



C.M.A(MD)Nos.458 and 459 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved in SR stage on : 29.02.2024

Pronounced after numbering on : 23.04.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)Nos.458 and 459 of 2024

C.M.A(MD)No.458 of 2024:

A.Chockalingam

... Appellant

Vs.

1.A.Pughalenth,
Chief Educational Officer,
Nagercoil – 629 001,
Kanyakumari District.

2.The State represented by the District Collector,
Kanyakumari District,
Nagercoil – 629 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Order 44 Rule 1 of CPC against the order dated 30.10.2023 in POP No.134 of 2022 on the file of the Learned Principal District Judge, Nagercoil.

C.M.A(MD)No.459 of 2024:

V.Thomas

... Appellant

Vs.



C.M.A(MD)Nos.458 and 459 of 2024

- 1.A.Pughalenth,
Chief Educational Officer,
Nagercoil – 629 001,
Kanyakumari District.
- 2.Prince Arockia Raj,
District Educational Officer,
Nagercoil – 629 001,
Kanyakumari District.
- 3.The State represented by the District Collector,
Kanyakumari District,
Nagercoil – 629 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Order 44 Rule 1 of CPC against the order dated 30.10.2023 in POP No.329 of 2022 on the file of the Learned Principal District Judge, Nagercoil.

In both cases:

For Appellant : Mr.R.Maheswaran

COMMON JUDGMENT

The Civil Miscellaneous Appeals are filed against the orders dated 30.10.2023 passed in the petition seeking permission to sue as an indigent person under Order 33 Rule 1 of CPC. The said petitions were dismissed against which the petitioners had preferred the present Civil Miscellaneous Appeals.

2. i) The brief facts of the case as stated in the affidavit of the appellant in



C.M.A(MD)Nos.458 and 459 of 2024

WEB COPY

C.M.A.(MD)No.458 of 2024 are that he was engaged as sweeper-cum-scavenger from 06.03.1990 for the work from 8 am to 6 pm in Government High school at Mahadhanapuram for a salary of Rs.105/- per month. He was appointed by the DEO (District Educational Officer) through Employment Exchange Office Seniority. For the purpose of regularisation, he had submitted an application to the DEO, but the same was not considered. The Government issued G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, to regularise the daily wage employees who had put in 10 years of service and the appellant had completed 10 years as on 01.01.2006. Further, the Government had issued G.O.Ms.No.111, School Education (R1) Department, dated 09.05.2012, wherein the Secretary had issued orders to all the Chief Educational Officer (CEO) to regularise the service of 614 persons those who had completed 10 years of service.

2. ii) Since the DEO failed to consider the appellant's name, the appellant submitted the application to CEO to regularise him. Since the respondents failed to consider to regularise the appellant under G.O.Ms.No.22, the appellant herein filed writ petition in W.P.(MD)No.5635 of 2020 praying for writ of Mandamus, directing the respondents to regularise the his service as full time sweeper on the



C.M.A(MD)Nos.458 and 459 of 2024

date of completion of 10 years of part time service from 08.03.1990 and to pay time scale of pay and other benefits payable with effect from 08.03.2000 by counting 50% of part time service for the purpose of pension in the light of judgment passed in W.A.(MD)No.93 of 2018, dated 27.03.2018 as confirmed by Hon'ble Supreme Court by dismissing the S.L.P.No.23960 of 2018. The said writ petition was allowed vide order dated 18.03.2020, aggrieved over the respondents had preferred writ appeal in W.A.(MD)No.241 of 2021 and the Hon'ble Division Bench had dismissed the writ appeal.

2. iii) Based on the directions of the Court, the appellant had submitted an application along with the copies of G.O.Ms.No.22, G.O.Ms.No.111 and the orders passed by the Courts. Even then, the DEO failed to grant regularisation and failed to obey the orders of this Court. Hence, the appellant conducted hunger strike along with his family before the C.E.O Office at Nagercoil. At the intervention of Police Officials, the DEO Renuka had promised that she would obey the direction in Na.Ka.No.857/A1/2021, dated 29.10.2021, G.O.Ms.No.111, dated 09.05.2012, G.O.Ms.No.247, dated 03.10.2012 and G.O.No.68, dated 18.03.2013 and regularize his service but she failed to regularize the appellant. Hence, again, the appellant conducted two more hunger strikes. On seeing the



WEB COPY

hunger strike the DEO stated if the CEO gives sanction, the appellant would be regularized.

