



W.P(MD)No.4397 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.4397 of 2021
and
W.M.P(MD)No.3546 of 2021

K.Vadivel

... Petitioner

Vs.

- 1.The State represented by
The Secretary to Government,
Rural Development and Panchayat Raj
Department,
St.George Fort,
Chennai – 600 009.
- 2.The Commissioner.
O/o.Rural Development and Panchayat Raj,
Panagal Building,
Chennai.
- 3.The District Collector,
Karur District, Karur.
- 4.The Commissioner,
O/o.Panchayat Union,
Krishnarayapuram,
Karur District.



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5.The Block Development Officer,
O/o.Krishnarayapuram Panchayat Union,
Krishnarayapuram,
Karur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in his proceedings in Letter No.9763/Pa/5/2016/7 dated 05.03.25018 and quash the same as illegal and consequently to direct the respondents to regularize the services of the Petitioner with effect from the date of initial appointment along with all other consequential monetary and service benefits within the period that may be stipulated by this Court.

For Petitioner : Mr.Mohamed Imran
for M/s.Ajmal Associates

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
Assisted by Mr.S.Shaji Bino
Special Government Pleader

ORDER

The present writ petition has been filed to call for the records relating to the impugned order passed by the first respondent in his proceedings in Letter No.9763/Pa/5/2016/7 dated 05.03.25018 and quash the same as illegal and consequently to direct the respondents to



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regularize the services of the petitioner with effect from the date of initial appointment along with all other consequential monetary and service benefits within the period that may be stipulated by this Court.

2. The petitioner was initially appointed as Watchman on 01.07.1991 through employment exchange in pursuance to a call letter issued by the fourth respondent. Though it was stated in the appointment order that the petitioner's appointment is temporary, it was intended to be made permanent as his appointment was made by following the employment seniority. The service register was also opened in respect of the service condition and he was also paid with regular time scale of pay. Subsequently, he was transferred and posted as Night Watchman in Krishnarayapuram Panchayat Union Office on 17.07.1992. Since his service was not regularised for a long time, the fourth respondent vide proceedings dated 17.08.2010 issued certain details to the third respondent for the purpose of regularisation of the petitioner's service. Since the said proposal was not taken into consideration, the petitioner filed W.P(MD)No.11146 of 2015 seeking the direction to regularise his service. This Court vide order dated 11.02.2016, directed the third



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respondent to consider his representation in the light of the recommendation of the fourth respondent. Following the same, the fifth respondent vide proceedings dated 04.03.2016 informed the petitioner that in order to regularise his service, ratification is required from the Government for the purpose of relaxation of his age at the time of his appointment. Thereafter, the third respondent vide proceedings dated 19.03.2016, had sent a proposal to the second respondent to regularise his service. The proposal was incorporated with the request for relaxation of the petitioner's age. In the meanwhile, the petitioner attained the age of superannuation on 30.06.2016. Since his service was not regularised, no order was passed allowing him to retire from service and he was orally instructed not to further come to the office. Whiles, the second respondent vide proceedings dated 25.09.2017 sought for a direction and on that basis the first respondent vide proceedings dated 26.09.2017 asked for further particulars. The third respondent furnished all the required particulars vide proceedings dated 28.11.2017. Even then, no action was taken on the regularisation of the petitioner, the petitioner filed W.P(MD)No.360 of 2018. This Court vide order dated 26.02.2018 directed the first respondent to pass final order in pursuance



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to the communication dated 28.11.2017 on or before 30.04.2018. Even after that no action was taken to regularise his service. Under such circumstances, the first respondent vide impugned proceedings dated 05.03.2018, rejected his claim for regularisation on the ground that the petitioner's appointment was made subsequent to G.O(Ms)No.878, Rural Development Department, dated 15.05.1981. However the petitioner's name was not included in G.O(Ms)No.161, Rural Development and Panchayat Raj Department, dated 26.06.2000. Hence challenging the same, the present writ petition came to be filed.

3. Heard the learned counsel appearing for the petitioner and Mr.Veerakathiravan, learned Additional Advocate General assisted by Mr.S.Shaji Bino, learned Special Government Pleader appearing for the respondents. The Third respondent had filed counter affidavit and carefully perused the materials available on record.

