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W.A.No.2138 of 2019, etc and batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.Nos.2138, 2143, 2145, 2146, 2150, 2152, 2154, 2158, 2160, 2178,
2988, 2991, 2998, 2999, 3000 to 3002, 3016 to 3018, 3020 to 3022, 3024
& 3042 of 2019 & 1678 to 1692 of 2018

and

C.M.P.Nos.14388, 14395, 14404, 14420, 14423, 14452, 14460,
14462, 14526, 19311, 19322, 19369, 19370, 19372, 19373, 19412,
19424, 19428, 19430, 19432, 19433 & 19506 of 2019
& 13498 to 13526 of 2018 & 7946 of 2023

W.A.No.2138 of 2019:

- 1.State Government of Tamil Nadu,
Rep By Its Principal Secretary,
Pubic Works Department,
Fort St. George,
Secretariat, Chennai – 600009.
- 2.The Engineer-in-Chief,
Chief Engineer (General),
Water Resources Organization Department,
Public Works Department,
Chepauk, Chennai – 600005.
- 3.The Engineer-in-Chief,
Chief Engineer(General),
Water Resources Organization Department,



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Public Works Department,
Tharamani, Chennai – 600113.

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4.The Executive Engineer,
Chennai Division Ground Water,
Water Resources Organization Department,
Public Works Department,
Tharamani, Chennai – 600113.

5.The Assistant Executive Engineer,
Ground Water,
Sub Division No.IV,
Public Works Department,
Tharamani, Chennai – 600113.

... Appellants

Vs.

1.A.Gajendran

2.The Chief Engineer ESG-GSO,
Department of Atomic Energy,
Kalpakkam,
Kanchipuram District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 23.01.2018 made in W.P.No.2856 of 2017 and allow the writ appeal.

For Appellants : Mr.P.S.Raman
Advocate General
Assisted by Mr.R.Kumaravel
Additional Government Pleader

For R1 : Mr.S.Silambanan
Senior Counsel
Assisted by Mr.Suryaprakash



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For R2

: Mr.P.G.Santhosh Kumar

COMMON JUDGMENT

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

Equal opportunity in public employment is the constitutional mandate.

All appointments into the public services are to be made only under the constitutional scheme and by following the Recruitment Rules in force.

Appointment to Sanctioned posts are to be made through open competitive process by affording equal opportunity to all the eligible candidates, who all are aspiring to secure public employment.

2. Irregular, illegal and back door appointments cannot be regularised.

Lakhs and Lakhs of youth of our Great Nation are burning their mid-night oil and thriving hard to secure public employment through open competitive process. Appointing candidates through back door method would infringe the fundamental rights of those eligible candidates. Therefore, the State is duty bound to ensure that the constitutional mandates are honoured and implemented in its letter and spirit while recruiting candidates for public



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posts.

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3. Admittedly, in the present writ appeals, the 1st respondent in all the writ appeals were engaged as daily rated employees in the Department of Water Resources Organisation. All the respondents have been engaged to perform duties relating to fitter, Plumber, Electrician etc., and admittedly their names are in the rolls of Nominal Muster Roll (NMR). No order of appointment has been issued to these daily rated employees. As and when their services are required, the authorities of the water resources organisation engage them and pay daily wages.

4. Mr.S.Silamabanan, learned Senior Counsel appearing on behalf of the 1st respondent in W.A.No.2138 of 2019 would submit that the respondents are continuously working as daily rated employees. Their works are necessary in the Department of Water Resources Organisation and in Atomic Power Plant.

5. Admittedly, the respondents have not been appointed in sanctioned posts in the time scale of pay in accordance with the Recruitment Rules in



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force.

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6. Writ Petitions are filed seeking direction to the Principal Secretary to Government Public Works Department to pass orders on the petitioners representation dated 02.07.2016 and to regularise the services of the writ petitioners.

7. The daily rated / casual / consolidated pay / temporary employees were not appointed against the sanctioned post by following the Service Rules in force. The legal position in this regard are considered by the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***State of Karnataka Vs. Uma Devi*** reported in ***(2006) 4 SCC 1***.