2. iv) In the meanwhile the Director of School Education directed the CEO and DEO to regularize the appellant and hence, he submitted an application to the CEO Nagercoil through the DEO Nagercoil, but the application was rejected, vide Na.Ka.No.2471/A1/2021, dated 29.12.2021, which was communicated to the District Collector, wherein it is stated that no G.O., is passed in favour of the appellant herein. According to the appellant, the same amounts to arbitrary and non-application of mind. Further in a similar case, the DEO Nagercoil had regularized the services of several persons namely Manoharan, Leci Rethinabai, Paul Daniel, Thomas Lalithabai, Sailaja Glori, Thambiraj, Pushbadhas, Palaiyan, Saimanraj, Nadan, Tharmaiyan Babi and 90 others. In another similar case, as per Na.Ka.No.2360/A1/2009, dated 18.08.2011, the DEO, Coimbatore had regularized the service of one Subramani.

2. v) In another similar case in Na.Ka.No.6586/A1/E1/014, dated 27.07.2015, the DEO, Kuzhithurai had rejected the application submitted by persons namely C.Rajam and P.Ponnamma, hence, the said C.Rajam and



C.M.A(MD)Nos.458 and 459 of 2024

WEB COPY

P.Ponnamma had given complaint before the Marthandam Police Station against erstwhile DEOs namely Arulmurugan, Yesurthinam, Mohan and also against Office Superintendent Mervin and Assistant Herbert. The Marthandam Police failed to register FIR against the said 5 persons, hence, a complaint was filed before the Judicial Magistrate-I at Kuzhithurai under Section 156 (3) of Cr.P.C. in C.M.P.No.3707 of 2016 and the same was allowed and FIR was registered in Cr.No.340 of 2016, dated 10.05.2016 for the offences punishable under sections 166, 167, 468, 420, 120(b) of IPC. The said five persons preferred quash petitions before this Court in CrI.O.P.(MD)No.9047 of 2016 and CrI.O.P.(MD)No.9506 of 2016 and the said petitions were dismissed on 20.03.2017 and hence, they are facing criminal prosecution. Thereafter, as per Na.Ka.No.0947/A3/E1/2016, dated 30.06.2017, the D.E.O., Kuzhithurai followed G.O.No.111, dated 09.05.2012 and the service of C.Rajam and P.Ponnamma were regularized.

2. vi) However, through Ne.Mu.No.0858/A1/2020, dated 15.12.2020, DEO, Nagercoil rejected the application of C.Jega Selvan and the reason for rejecting is that the said order in W.A.(MD)No.93 of 2018 filed by one Rani is not applicable to the said C.Jega Selvan, since the said Rani was regular employee. But the appellant states that it was found that as per Na.Ka.No.35/96-97, dated



C.M.A(MD)Nos.458 and 459 of 2024

WEB COPY

15.04.1996, the said Rani was also working as a part time worker. So the rejection order passed by the DEO is not sustainable and the DEO Nagercoil had cheated the C.Jega Selvan. Further, the alleged the said 'cheated order' had affected C.Jega Selvan, S.Lekshmi, M.Pappa, P.Vasanthakumari, V.Murugan and V.Thomas and the appellant Chockalingam.

