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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)Nos.17729 and 27438 of 2023

and

WMP(MD)Nos.14808, 14811, 22175, 23571, 23573 & 23574 of 2023
& 12948 of 2024

WP(MD)No.17729 of 2023:

S.Subbammal (Died)

2.Sollamadan

3.Auvudaiyammal

4.Kaleeswari

5.Maheswari

6.Sudha

.. Petitioner

[Petitioners 2 to 6 are substituted vide order daed 04.07.2024 in
WMP(MD)No.12948/2024 in WP(MD)No.17729/2023 by RNMJ]

Vs.

1.The Chairman/Managing Director,
Tamil Nadu Ware Housing Corporation,
No.100, Anna Salai, Guindy,
Chennai-32.

2.The Senior Regional Manager,

1/14



Tamil Nadu Ware Housing Corporation,
Nellaippar High Road,
Tirunelveli-627 001.

3.The Ware House Manager,
Meelavittan Ware House,
Thoothukudi,
Thoothukudi District.

4.Assistant Commissioner of Labour,
Thoothukudi,
Thoothukudi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to his proceedings in Proc.Rc.002575/2023/01 dated 28.06.2023 and to quash the same and direct the respondents 1 to 3 to implement the order passed by the 4th respondent by his proceedings in Na.Ka.No.E/1041/2022 dated 02.05.2023 with all benefits and backwages within a period that may be stipulated by this Court.

For Petitioners : Mr.G.Chandrasekar

For R4 : Mr.S.Shanmugavel
Additional Government Pleader

For R1 to R3 : Mr.C.Gangai Amaran



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WP(MD)No.27438 of 2023:

1.The Chairman//Managing Director,
Tamil Nadu Ware Housing Corporation,
No.100, Anna Salai, Guindy,
Chennai-32.

2.The Senior Regional Manager,
Tamil Nadu Ware Housing Corporation,
Nellaippar High Road,
Tirunelveli-627 001.

3.The Ware House Manager,
Meelavittan Ware House,
Thoothukudi,
Thoothukudi District.

.. Petitioners

Vs.

1. Subbammal(Died)

2. Sollamadan

3.Auvudaiyammal

4.Kaleeswari

5.Maheswari

6.Sudha

7.Assistant Commissioner of Labour,
Thoothukudi,
Thoothukudi District.

... Respondents

[R2 to R6 are substituted vide order dated 04.07.2024 in WMP(MD)No.
13031/2024 in WP(MD)No.27438/2023 by RNMJ]



Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the record pertaining to the impugned order passed by the 2nd respondent vide Na.Ka.No.E/1041/2022 dated 02.05.2023 and quash the same as illegal.

For Petitioners : Mr.C.Gangai Amaran

For R7 : Mr.S.Shanmugavel
Additional Government Pleader

For R1 to R5 : Mr.G.Chandrasekar

COMMON ORDER

Since the issue involved in these two writ petitions is one and the same, these two writ petitions are taken up together and disposed by this common order.

W.P(MD)No.17729 of 2023:

2. Heard Mr.G.Chandrasekar, learned counsel for the petitioners, Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the 4th respondent and Mr.C.Gangai Amaran, learned counsel for the respondents 1 to 3.



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3. Since the first petitioner Subbammal passed away pending the writ proceedings, her legal heirs are substituted in these two writ petitions. The first petitioner Subbammal was appointed as Sweeper on consolidated payment in the third respondent Ware House by the 1st respondent Chairman/Managing Director, Tamilnadu Ware Housing Corporation. She was working as a Sweeper from 14.07.2000 as temporary employee for nearly 24 years. Earlier, she filed a writ petition in W.P(MD)No.7097 of 2013 seeking for regularizing her service. However, the said petition was subsequently withdrawn with liberty to file a case before the appropriate authority under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Accordingly, the 1st petitioner filed a petition before the 4th respondent. After conducting proper enquiry, the 4th respondent by his proceedings, dated 02.05.2023, gave a direction to the respondents 1 to 3 to regularize her service from the date on which she has completed 24 Calendar month from her original date of appointment i.e., 14.07.2000. The 1st petitioner has served the above order to the 1st respondent. However, the 1st respondent terminated the 1st petitioner's



service on 28.06.2023 without any notice through his proceedings in Proc.Rc.002575/2023/01 stating that the 1st petitioner was appointed as a part time Sweeper and hence, the posting is purely temporary and liable to be terminated at any time without assigning any reason. The 1st petitioner's entry was denied and salary for the last month was also not paid to her. Hence, the petitioner has challenged the order of termination dated 28.06.2023 and seeking a direction to implement the order of the 4th respondent in proceedings in Na.Ka.No.E/1041/2022 dated 02.05.2023.

W.P(MD)No.27438 of 2023:

Heard Mr.C.Gangai Amaran, learned counsel for the petitioners 1 to 3, Mr.G.Chandrasekar, learned counsel for the respondents 1 to 5 and Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the 7th respondent.

4. As a counter case, the respondent Ware House has filed a writ petition in WP(MD)No.27438 of 2023 challenging the order of the Assistant Commissioner, Thoothukudi, Thoothukudi District in



Na.Ka.No.E/1041/2022 dated 02.05.2023.

