



W.A.No.2513 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

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CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

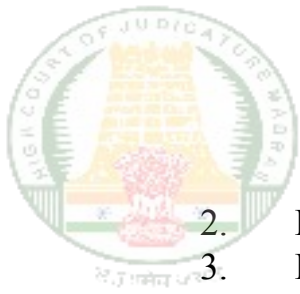
W.A.No.2513 of 2018
and
C.M.P.No.20339 of 2018

1. The Government of Tamil Nadu,
Represented by its Secretary,
Local Administration and Rural
Development Department,
Fort.St.George,
Chennai - 600 009.
2. The District Collector,
Kanyakumari District,
@ Nagercoil.
3. The Commissioner,
Melpuram Panchayat Union,
Pacode Post,
Kanyakumari District.
4. The President,
Devicode Village Panchayat,
Melpalai Post, Vilavancode Taluk,
Kanyakumari District.

... Appellants

Vs.

1. C.Xavier



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2. D.Shibu
3. Rejani
4. Sanjo

... Respondents

[R1 died is substituted by the respondents
R2 and R3 as LR's of deceased R1 *vide*
order of court dated 05.06.2024 made in
C.M.P.No.10787 of 2024 in W.A.No.2513 of 2018
by SMSJ & CKJ]

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the
order dated 07.12.2017 passed in W.P.No.30374 of 2003.

For Appellants : Mr.R.Neelakandan
Additional Advocate General
assisted by
Mr.S.Ravichandran
Additional Government Pleader

For R1 : Died

For R2, R3 & R4 : Mrs.P.Mahalakshmi

J U D G M E N T

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

The intra-Court appeal on hand has been instituted challenging the writ
order dated 07.12.2017 passed in W.P.No.30374 of 2003.

2. The respondents herein are the writ petitioners filed a writ of



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certified mandamus to quash the proceedings issued by the 3rd respondent dated 21.03.2003 and the consequential order of the 4th respondent dated 17.10.2003 and to direct the respondents to regularise the services of the petitioners in the sanctioned post in the time scale of pay with effect from 01.06.1998 with all monetary benefits.

3. The order of appointment issued to the respondents by the Devicode Panchayat President dated 01.12.1997 would reveal that the respondents were appointed as Water Supply Assistant on daily-wage basis. They were appointed by the Panchayat President, which is not in dispute. The case of the respondents were that they continued as daily-wage employees for long years and subsequently, the Panchayat President regularised their services. The appellants have not approved the regularization and passed the impugned order, which resulted in filing of the writ petition by the respondents.

4. Mr.R.Neelakandan, learned Additional Advocate General appearing on behalf of the appellants would submit that the initial appointment of the respondents were made not against the sanctioned posts.



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The initial appointments were not made in accordance with the Panchayat Service Rules in force. Thus, the appointment of the respondents were irregular and not in consonance with the Recruitment Rules in force. In the absence of any sanctioned posts, President Panchayat cannot regularise the services of the daily-wage employees. He would further contend that it is a part time employment. But, erroneously designated as full-time daily wage employees by the Panchayat President. Thus, the proceedings of the Panchayat President was disapproved by the competent Authorities under the provisions of the Panchayat Act.

5. Pertinently, actions were initiated against the Panchayat President in the present case, since illegal appointments were made.

6. The learned Additional Advocate General would submit that the writ court has not considered these aspects. The writ court proceeded mainly on the basis that the respondents were appointed as daily wage employees for full-time employment. Therefore, they are entitled to be regularised in the sanctioned post. When the initial appointment of the respondents were not in accordance with the Recruitment Rules in force and in the absence of any



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sanctioned posts, the writ court ought not to have granted the relief of regularization. Thus, the State preferred the present writ appeal.

7. The learned Additional Advocate General would rely on the judgment of the Division Bench of this Court passed in W.A.No.1483 of 2013 dated 20.02.2018, wherein, the facts are identical. The Division Bench held as follows:

"4. Before the writ court, the appellants 1 and 2 filed separate affidavits contending that there was no sanctioned post of Water Supply Assistant. According to the appellants, the first respondent was engaged on daily wages as a Water Supply Assistant, without there being any recruitment rule. It was contended that as there was no post of Water Supply Assistant sanctioned for Maruthancode village Panchayat, the first respondent is not entitled for regularisation.

5. The learned Single Judge, taking into account the contention taken by the first respondent, issued a mandamus directing the appellants to regularise his services.