2. vii) The said C.Rajam and P.Ponnamma were regularized as per the recommendation of DEO in Na.Ka.No.857/A1/2020, dated 29.10.2021 of DEO and consequently, the Joint Director, Department of Education, Chennai, based on G.O.Ms.No.111, dated 09.05.2012 and regularized the said C.Rajam and P.Ponnamma. The DEO is aware of the said G.O.Ms.No.111. But as per Na.Ka.No.857/A1/2020, dated 06.12.2021, the same DEO submitted to the Police that the copy of the said G.O.Ms.No.111 is not available in the office of DEO. In the meanwhile, the 1st respondent CEO (A.Pughalenth) as per Na.Ka.No.2471/A1/2021, dated 13.12.2021, had informed the appellant that along with the appellant, six others would be regularized and he would take earnest efforts. As per Na.Ka.No.2471/A1/2021, dated 29.12.2021, the same CEO had sent sanction letter to DEO to regularize the appellant and 6 others. On the same date, as per Na.Ka.No.2471/412021, dated 29.12.2021, the same CEO intimated to the District



C.M.A(MD)Nos.458 and 459 of 2024

WEB COPY

Collector, Kanyakumari, that the copy of G.O.Ms.No.111, dated 09.05.2012, was not available in the Government records and declined permission for hunger strike to the appellant and 6 others. Then the CEO through Na.Ka.No.2471/AI/2021, dated 08.02.2022, has stated the same reason to the appellant that the said G.O.Ms.No.111, is not available and hence, the appellant cannot be regularized.

2. viii) Further, in similar cases in W.P.(MD)Nos.1636 and 1637 of 2015, vide order dated 09.01.2019, this Court allowed the writ petition in favour of D.Paul Daniel and M.Ligi Rethinabai wherein in para 7 of said order it is mentioned that as already persons like that of the petitioners have been squeezed till the last drop of blood to work for the State Government but monthly salary is only Rs.105/-. Hence, the petitioner claims he is entitled to get compensation amount of Rs.1,00,00,000/- with 18% interest per annum. As per G.O.No.22 dated 28.02.2006, G.O.No.111 dated 09.05.2012, G.O.No.247 dated 03.10.2012 and G.O.No.68 dated 18.04.2013, order passed in W.P.(MD)No.5635 of 2020 dated 18.03.2020 and in W.A.(MD)No. 241 of 2021 dated 15.07.2021 and Na.Ka.No. 15976/2/2010 dated 21.05.2012 of the Director of Education, the appellant is entitled to regularization.



C.M.A(MD)Nos.458 and 459 of 2024

WEB COPY

2. ix) Further, the appellant had preferred complaint before the Kottar Place Station against the 1st respondent and five others for violating the aforesaid orders. During enquiry, the respondent had submitted that G.O.Ms.No.111 dated 09.05.2012 was not available in the office. The act of the respondents is without application of mind and the same had caused mental agony and financial loss to the petitioner, hence, the petitioner is seeking Rs.1,00,00,000/- (Rupees One Crore Only) as compensation. The petitioner issued legal notice to the respondent on 19.01.2022 and the same was received by the respondent on 19.01.2022, but the respondent failed to reply.

2. x) The petitioner is not having any movable or immovable property and he is not having any income, hence, the petitioner had filed P.O.P.No.134 of 2022 to permit the petitioner to file the above suit as indigent person and to direct the Respondent to pay compensation of R.1,00,00,000/- (Rupees One Crore Only). But the Trial Court had passed the impugned order dated 30.10.2023 thereby the petition under Order 33 Rule 5 of C.P.C was dismissed by assigning fragile reasons. Hence, the present Civil Miscellaneous Appeal is preferred along with a petition seeking exemption to pay court fees of Rs.1,500/-.



C.M.A(MD)Nos.458 and 459 of 2024

WEB COPY

3. i) The 1st respondent had filed counter before the Lower Court, wherein it is stated that the petitioner was appointed as part time sweeper by DEO on 06.03.1990. As part-time sweeper, the petitioner used to work from 8 AM to 10 AM on all working days and the petitioner has to prove that the salary is only Rs. 105/-. The averment that the petitioner was not granted regularisation in spite of many applications is wrong and misleading. The DEO is not the appointing authority to regularise the petitioner. Moreover, without Government order the 1st respondent has no power to regularise the petitioner since the petitioner was working on consolidated pay as part time employee. It is for this reason respondent could not regularise the petitioner in his post. So far as the G.O.Ms.No.22, it is specifically stated the services of daily wages employee working in all government departments who have rendered 10 years of service as on 01.01.2006 be regularised. Since a petitioner is part-time worker and not a daily wages employee he cannot be considered. Further the petitioner was appointed as a sweeper on consolidated pay and not on daily wages. Hence the petitioner is not entitled to the benefits of G.O.Ms.No.22. In W.P.No.29412 of 2010, the High Court directed to consider the representation of the petitioner within one week in the light of the judgment of Hon'ble Division Bench of this Court in the case of *Director of School Education and others Vs P.Subramoni*