8. The Apex Court in unequivocal terms held that irregular, illegal and back door appointments cannot be regularised. In paragraph 54 of the judgment the Constitution Bench reiterated that those decisions, which run counter to the principles settled in *Uma Devi's* case or in which the directions running counter to what the Constitution Bench held in *Uma Devi's* case will stand denuded for their status as precedent. Therefore, the principles laid



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down by the Constitution Bench of Hon'ble Supreme Court is binding on all the Courts across the Country and Law of the Land.

9. Subsequently, the Hon'ble Supreme Court of India in the case of ***Secretary to Government School Education Department, Chennai Vs. R.Govindaswamy and Others*** reported in **2014 (4) SCC 769** reiterated the principles by referring the case in ***State of Rajasthan and Others Vs. Daya Lal and Others*** reported in **(2011) 2 SCC 429**, which reads as under;

“8.

(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*



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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



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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



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under a contract or under a statute.”

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10. Mr.P.S.Raman, learned Advocate General appearing on behalf of the Appellants would submit that the Government issued orders in G.O.Ms.No.131, Personnel and Administrative Reforms (F) Department dated 28.11.2020, based on the legal principles settled by the Constitutional Bench in the *Uma Devi's* case as follows:

ABSTRACT

Public Services – Employees working on daily wages – Bringing into regular establishment – Consolidated Instructions – Issued.

*PERSONNEL AND ADMINISTRATIVE REFORMS (F)
DEPARTMENT*

G.O.(Ms).No.131

Dated: 28.11.2020

- 1. G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006.*
- 2. G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013.*
- 3. Advocate General of Tamil Nadu, High Court Chennai – 600 104, Letter dated 18.02.2019.*
- 4. Orders of High Court of Madras in W.P.Nos.28633 to*



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28646 of 2014, dated 12.12.2017.

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5. Government Letter No.4486/C2/2018-1, Public Works Department, dated 28.02.2018.

Based on the announcement made by the Hon'ble Chief Minister on 08.02.2006, orders were issued in the reference first cited to pursue action to regularize the services of the daily wages employees, working in all Government Departments, who have rendered 10 (ten) years of service as on 01.01.2006, by appointing them in the time scale of pay of the post, in accordance with the service conditions prescribed for the post concerned, subject to their being otherwise qualified for the post. It was also ordered therein that wherever necessary, in special cases, wherein relaxation of rules is required, proposal shall be sent to Government.

2. In view of the deviations noticed in the implementation of the above orders, revised orders were issued in the reference second cited, among other things, that the services of the full time daily wage employees who were initially appointed on full time basis, in consultation with Employment Exchange, to discharge the function of the post in the Tamil Nadu Basic Service and completed 10 (ten) years of service as on 01.01.2006 shall be regularized, against the



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regular vacancies, in the sanctioned cadre strength.

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3. The High Court of Madras, in its order dated 12/12/2017 in W.P.Nos.28633 to 28646 of 2014 and C.P.Nos.561 to 574 of 2015, filed by Thiru. M.Mahalingam, relating to regularization of daily wage services in the Water Resource Organization, Public Works Department, among other things, directed the Registry to communicate the copy of the order to the Chief Secretary, for issuing consolidated instructions to all officials concerned, to scrupulously follow the judgment of the Constitution Bench of the Hon'ble Supreme Court of India In "Umadevi Case" [State of Karnataka Vs. Umadevi (2006)4 SCC 1] as well as the legal principles settled in the present writ petition, in its letter and spirit, in respect of the cases relating to regularization of services of daily wages employees, into regular establishment.

4. In the above said "Umadevi case", among other things, the Constitution Bench of the Supreme Court of India, emphasized that if rules have been made under Article-309 of the Constitution, then the Government can make appointments only in accordance with the rules. If sanctioned posts are vacant, the State will take immediate steps for filling those posts, by a regular process of selection. The State Government and their instrumentalities should take steps to regularize, as



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a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts, but not under cover of orders of the courts or of Tribunals, and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that required to be filled up, in cases, where temporary employees or daily wages are being now employed. If sanctioned posts are vacant, the State will take immediate steps for filling those posts, by a regular process of selection. There should be no further bypassing of the Constitutional requirement, regularizing or making permanent, those not duly appointed, as per the Constitutional scheme.