4. The petitioner was appointed as Santhai Watchman on 01.07.1991 by the fourth respondent through employment exchange and was posted on Irumboothipatti Weekly Santhai, Krishnarayapuram



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Panchayat Union. Subsequently, he was transferred and posted as Night Watchman in the office of the Krishnarayapuram Panchayat Union on 17.07.1992. Since the post of Night Watchman came under contingent service, there was an audit objection in the year 1993-1994 stating that only after getting concurrence from the Government, the contingent vacancy could be filled up as regular vacancy. Therefore, it was advised to get ratification from the Government for the appointment of the petitioner. In the meanwhile, the Panchayat Union council passed Resolution No. 156 dated 18.09.1997 and fixed the salary of the petitioner under regular time scale of pay and service register was also opened for his condition of service. During the period 1981, there was a ban for the appointment under the contingent service. After 01.04.1981 by virtue of G.O(Ms)No.267, Rural Development Department, dated 22.12.1999 and G.O(Ms)No.161, Rural Development Department, dated 26.06.2000 the services of the contingent, daily wage and consolidated charges employees those who have completed 10 years of service were ordered to be regularised from the date of the Government Order i.e., from 26.06.2000. Thus the services of 171 Night Watchmen whose name found in the annexure of the said Government Order were ordered to be



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regularised. However, the petitioner's name was left out in the said Government Order.

5. The learned Additional Advocate General vehemently contended that since the petitioner was appointed under time scale on 01.07.1991, he was not entitled to the benefit of G.O(Ms)No.267, Rural Development Department, dated 22.12.1999 and G.O(Ms)No.161, Rural Development Department, dated 26.06.2000.

6. However, the learned counsel appearing for the petitioner pointed out that the Hon'ble Apex Court has dealt with a similar case. He relied upon the order passed by the Hon'ble Apex Court in ***Sheo Narain Nagar & Others Vs State of Uttar Pradesh & Another*** case reported in ***(2018) 13 SCC 432***. The relevant portion is extracted as follows:

“7. When we consider the prevailing scenario, it is painful to note that the decision in Umadevi has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-



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wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not envisaged by Umadevi. The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Umadevi has been ignored and conveniently over looked by various State Governments/ authorities. We regretfully make the observation that Umadevi has not be implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularising the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34(1) (d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S.Nakara v. Union of India, from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision



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for pension, retiral benefits etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Umadevi. Thus, the time has come to stop the situation where Umadevi can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Umadevi laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Umadevi.”

He further relied upon the order passed by the Hon'ble Apex Court in ***Nihal Singh & Others Vs The State of Punjab & Others*** case reported in ***(2013) 14 SCC 65***. The relevant portion is extracted as follows:



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“27. Such a procedure making recruitments through the employment exchanges was held to be consistent with the requirement of Articles 14 and 16 of the Constitution by this Court in Union of India v. N.Hargopal.”

He also relied upon another judgment passed by the Hon'ble Apex Court in ***Raman Kumar & Others Vs Union of India & Others*** case reported in **2023 LiveLaw (SC) 520**. The relevant portion is extracted 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 No(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 available, and, thereafter, Group 'D' posts have been abolished, the appellants could not have been regularized.



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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.”

7. Per contra, the learned Additional Advocate General relied upon the order passed by the Hon'ble Division Bench in W.A(MD)No.836 of 2014 dated 05.07.2023 and the order made in W.P(MD)Nos.10739 and 10740 of 2023 dated 12.12.2023. However, those two cases were not applicable to the facts and circumstances of this case. He relied yet another order of this Court made in W.P.No.32769 of 2014 (A.Subramanian Vs The Secretary to Government, Department of Higher Education & Others) dated 26.07.2022. The relevant portion is extracted as follows:

“11. The very principles laid down by the Constitution Bench is to make appointments only through recruitment



process as per rules in force. The Constitution Bench in unambiguous terms ruled that irregular and illegal appointments cannot be regularised. Thus, the one time permission granted in paragraph 53 of the judgment cannot be followed in perpetuity. It was intended to clear the proposals, which was pending during the relevant point of time and more so, even in such cases, the authorities competent are bound to verify, whether it is illegal or irregular appointments. It is not as if the Hon'ble Supreme Court of India directed the authorities to regularise illegal appointments. No such approval was granted by the Constitution Bench as the principles are well settled by the Constitution Bench of the Apex Court of India.

12. There are subsequent judgments, following the principles laid down in the Uma Devi's case (cited supra). No doubt, the relief of regularisation and permanent absorption was granted even by two Judges Bench of the Hon'ble Supreme Court in certain cases after the Uma Devi's case (cited supra). However, those relief were granted by considering the particular facts and circumstances of those cases. Those judgments rendered subsequent to the Uma Devi's case by the High Court and Hon'ble Supreme Court have denuded to loose its status as precedent. Those judgments cannot be followed as precedent as paragraph 54 of the Constitution Bench judgment



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clarifies that the judgments and the Government orders running counter to the principles laid down by the Constitution Bench have denuded to loose its status as precedent. Thus, the Government orders and the subsequent judgments, granting benefits of regularisation or permanent absorption by the High Court or by the Supreme Court on certain facts cannot be followed as precedent and thus, the judgements produced in this regard cannot be relied upon for the purpose of grant of regularisation or permanent absorption.