C.M.A(MD)Nos.458 and 459 of 2024

and the order of this Court in the case of ***M.Kumar Vs Director of School Education and others*** and taking note of the Government Orders which enables the regularisation of service where the person has been in employment for long period and appropriate orders. Based on the above order, G.O.Ms.No.111 of 2012 dated 09.05.2012 was passed to regularise, pay scale pay and other monetary benefits of 618 individuals and over 800 part-time workers in Education Department who filed petitions and directed the Director of School Education to relax the rules according to the petitioners. Subsequently, G.O.Ms.No.247 of 2012 was passed to provide monetary benefits for eligible employees from the date of regularisation. And 90 part-time workers were regularised as per G.O.Ms.No.68.

3.ii) The petitioner filed writ petition W.P.5635 of 2020 and the Hon'ble Court after taking the fact that the SLP filed against the order passed in W.A.No. 93 of 2018 was dismissed, directed the respondents to consider the claim of the petitioner by considering the representation dated 05.02.2020 in the light of the order passed in W.A.No.93 of 2018. But the said order passed in W.A.No.93 of 2018 is not applicable to the petitioner, since the said Rani was daily wage employee whereas the petitioner is a part-time employee on consolidated pay. And the petitioner had not worked as full-time worker and as such the petitioner will



C.M.A(MD)Nos.458 and 459 of 2024

not get certificate as full time worker. The appointment order issued to the petitioner itself would indicate the employment of the petitioner is part time worker. The employees got regularisation under G.O.Ms.No.111 on the basis of order of the High Court in W.A.(MD)No.241 of 2021. Further the orders passed in writ petition and the writ appeal had directed to consider the petitioner's application in accordance to law. Further there is no averment in the plaint that the petitioner is an indigent person. The petitioner has sufficient means to pay court fees and he has wantonly did not disclose the assets. The petitioner has filed the present litigation only to cause loss to the government exchequer. The petitioner is not entitled to compensation and prayed to dismiss the indigent petition.

4. Heard Mr.R.Maheswaran, the Learned Counsel appearing for the petitioner in both cases and perused the records.

5. The petitioners / appellants herein in both cases have filed a suit claiming compensation to the tune of Rs.1,00,00,000/- for the mental agony caused due to declining to grant regularization of service. However, the said suit is filed seeking permission to file the suit as indigent person. The Lower Court had considered the same and rejected permission to file the suit as indigent person. Aggrieved over



the same, the present Civil Miscellaneous Appeals are preferred. The present CMA also are filed along with petitions seeking exemption to pay court fees.

6. On merits of the cases, the contention of the petitioners / appellants herein is that the Lower Court ought not to have dismissed the Pauper Original Petition on merits. On perusing the impugned orders, it is seen that the Lower Court had considered the petition under Order 33 Rule 5, wherein the said provision grants power to reject the application on seven grounds and the provisions are extracted hereunder:

“5. Rejection of application.—The Court shall reject an application for permission to use as an indigent person—

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where the applicant is not an indigent person, or

(c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to use as an indigent person:

Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person. or

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has



WEB COPY

obtained an interest in such subject-matter; or

(f) where the allegations, made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(g) where any other person has entered into an agreement with him to finance the litigation.”

When the provision grants power to the Lower Court to reject the application on the above stated seven grounds, the Lower Court is right in exercising the said power. Especially, the Lower Court had held that there is no cause of action in the suit and hence, by invoking of Order 33 Rule 5 Clause (d) had held that the suit is dismissed on the ground that there is no cause of action. When the Lower Court had come to the conclusion after hearing the arguments and after perusing the evidence that there is no cause of action, this Court is of the considered opinion that there is no perversity or no illegality in the impugned orders.

