65 persons were entitled to be regularized, the act of regularizing the services of only 35 employees and not regularizing the services of other employees, including the appellants, is patently discriminatory and violative of Article 14 of the Constitution of India.'

5. In reply to the submission made by the learned counsel for the respondent that the service of one Mr.T. Vijendran, who filed W.P. No. 8302 of 2008 along with the respondent has been regularised pursuant to the order passed by this Court, learned Additional Advocate General would submit that there are two categories of temporary employees engaged in Animal Husbandry Department. The temporary employees, who are engaged in Government Farms are full time workers. However, the respondent in the present case was appointed as part-time worker for watering and sweeping work at Ganapathypuram, Government Veterinary Sub Centre, Nagapattinam District, which is neither a full-fledged dispensary nor a hospital. According to the learned Additional Advocate



W.A. No. 981 of 2021

General, the respondent was engaged as a part-time casual labourer on need basis. Further, it was purely an internal arrangement for temporary work as the respondent belonged to that area. Therefore, he is not eligible for regularisation of service and he cannot be compared with T. Vijendran, the petitioner in W.P. No. 8302 of 2008 as regards the benefit of regularisation granted in his favour.

6. Heard both sides.

7. The grant of regularisation and permanent absorption are now settled by the Constitution Bench of Hon'ble Supreme Court of India in ***Secretary, State of Karnataka Vs. Uma Devi*** reported in **2006 4 SCC 1**. The principles enunciated in the said judgment have been reiterated by the Hon'ble Supreme Court of India in the subsequent judgment in ***Secretary to Government, School Education Department, Chennai Vs. R.Govindasamy & Ors.*** reported in **(2014) 4 SCC 769** wherein a two-Judge Bench of the Hon'ble Supreme Court of India while considering the claim of regularisation relied on paragraph No. 48 of ***Uma Devi's*** case. Para.48 of ***Uma Devi's*** case is as under:

“48. ...*There is no fundamental right in those who have*



W.A. No. 981 of 2021

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 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.”

Further, in **Govindasamy's** case, in para.8, the Hon'ble Apex Court considered the principles laid down in the case of **State of Rajasthan Vs. Daya Lal**, reported in **2011 (2) SCC 429** wherein, clear directives were issued by the Hon'ble Apex Court as under:

“(i) The High Courts, in exercising power under Article 226 of the Constitution 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



W.A. No. 981 of 2021

followed and Courts should not issue a direction for regularization 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 along number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right."

8. It would also be pertinent to extract paragraph 12 of the judgment of the Hon'ble Apex Court, relied on by the learned Additional Advocate General, in the case of ***Secretary to Government, Commissioner of Taxes and Registration Department V. Singamuthu*** rendered in Civil



W.A. No. 981 of 2021

Appeal No. 3770 of 2017 on 07.03.2017, wherein it was held as hereunder:

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'12. *In the present case, the respondent herein was engaged to fetch water, to sweep and other connected menial works for one or two hours in a day as part-time Masalchi. The post of part-time Masalchi is not included in Class IV or V of the Tamil Nadu Basic Service. Further a part-time Masalchi cannot be treated as equivalent to the post of Masalchi (full-time) basis because the post of part-time Masalchi does not come under the purview of service rules. The respondent herein was only a part-time Masalchi and hence, the question of applying G.O.Ms. No. 22 P &AR Dept. dated 28.02.2006, which is applicable only to the daily wage full-time employees, does not arise.*

9. The Judgments of High Courts running counter to the legal principles settled by ***Uma Devi's*** case and in ***Govindasamy's case*** for granting the relief of regularisation and permanent absorption cannot be followed as precedents nor any relief of regularisation can be granted in violation of the Service Rules in force.

10. The crux of the issue and the constitutionality involved in the matter of appointment, regularisation and permanent absorption are that, all



W.A. No. 981 of 2021

appointments are to be made under the Constitutional scheme and by following the due process. Equal opportunity in public employment is the constitutional mandate. Back door appointments cannot be regularized infringing the fundamental rights of the candidates aspiring to secure public employment through open competitive process. Daily wage, temporary and contractual appointments are made without following the due process and the Recruitment Rules applicable to the posts. Such appointments are mostly not made against sanctioned posts. Selections are done either at the choice of the Authorities or based on the recommendations of VIP's and VVIP's. Such appointments, if end with an order of regularisation and permanent absorption, this Court has no hesitation in arriving at a conclusion that the fundamental rights of lakhs and lakhs of youths of our great nation would be infringed and we would be dishonoring the constitutional scheme of appointments. Therefore, any appointment made in violation of the service rules cannot end with an order of regularisation and permanent absorption. However, such candidates may be granted liberty to participate in the recruitment process for securing employment on merits and through rule of reservation as per the Service Rules in force.



W.A. No. 981 of 2021

WEB COPY

11. As far as the judgment relied on by the learned counsel for the respondent i.e., *Raman Kumar's case* decided by the Hon'ble Supreme Court of India, is concerned, the factual matrix of the case would reveal that the Chief Commissioner of Income Tax had himself found that 65 persons were entitled to be regularised. Though the Commissioner of Income Tax had listed out 65 eligible employees for grant of regularisation, only 35 employees were regularised while others were not. With reference to the same, the Hon'ble Supreme Court of India held that other employees should also be regularised as otherwise it would amount to discrimination. The said facts would have no application to the case on hand as in the present case, the respondent has not been found eligible for regularisation under the Service Rules in force. Thus, the said judgment would not be applicable to the case of the respondent.

12. In the case on hand, the writ court has not considered the legal position as settled by the Constitution Bench of the Hon'ble Supreme Court of India and the case of *Govindasamy*.



W.A. No. 981 of 2021

WEB COPY

13. In view of the facts and circumstances of the case and the principles laid down in the judgments cited supra, we are inclined to

S.M. SUBRAMANIAM,J.

AND

C. KUMARAPPAN,J.

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interfere with the order impugned and the order dated 29.03.2021 in W.P. No. 10963 of is set aside. The writ appeal stands allowed. No costs. Connected C.M.P. is closed.

nv

(S.M.S.J.) (C.K.J.)
04.07.2024

To

1. The Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai -9.
2. The Commissioner and Director of
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3. The Regional Joint Director,

W.A.No. 981 of 2021

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W.A. No. 981 of 2021

Animal Husbandry Department,
Nagapattinam, Nagapattinam District.

4. The Assistant Director,
Animal Husbandry Department,
Thirumarugal, Nagapattinam.