5. In view of the above, It is hereby reiterated that in case of posts governed by Rules, in all the Services, including Tamil Nadu Basic Service, appointment shall be made only with reference to the existing rules. While selecting candidates for appointment, the claim of the contesting candidates shall be weighed with reference to the rules, in force, as emphasized in the “Umadevi Case” [State of Karnataka Vs. Umadevi (2006)4 SCC 1].

6. All the appointing authorities should adhere to the above instructions scrupulously, failing which, it will be viewed seriously and necessary disciplinary action will be



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initiated as per rules, against the person responsible for the said lapses. All Heads of Departments are directed to ensure that the above said instructions are followed, without fail.

(By Order of The Governor)

*K.SHANMUGAM,
CHIEF SECRETARY TO GOVERNMENT*

To

All Secretaries to Government, Chennai – 600 009.

All Departments of Secretariat, Chennai – 600 009.

*The Secretary, Tamil Nadu Legislative Assembly Secretariat,
Chennai – 600 009.*

The Governor's Secretariat, Guindy, Chennai – 600 032.

*All Heads of Departments / District Collectors / District
Judges / Chief Judicial Magistrate.*

*The Registrar General, High Court, Chennai – 600 104/
Madurai – 625 023.*

*The Advocate General of Government of Tamil Nadu,
High Court of Madras, Chennai – 600 104.*

The Accountant General, Chennai – 18/35.

The Director of Treasuries and Accounts, Chennai – 600 035.

The Director of Employment and Training, Chennai – 600 005.

All Treasury Officers.

The Pay and Accounts Officer, (North / South / East /



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Secretariat), Chennai – 79/35/5/9.

WEB COPY *The Resident Audit Officer, Chennai – 600 009.*

*The Secretary, Tamil Nadu Public Service Commission,
Chennai – 600 003.*

Copy to:

*The Principal Private Secretary to Chief Secretary to
Government, Chennai – 600 009.*

*The Principal Private Secretary to Secretary to Government,
Personnel and Administrative Reforms Department,
Chennai – 600 009.*

*The Principal Private Secretary to Additional Chief Secretary
to Government, Finance, Chennai – 600 009.*

*The Principal Private Secretary to Principal Secretary to
Government, Public Works Department,
Chennai – 600 009.*

*The Personnel and Administrative Reforms (AR-II)
Department,
Chennai – 600 009 (to publish in the Government web-
site www.tn.gov.in).*

*All Officers/Sections in Personnel and Administrative Reforms
Department.*

SF/SC.



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//Forwarded by Order//

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SECTION OFFICER

11. The Government has implemented the judgment of the Constitution Bench in Uma Devi's case. Therefore, grant of regularisation, permanent absorption in violation of the legal principles settled by the Hon'ble Supreme Court is impermissible. However, the Government in respect of daily rated employees granted special time scale of pay subject to eligibility. In this regard, the respondents are at liberty to submit a fresh representation for grant of special time scale of pay if they are otherwise eligible under the Government orders. In the event of submitting any such representation, the same is to be considered strictly in accordance with the Government orders and the Government policy in the matter of grant of special time scale of pay to the daily rated / causal employees engaged by Government Department.

12. Therefore, the respondents are not entitled for regularisation or



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permanent absorption, since their initial appointments were not in accordance with the recruitment rules in force. In view of legal principles settled by the Hon'ble Supreme Court of India, we are not in agreement with the findings of the learned Single Judge in the writ order impugned. Consequently, writ order dated 23.01.2019 passed in W.P.Nos.2739 to 2753, 2856 to 2870 and 2920 to 2934 of 2017 is set aside and the Writ Appeals are allowed. Connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

[S.M.S., J.] [C.K., J.]
13.06.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes



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To

The Chief Engineer ESG-GSO,
Department of Atomic Energy,
Kalpakkam,
Kanchipuram District.



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S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

Jeni

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