7. The next contention of the petitioners / appellants herein is that the Lower Court had erred in coming to such conclusion and to substantiate the contention, the Learned Counsel appearing for the petitioners / appellants herein had submitted that the petitioners / appellants herein are entitled to regularisation under G.O.Ms.No.22, since the petitioners / appellants herein had completed 10



years of service. It is seen that as per the said G.O.Ms.No.22, the persons who were employed as “daily wage employee” and who had completed 10 years of service as “daily wage employee” are entitled to be considered for regularisation. In the present cases, the petitioners / appellants herein were appointed as part-time employees with consolidated pay even as per their appointment order and hence, the petitioners / appellants herein cannot be considered for regularisation. In fact, the petitioners / appellants herein themselves had admitted that they were working as part time employee and it is evident in the prayer in W.P.(MD)Nos.5635 and 5654 of 2020 and the same is extracted hereunder:

“W.P.(MD)No.5635 of 2020:

Writ of Mandamus to regularise the petitioner’s service as full time sweeper on the date of completion of ten years of part time service from 08.03.1990 and to pay time scale of pay and other benefits payable with effect from 08.03.2000 by counting 50% of part time service for purpose of pension in the light of the order passed in W.A.(MD)No.93 of 2018 dated 27.03.2018 as confirmed by the Apex Court by dismissal of SLP No.23960 of 2018.

W.P.(MD)No.5654 of 2020:

Writ of Mandamus to regularise the petitioner’s service as full time waterman on the date of completion of ten years of part time service from 04.02.1987 and to pay time scale of pay and other benefits payable with effect from 04.02.1997 by counting 50% of part time service for purpose of pension in the light of the order



WEB COPY



C.M.A(MD)Nos.458 and 459 of 2024

passed in W.A.(MD)No.93 of 2018 dated 27.03.2018 as confirmed by the Apex Court by dismissal of SLP No.23960 of 2018.”

When the petitioners / appellants herein had admitted that they are only part time employees, the petitioners / appellants herein are not entitled to regularisation under G.O.Ms.No.22.

8. In fact, some of the part time employees also claimed regularisation under G.O.Ms.No.22 and the High Court had passed several orders to regularise the part time employees also. The reason stated is that the G.O.Ms.No.22 specifically is not denying the regularization of part time employees. When this was pointed out, the Government had issued another G.O., in G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated 27.06.2013, wherein the Government has specifically declined regularization for part time employees and the said G.O., is extracted hereunder:

“G.O.Ms.No.74, Personnel and Administrative Reforms Department, dated 27.06.2013, reads as follows:

G.O. Ms. No.22 dated 28.02.2006, issued by the Personnel and Administrative Reforms Department,

In supersession of the orders issued in the Government Order read above,



the Government now issue revised orders on regularization of services of full time daily wage employees working in all Government departments as detailed below:

This Order shall be deemed to have been come into force with retrospective effect from 01.01.2006.

(ii) The services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and complete 10 (ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength.

(iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed.

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23 (a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services;

(v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularisation;

(vi) The part-time and casual employees are not entitled to the concession referred to at para (ii) above;

(vii) The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularized;

(viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules against the



person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the above said instructions are followed without fail and lapses if any found, responsibility will be fixed against them;

(ix) All the proposals for regularization of the services of full time daily wage employees should be sent to the Government even in cases where relaxation of rules are not involved. In G.O. Ms. No.74, it was thus, made clear that the part-time employees are not entitled for regularization and that full-time daily wage employees, who had completed ten years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned post. It was also made clear that the services of daily wage employees who have completed ten years of service after 01.01.2006 are not entitled for regularization.”