5. It is submitted that on behalf of the Ware House Corporation that the 1st respondent Subbammal has been appointed only on a part-time basis. Various Government Orders have been issued for fixing the minimum wages and the wages have been fixed only in accordance with the above orders and without any delay. Since the 1st respondent had been engaged as a part-time Sweeper, she has no right to claim any regularization as a matter of right. As per the judgment of the Hon'ble Supreme Court in *State of Karnataka Vs. Umadevi (2006)4 SCC(1)*, the first respondent's services cannot be regularized since she was engaged only as a part-time Sweeper. If the services of the part-time employees are regularized, it would affect the equal opportunity in the public employment which is guaranteed under Articles 14 and 16 of the Constitution of India. Since the orders of the Assistant Commissioner, Thoothukudi have been passed without taking into consideration the above facts, the above order is illegal.

Discussion:

6. Though the Ware House Corporation claims that the 1st



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petitioner Subbammal is engaged as a part-time Sweeper by the nature of work in the Ware House, it cannot be said that she would be engaged only on part-time basis during the cleaning process in the Ware House. Whenever the load of materials is arrived and unloaded and despatched, the service of the Sweepers are indispensable. So, it cannot be said that the Sweeper's service is not required from 09.00 a.m, till 06.00 p.m., but during particular hours of the office. Even the said allegations were not substantiated by specifying the hours during which the petitioner was engaged. The 1st petitioner has rendered her services for more than 23 years. The 1st petitioner is engaged as Sweeper and she is executing manual work and hence, she would come under the definition of 'workman' as defined under the Act. If such workman is in continuous service for a period of 480 days within a period of 24 calendar month in the industrial establishment, he shall be made permanent. It is not denied by the Ware House Corporation that the 1st petitioner was in continuous employment for more than 480 days. But the only contention made by the Ware House Corporation is that the 1st petitioner is a part-time Sweeper and if she is made permanent, that will violate the principles of equality in public employment. So, according to the Ware House



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Corporation, the conferment of permanency on the 1st petitioner Subbammal would by-pass the competitive process for getting public employment and that would prejudice the interest of others.

7. In **Umadevi** case, the Hon'ble Supreme Court has decried to regularise the person who has been appointed on temporary basis against the regular post in public employment. It is also stated that the petitioner cannot claim permanency in the absence of any available post.

8. It is learnt that there is no post called as part-time Sweeper in the respondent establishment and in fact, the establishment has sanctioned post in the cadre of Sweeper. The continuous engagement of the 1st petitioner for more than 23 years would mean that there was a demand for the job but that is being obtained without creating a regular post but by keeping the post as temporary. For the similar point, it is essential to refer to the judgment of the Division Bench of this Court in ***W.A.(MD)No.1163 & 1164 of 2016 [Madurai Corporation v. The Inspector of Labour and others]***, wherein the Hon'ble Division Bench has held that a category of temporary workers is being engaged in such



Departments for many years without being paid with the equal salary paid to the other employees. So, unfair labour practice cannot be allowed to be perpetuated in the name of temporary employment. After having relied on several judgments of the Hon'ble Supreme Court and High Court, the Division Bench of this Court while dismissing the writ petitions, confirmed the orders passed by the Inspector of Labour directing conferment of permanent status on 81 workmen involved therein. The essential part of the said judgment is extracted as below:

“33. This judgment of the Hon'ble Supreme Court, in fact, advances the case of the workmen in these writ appeals and writ petitions. The Act 46 of 1981 confers a power on the Inspector of Labour to direct permanency of employees who had worked for more than 480 days in two calendar years. As we had already pointed out, there is no dispute with regard to the fact that all the employees had worked for 480 days in two calendar years. The work of sanitary workers in a Corporation cannot be at any stretch of imagination termed as temporary.

34. The Municipal Solid Wastes (Management and Handling) Rules, 2000, would show that the municipal authority is burdened with the responsibility of implementation of the provisions of the rules and therefore, it cannot be said that collection and disposal of wastes is a temporary phenomenon. It is a continuing factor which has to be carried out by the



Corporation. Therefore, the Corporation cannot be had to

contend that the sanitary workers were employed purely on temporary basis to carry out the temporary work.

35. The next decision cited by Mr.Veera Kathiravan, learned Additional Advocate General in Hindustan Aeronautics Ltd., s. Dan Bahadur Singh and others reported in (2007) 6 SCC 207, is also one rendered with reference to the provisions of service law where it was held that a person cannot claim permanency in the absence of availability of the posts. We, therefore, do not think that this judgment could be of any help to further the cause of the Corporation. Needless to point out that both in A.Umarani vs. Registrar, Co-operative Societies and others reported in (2004) 7 SCC 112 and State of Karnataka and others vs. Umadevi and others reported in (2006) 4 SCC 1, the Hon'ble Supreme Court has decried appointment of a person on temporary basis to regular posts in public employment. This Court has time and again held that those two decisions of the Hon'ble Supreme Court will not put fetters on the applicability of the Act 46 of 1981 on the workers who are appointed by an industrial establishment on a temporary basis.”

9. In the result,

(i) The writ petition filed by the Ware House Corporation in W.P(MD)No.27438 of 2023 is **dismissed**. No Costs. Consequently, connected miscellaneous petitions are closed.



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(ii) The writ petition in W.P(MD)No.17729 of 2023 is **allowed**.

The respondents 1 to 3 are directed to implement the proceedings of the 4th respondent passed in Na.Ka.No.E/1041/2022 dated 02.05.2023 and confer permanency to the 1st petitioner Subbammal with all benefits and backwages within a period of six weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

11.07.2024
(2/3)

Index : Yes / No
NCC : Yes / No
PJL

To
1.The Chairman/Managing Director,
Tamil Nadu Ware Housing Corporation,
No.100, Anna Salai, Guindy,
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2.The Senior Regional Manager,
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R.N.MANJULA, J.

PJL

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