



W.A.No.1508 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

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CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

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1. K.M.Sivakumar-Died
2. M.Sivaguru
3. N.Sahadevan
4. S.Parvathy
5. Kiruthiga

... Appellants

[A1 (died) is substituted by the appellants 4 and 5
as the LR's of deceased A1, *vide* order of court
dated 26.06.20204 made in CMP.No.16264 of 2021
by SMSJ & CKJ]

Vs.

1. The State of Tamil Nadu,
Represented by is Secretary,
Department of Agriculture,
Fort St.George,
Chennai - 600 009.
2. The Director of Horticulture,
Department of Horticulture,
Government of Tamil Nadu,
Chennai.



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3. The Joint Director of Horticulture,
Department of Horticulture,
Udagamandalam.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 11.08.2018 passed in W.P.No.11681 of 2009.

For Appellants : Mr.D.Muthukumar
for M/s. Paul and Paul

For R1 to R3 : Mr.T.Chezhiyan
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)

The principles governing the regularisation and permanent absorption of casual/daily rated/temporary employees are settled by the Constitutional 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**. Therefore, all other Judgments running counter to the legal principles settled by the Constitution Bench Judgment denuded to loose its status as precedent and the said dictum also has been reiterated by the Constituted Bench in para.54 of the Judgment in *Uma Devi's* case. The Apex Court in an unequivocal terms held that one



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time arrangement made by way of clarification under para.53 of the Judgment cannot be relied on in perpetuity. Therefore, Judgments or orders passed by the Courts, which are all not in consonance with the legal principles are to be construed as individualization of Justice or applicable to the facts of that case alone.

2. In the present case, admittedly, the appellants were initially engaged as farm labourers on daily wage basis. Since they continued as farm labourers for more than 10 years the Government issued orders to regularise these daily rate employees in the sanctioned posts in the time scale of pay. The benefit of regularization and permanent absorption granted to these daily rated farm labourers itself is a concession extended. Having accepted the regularisation and permanent absorption from the date of Government Order, the appellants have subsequently represented that their regularisation must be granted from the date of their respective initial date of appointments as daily wage farm labourers.

3. Such claims, in few cases, are considered by writ courts. As rightly pointed out by the learned Counsel appearing on behalf of the



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appellants, the Division Bench also confirmed those orders in certain cases.

However, those orders are held as individualization of Justice by the Constitution Bench. Therefore, we are not inclined to adopt those Judgments as precedents for the purpose of extending the benefit of regularisation with retrospective effect from the date of initial appointment of these farm labourers. In certain cases, the benefit of regularisation was granted from the date on which the labourers completed 10 years of service. The said principle also cannot be adopted in view of the fact that the Government in G.O.Ms.No.22 dated 28.02.2006, has clarified that the casual/daily rated employees, who have completed 10 years of service as on 01.01.2006 are eligible for regularization. But there is no mentioning about retrospective regularization as claimed by the respondents in the present case.

4. Equal opportunity in public employment is the Constitutional mandate. All appointments are to be made under the Constitutional schemes. Lakh and lakh of youth of our great nation are longing to secure public employment through open competitive process. Regularization or permanent absorption or back door appointments would result in infringement of the fundamental rights of the eligible candidates, who all are aspiring to secure



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public employment even under the Rule of reservation. Back door, illegal and irregular appointments are made either at the instance of the Authorities or with the recommendations of the VIP's or VVIP's. If such appointments end with an order of regularisation or permanent absorption, no doubt, the Constitutional scheme of appointments are dishonoured and the fundamental rights of all other citizens are infringed. Rule of reservation is important part under the constitution and regularizing these back door appointments, Rule of reservation has not been followed. No merit assessments are made. Admittedly, these temporary appointments are made not against sanctioned post. Thus, the regularization cannot be claimed as an absolute right by these employees. It is a concession extended only based on the length of service rendered by these employees in the non-sanctioned post.

5. The legal position was reiterated in the case of ***Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy*** reported in **2014 (4) SCC 769**. The Hon'ble Supreme Court of India relying on the principles laid down in the case of ***State of Rajasthan Vs. Daya Lal*** reported in **2011 (2) SCC 429** reiterated the well settled principles relating to regularization, which reads as under:



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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, regularization 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." (emphasis supplied)

6. In the case of ***State of Tamil Nadu Vs. A.Singamuthu*** reported in **2017 (4) SCC 113**, the Supreme Court has considered the scope of G.O.Ms.No.22 dated 28.02.2006 and in para.18, the following observations are made:



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"18. The learned Single Judge erred in extending the benefit of G.O.Ms.No.22 dated 28.02.2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned Senior Counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is, from 01.04.1999 till the date of his regularisation, that is, 18.06.2012, the financial commitment to the State would be around Rs.10,85,113 (approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned Senior Counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularised under various G.Os and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularisation of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also."

7. In fine, the claim as such sought for by the appellants was rightly rejected by the writ court. The regularisation already granted in favour of the appellants itself is a concession extended. Therefore, they are not entitled to



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seek further benefit of retrospective regularisation or otherwise. Thus, for all purposes, the regularisation granted to these appellants are to be confined with reference to the date on which their services are regularised and they are entitled for the benefit as applicable under the Rules.

8. With the above observations, the Writ Appeal stands **dismissed**.

No costs.

[S.M.S., J.] [N.S., J.]
05.07.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1. The District Collector,
Collectorate Buildings,
Coimbatore.
2. The Special Officer cum
Block Development Officer,
Servakaranpalayam Panchayat,
Pollachi North Union,
Pollachi Taluk,
Coimbatore District.



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