9. The Hon'ble Supreme Court has considered the case of regularization in the case of **Secretary to Government School Education Department Vs. Govindasamy, reported in 2014 CDJ SC 146**, wherein it is held that regularization of service is exclusive domain of the employer. In the present case, the Government is the authority to grant regularization and hence, it is within the domain of the Government to grant regularisation.

10. Further, the scope of regularisation under G.O.Ms.No.22 and



WEB COPY

G.O.Ms.No.74 was elaborately considered by the Hon'ble Supreme Court in Civil Appeal No.377 of 2017 in the case of **Secretary to Government and another Vs.**

Singamuthu reported in **(2017) 4 SCC 113**, wherein it is held as under:

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

(i) 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 followed and courts should not issue a direction for regularization of services of an employee which would be violative of 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(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 regularization, if he is not working



WEB COPY

against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization 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 regularization 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.”

Following the above judgment, it is evident that the petitioner being part time employee is not entitled to regularisation as per G.O.Ms.No.22 and G.O.Ms.No. 74. Therefore, this Court is of the considered opinion that the petitioners / appellants herein are not entitled to regularization.



WEB COPY

11. Further, it is seen that the petitioners / appellants herein had filed W.P. (MD)Nos.5635 and 5654 of 2020 seeking for direction to regularize and the Court had directed the respondents only to consider and pass orders and the relevant portions of the orders are extracted hereunder:

“W.P.(MD)No.5635 of 2020:

.....

6. *Considering the limited scope of prayer sought for in the writ petition and also considering the fact that against the writ appeal order, Special Leave Petition has been filed and the same was dismissed, the respondents are directed to consider the representation of the petitioner dated 05.02.2020 in the light of the order passed in W.A.(MD)No.93 of 2018 within a period of eight weeks from the date of receipt of copy of the order. It is needless to say that the petitioner shall enclose the copy of the representation dated 05.02.2020 along with this order copy to the respondents.*

W.P.(MD)No.5654 of 2020:

.....

6. *Considering the limited scope of prayer sought for in the writ petition and also considering the fact that against the writ appeal order, Special Leave Petition has been filed and the same was dismissed, the respondents are directed to consider the representation of the petitioner dated 03.02.2020 in the light of the order passed in W.A.(MD)No.93 of 2018 within a period of eight weeks from the date of receipt of copy of the order. It is needless to say that the petitioner shall enclose the copy of the*



C.M.A(MD)Nos.458 and 459 of 2024

WEB COPY

representation dated 03.02.2020 along with this order copy to the respondents.”

Even though the Learned Single Judge had directed to consider and pass orders, the order further states to pass orders in the light of order passed in W.A.(MD)No. 93 of 2018. Aggrieved over, the respondents had preferred W.A.(MD)No.241 of 2021 and W.A.(MD)No.227 of 2021 and the Hon’ble Division Bench had disposed of the appeals vide orders, dated 15.07.2021 and the relevant portion of the orders is extracted hereunder:

“5. In any event, the direction issued is to consider the representation, it should mean that consideration on merits and in accordance with law. It will be well open to the appellants to take note of the decision in W.A. (MD)No.93 of 2018 dated 27.03.2018 and arrive at a decision in accordance with law.”

From the above order of the Hon’ble Division Bench, it is evident that the respondents were directed to consider and pass orders in accordance to law. The order further states that while passing the order in the present case, the respondents may take note of the order in W.A.(MD)No.93 of 2018. The respondents in order to obey the order of the Hon’ble Division Bench, had passed an order declining regularization since the petitioners / appellants herein being a



part time employee in consolidated pay. When the petitioners / appellants herein are not having the qualification stated in the G.O.Ms.No.22 and G.O.Ms.No.74, the petitioner is not entitled to regularization and hence, there is no infirmity in the order declining regularization.