6. There is nothing on record to show that the first respondent was appointed against a sanctioned post. Even according to the first respondent, his father donated land to the local body, subject to the condition that he should be given



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appointment. The then President of Maruthancode Village Panchayat appears to have appointed the first respondent on daily wages. The question of regularization would arise only in case the appointment was against a sanctioned post. The first respondent has no case that there was a sanctioned post of Water Supply Assistant and he has been working ever since his appointment against such sanctioned post. The fact that the first respondent was working from 30 September, 1999 would not give him a right for regularization unless there is a Government Order directing the regularization of such employees. There was no order quoted by the learned Single Judge in the matter of regularization of Water Supply Assistants who were appointed without there being a substantive post. We are, therefore, of the view that the learned Single Judge was not correct in regularising the services of the first respondent."

8. Considering the arguments as advanced between the learned Additional Advocate General appearing on behalf of the appellants and the learned Counsel appearing on behalf of the respondents to this *lis* on hand, the legal principles governing the regularisation and permanent absorption has been settled 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)**. Following the said legal position, the Hon'ble Supreme Court has



reiterated the principles in the case of *Secretary to Government, School Education Department Vs. R.Govindaswamy & Ors.* reported in 2014 (4)

SCC 769. The Apex Court relying on the earlier Judgment in the case of *State of Rajasthan & Ors. vs. Dayal Lal & Ors.* reported in 2011 (2) *SCC 429* wherein certain directives are issued to the High Court. The directives of the Apex Court found in SCC p.435, para 12 indicates that:

(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 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



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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.

9. Close reading of the Judgment of the Constitution Bench would be sufficient to form an opinion that all appointment to the public posts are to be made under the Constitutional schemes and by following the recruitment rules in force. Appointments are to be made against sanctioned posts and irregular or illegal appointments cannot be regularised by the Authorities as well as by the Courts. Equal opportunity in public employment is the constitutional mandate. The fundamental rights of the eligible candidates cannot be allowed to be infringed by regularising the illegal and irregular appointments. Therefore, regularization and permanent absorption of illegal and irregular appointments would result in unconstitutionality and causing infringement of the fundamental rights of the eligible candidates, who all are aspiring to secure public employment through open competitive process under the Constitutional scheme. Backdoor appointments are causing concern to lakh and lakh of unemployed youth of our great nation.



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10. This exactly is the reason why the Constitution Bench in *Uma Devi's* case in an unequivocal terms held that any judgments/orders running counter to the legal principles settled by the Constitution Bench have deluded to loose its state as precedent. The said ruling has been held in para 54 of the said judgment.

11. Courts are not expected to grant regularization or permanent absorption on misplaced sympathy. Such mis-placed sympathy by the Courts are resulting infringement of the fundamental rights of eligible citizen, who all are burning their mid night oil and thriving hard to secure public employment through open competitive process. Therefore, the Courts are expected to grant regularization or permanent absorption, if the initial appointments are made by following the Recruitment Rules in force and against the sanctioned posts.

12. In the present case, admittedly, the respondents were appointed by the President, Panchayat on daily-wage basis as Water Supply Assistant and there was no sanctioned post in the said Panchayat during the relevant point of time.



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13. The Principal Secretary to Government, Rural Development and Panchayat Raj Department filed an additional affidavit in Contempt Petition No.2648 of 2018 stating that the Village Panchayat Administration consists of the following sanctioned posts *viz.*,

1. Panchayat Secretary (Full Time).
2. Sweeper (Special Time Scale of Pay).
3. Part Time Sweeper.
4. Part Time OHT Operator

The post of part time Sweeper and part time OHT Operator are equivalent posts. There is no other posts available in a Village Panchayat. Part Time Sweeper on completion of 3 years of service would be brought into Special Time Scale Pay i.e., 1300-300-3000/-. In this regard it is submitted that, post of Tank Operator is not a sanctioned post and only a part time post. It is not a feeder category post for appointment as Panchayat Secretary. Hence, the petitioner herein was awarded with Sweeper Post in the special time scale pay in the existing vacancy.

14. The above facts would be sufficient that the initial appointment of the respondents were not made against the sanctioned posts. However,



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considering the length of service, these respondents were accommodated in the post of Sweeper in the Special time scale of pay.

15. It is brought to the notice of this Court that the 1st respondent/Mr.C.Xavier died during the pendency of the present litigation and his legal heirs are impleaded as parties in the writ appeal.

16. In view of the above legal position as reiterated by the Hon'ble Apex Court in Constitution Bench Judgment and in the Division Bench Judgement, we found the relief granted by the writ court is running counter to the legal principles settled and thus, we are inclined to interfere.

17. Accordingly, the order impugned dated 07.12.2017 made in W.P.No.30374 of 2003 is set aside and the Writ Appeal stands **allowed**. No costs. Connected miscellaneous petition is closed.

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[S.M.S., J.] [C.K., J.]
19.06.2024

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

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S.M.SUBRAMANIAM, J.
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