13. Pertinently, with reference to the part time temporary appointments, the Hon'ble Supreme Court of India in the case of Secretary to Government, School Education Department Vs. Thiru R.Govindaswamy and Others reported in [(2014) 4 SCC 769], considered the scope of issuing direction by the High Court for grant of regularisation. The Hon'ble Supreme Court of India considered the principles laid down in the case of State of Rajasthan Vs. Daya Lal reported in [(2011) 2 SCC 429] and in the case of Union of India Vs. A.S.Pillai reported in [(2014) 13 SCC 448]. The Hon'ble Supreme Court of India in clear terms ruled as follows:

“8. This Court in State of Rajasthan v. Daya Lal has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down wellsettled principles



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relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under: (SCC p. 435, para 12)

(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 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



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(ii) *Mere continuation of service by atemporary 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 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.*



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(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 under a contract or under a statute. (emphasis supplied)”

14. In the present case, the petitioner states that he was continuously engaged as part time Assistant for several years and he was discharged from services without even passing any order of termination. It is an admitted fact that no appointment order was issued nor any order of termination was issued.

15. The petitioner accepting the terms and conditions of the employment, served in the Hostel and therefore, he cannot turn around and seek the benefits of regularisation or permanent absorption in violation of the Recruitment Rules.



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16. *The respondents state that the petitioner was engaged as part time Assistant to maintain the students Hostel records and he has not handed over the key on his discharge from service and in this regard, the respondents filed a Criminal complaint before the jurisdictional Police Station. The fact regarding the discharge of the writ petitioner was disputed by the petitioner, stating that no order of termination or discharge was issued. Therefore, he has not handed over the key. However, these facts may not be relevant and deserves no further consideration.*

17. *At the outset, the writ petitioner was not appointed in accordance with the Recruitment Rules in force in a sanctioned post. If at all the posts are sanctioned by the Government, then the respondents are bound to appoint persons in accordance with the Recruitment Rules in force by affording equal opportunity to all the eligible candidates, who all are aspiring to secure public employment through open competitive process. Rule of reservation is to be followed under the Constitutional scheme of appointments. Equal opportunity in public employment is the mandate. Thus, in the event of undertaking the process of selection, appointments for sanctioned posts, the procedures are to be scrupulously followed.”*



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8. The petitioner is a senior citizen. No doubt he was sponsored by the employment exchange. The second respondent had already taken three decisions that his appointment should be regularised. However, the matter has been kept in abeyance endlessly. Though the petitioner was appointed temporarily on 01.07.1991, he was allowed to continue till he attained his age of superannuation on 30.06.2016. That apart, his original appointment was in pursuance of a regular recruitment made in accordance with relevant rules in an open competitive process against sanctioned vacant post. He was also called upon to attend interview on 20.06.1991 as sponsored by employment exchange on the basis of an official notification and he was brought under regular time scale of pay with effect from 01.07.1991 vide Resolution No. 156 dated 18.09.1997 passed by the Krishnarayapuram Panchayat Union. Following which a service register was maintained with effect from 09.07.1991 by the fourth respondent. Rule of equality in public employment is basic feature of our constitution. Having allowed to extract his services as an adhoc for 25 long years and having failed to show the doors to the petitioner with effect from 26.06.2000, that is, the date of G.O(MS)No.161 Rural Development Department whereby the services of contingent, delay



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wage and consolidated pay employees those who completed 10 years of service were ordered to be regularised, negating the fact that the petitioner was brought under regular time scale of pay with effect from 01.07.1991 by the fourth respondent, the first respondent ought not to have rejected the proposal to regularise the petitioner's service, that too after 25 years, for the reason that he was over aged, conveniently brushing aside the fact the he was called for interview in a proper selection process as sponsored by the employment exchange. In a welfare State like ours, when an affirmative action is the constitutional goal, after 25 years of continuous public service, the first respondent ought not to have perilously deprived of the petitioner with the positive measure of regularising his service. The benevolence of the Government is wanted particularly in the claim like the present one.

9. In view of such observation, this Court hereby quash the first respondent's proceedings dated 05.03.2018 as illegal and consequently direct the respondents to regularise the service of the petitioner with effect from the date of his initial appointment.



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10. Accordingly, this writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.02.2024

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

To

- 1.The Secretary to Government,
Rural Development and Panchayat Raj
Department,
St.George Fort, Chennai – 600 009.
- 2.The Commissioner.
O/o.Rural Development and Panchayat Raj,
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