12. The petitioners / appellants herein had relied on the G.O.Ms.No.111 dated 09.05.2012, G.O.Ms.No.247 dated 03.10.2012 and G.O.No.68 dated 18.03.2013 and submitted that the Government had granted regularization to daily wages employees and also to part time employees. It is seen that after the G.O.Ms.No.22, the Education Department was flooded with applications from the employees who were not regularised and the High Court was also flooded with writ petitions. The Court has passed several orders. In some cases, positive directions were granted and in some cases directions to consider and pass orders were granted. The Government preferred writ appeals and the same were dismissed. Aggrieved over the same, the Government preferred SLPs and the same were dismissed. Also, the Government faced contempt in several cases. Left with no option, the Government had passed G.O.Ms.No.111 dated 09.05.2012 wherein it recommended to pass orders to regularize the posts, to pay scale and other monetary benefits for 618 individuals and to grant regularization for more



than 800 part time workers in the Education Department. At the most, the said G.O.Ms.No.111 could be considered as recommendation. But the Government had accepted the recommendation only for daily wages employees and had passed orders in G.O.Ms.No.247 granting regularization and monetary benefits for eligible candidates. Thereafter, the Government realized that the part time employees were included in the above litigation, but the Government was facing contempt, hence, the Government was forced to pass regularization order in G.O.Ms.No.68 to 90 employees who are part time employees. When the G.O.s are passed in order to comply with the Court orders under the pressure of contempt, such G.O.s cannot be relied on to grant the same benefits. Therefore, the aforesaid G.O.s cannot be relied on by the petitioners / appellants herein for their prayer of regularization.

13. Further, the Government after suffering the above Court orders, in order to remove the adverse impact of the said G.O.s, had taken policy decision that the part time employees cannot seek regularization, thereafter, had issued G.O.Ms.No. 74, Personnel and Administrative Reforms Department, dated 27.06.2013, wherein it is categorically stated that the part time employees are not entitled to the benefits of regularization granted under G.O.Ms.No.22. It is pertinent to state that both



C.M.A(MD)Nos.458 and 459 of 2024

G.O.Ms.No.22 and G.O.Ms.No.74 were upheld in Singamuthu's case cited supra.

WEB COPY

In such circumstances, the petitioners / appellants herein are not entitled to regularization since even as per the petitioners / appellants herein they are working as part time employees in consolidated pay.

14. When the petitioners / appellants herein are not entitled to regularization, the respondents have rightly rejected the petitioners' application for regularization. When the petitioners / appellants herein are not legally entitled to regularization, claiming compensation for Rs.1,00,00,000/- is vexatious litigation. Therefore, this Court is of the considered opinion that the Lower Court is right in stating that there is no cause of action to consider the petitioners' / appellants' application.

15. Further, this Court is bound to record the series of litigations filed by the employees seeking regularization, especially criminal cases. One C.Rajam and P.Ponnamma had filed criminal complaint against the officials namely three District Educational Officers, Office Superintendent, Assistants. It is pertinent to state that regularization is exclusive domain of the employer as held in **Govindasamy's case** cited supra. The employer is the Government and not the



C.M.A(MD)Nos.458 and 459 of 2024

WEB COPY

DEOs or CEOs. The Government has every power to take policy decision to regularize the class of employees. In fact, the Government ought to ascertain the financial implications, further claims (especially future claims by several persons) and then ought to take policy decision. In such circumstances, by filing criminal complaints against officials would amount to arm twisting the officials and intimidating the Government. Such practices ought to be deprecated. It is so unfortunate that the officials are facing criminal prosecution for no fault of theirs.

16. For all the observations and reasons stated supra, the Civil Miscellaneous Appeals are liable to be dismissed and accordingly Civil Miscellaneous Appeals are dismissed. No costs.

23.04.2024
(2/2)

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Tmg



C.M.A(MD)Nos.458 and 459 of 2024

To

WEB COPY

- 1.Principal District Judge, Nagercoil.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.Chief Educational Officer,
Nagercoil – 629 001,
Kanyakumari District.
- 4.The District Collector,
Kanyakumari District,
Nagercoil – 629 001.
5. District Educational Officer,
Nagercoil – 629 001,
Kanyakumari District.



WEB COPY



C.M.A(MD)Nos.458 and 459 of 2024

S.SRIMATHY, J.

Tmg

C.M.A(MD)Nos.458 and 459 of 2024

23.04.2024
(2/2)