



W.P.(MD).No.20287 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.20287 of 2022
and WMP(MD) No.24961 of 2023

V.Esakki

... Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Secretariat, Chennai.
2. The Commissioner of School Education,
Chennai - 6.
3. The Chief Educational Officer,
Tenkasi District.
4. The District Educational Officer,
Tenkasi, Tenkasi 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 pertaining to the order passed by the 4th respondent in his proceedings in O.Mu. No.079/A1/2018, dated 26.03.2018 and quash the same and direct the



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respondents to regularize the service of the petitioner from the date of appointment i.e. from 13.11.1992 with all consequential benefits.

For Petitioner : Mr. V.Panneer Selvam

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present writ petition has been filed challenging the impugned order passed by the 4th respondent in his proceedings in O.Mu. No. 079/A1/2018, dated 26.03.2018 and direct the respondents to regularize the service of the petitioner from the date of appointment i.e. from 13.11.1992 with all consequential benefits.

2(i).The petitioner was appointed as Part time Sweeper during the year 1992-93 through Employment Exchange and posted in various Office under the Education Department. As per G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, the service of persons who had completed 10 years of service as on 01.01.2006 are entitled for regularization of service. Hence, the petitioner approached the department for extending the said benefits to him also. Since the same was not considered, the petitioner filed an application in O.A.No.1959 of 1998 and 743 to 745 of 2004



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before the Tamil Nadu Administrative Tribunal to issue a direction to consider the appointment of the petitioner as Sweeper in time scale. In the meanwhile, the Government imposed ban on regular appointment and as a result of the same, appointments could not be made. It was later clarified that the ban will not be applicable to the basic service posts such as Sweeper, Gardener, Watchman etc. Hence, the respondents drew a Seniority List on 22.02.2001, following which, the fourth respondent issued proceedings, dated 23.02.2001 referring the order of the Tribunal, for 17 persons, out of which, three have been given appointment and remaining 14 persons would be given as and when vacancies arises. In respect of 3 persons, who filed O.A.No.743 to 745 of 2004, their names have also been included in the seniority list. Despite availability of vacancies, he was not given appointment citing the ban order. While so, the Government issued an order lifting the ban in G.O.Ms.No.14, P & AR Department, dated 07.02.2006. Out of 22 persons in the seniority list, 6 have been given appointment in time scale and remaining were only 16 persons. Hence, the petitioner filed W.P(MD) No.8240 of 2006 seeking to direct the respondents to regularise his service. This Court directed the fourth respondent to appoint the petitioner in regular time scale in the existing vacancies of Class-II and Class-IV in Tirunelveli District within four weeks



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from the date of order, dated 08.09.2006. However, the petitioner was not employed and thereafter, filed a contempt petition in Cont.P(MD)No.295 of 2006 against the respondents, following which, appointment order was issued to the petitioner on 17.11.2006. Subsequently, as per seniority, the petitioner was promoted as Record Clerk on 16.06.2014. Since the persons appointed during the years 1991-92 as Part time Sweepers have been given with regular time scale on completion of 10 years, the petitioner made a request to grant regular time scale, without considering the same, the fourth respondent passed the impugned order of rejection, signed on 26.03.2018. Challenging the same, this writ petition came to be filed.

3. The learned counsel for the petitioner submitted that the writ petitioner was appointed through employment exchange in the year 1993 and hence, his appointment cannot be counted as irregular appointment. During that period, many persons were appointed in various departments through employment exchange. Some departments within 2 or 3 years had accorded time scale of pay to the employees. However, on the basis of G.O.Ms.No.528 Personnel and Administrative Reforms (F) Department, dated 10.10.1998, time scale was given in many other departments on completion of 10 years of



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continuous service. However, the petitioner was left out in the said exercise. For the delay attributable to the respondent authorities, the petitioner cannot be penalized and hence, the petitioner is entitled to get the time scale of pay from the date on which the similarly placed persons were given time scale of pay i.e., on the date of completion of 10 years of continuous service. He pressed for interfering with the impugned order and allowing the writ petition.

4.The learned Government Advocate submitted that the writ petitioner is estopped from maintaining the present writ petition on challenging the rejection order passed by the 4th responder herein alone, because even in the proceedings under which the writ petitioner herein was brought under regular time scale there had been a clause mentioning that the service of the writ petitioner herein is brought under regular time scale only from 17.11.2006 and hence, the writ petitioner cannot seek any past service benefits in future. The writ petitioner herein having accepted the Order bringing his service to regular time scale of pay with effect from 17.11.2006 without any whisper or objection, subsequently accepting the further promotions and other benefits based on the same, is now stopped from making claim to bring his service under time scale from the date of completion of ten years of service in part time



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post that too after lapse of 12 years and therefore writ petition is liable to be dismissed on ground of delay and laches. It is pertinent to note that even though the writ petitioner herein was appointed as part time sweeper based on the eligible list sponsored by the District Employment Exchange, his appointment is only on consolidated pay basis and therefore the same cannot be construed as an appointment made by following norms prescribed for the public employment and further it is pertinent to note that the very appointment of the writ petitioner on part time service itself make it clear the same is on consolidated pay and further the employment is only temporary and further no claim of regularization can be made in future. It is futile to contend that one set of employes have already reaped the benefit and the denial of benefit to the writ petitioner amounts to discrimination and the same has been considered by this Hon'ble Court in the case of *State of Tamil Nadu V. M.Seeniammal and others* reported in **2014 (5) CTC 474**. Hence, the question of considering the request of writ petitioner to regularize him from the date of appointment in the part time service does not even arise. Hence, pressed for dismissal of the writ petition.

5.The *lis* in hand is no more res-integra. I have dealt with similar matter in WP(MD) No.29964 of 2023 and the relevant portion is extracted



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hereunder:

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6. *The Hon'ble Supreme Court in the case of **Narendra Kumar Tiwari & Others Vs. State of Jharkhand & Others**) reported in 2018 (8) SCC 238 has dealt with a case of regularization. The relevant portion of the same is extracted as follows:*

“11. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.

12. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four months from today on regularisation of the status of the appellants.

13. The appeals are accordingly disposed of.

14. We may add that that it would be worthwhile for the State of Jharkhand to henceforth consider making regular appointments only and dropping the idea of making irregular appointments so as to short circuit the process of regular appointments.”

7. *In yet another case, the Hon'ble Supreme Court in 2018 (13)SCC 432 (**Sheo Narain Nagar Vs. State of Uttar Pradesh**) has dealt with a similar case and the relevant portion of which is extracted as follows:*



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“7. When we consider the prevailing scenario, it is painful to note that the decision in *Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] 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-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 (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. 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 (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the observation that *Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been 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 Articles 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* [*D.S. Nakara v. Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : AIR 1983 SC 130], 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 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 (3) [State of Karnataka v.Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . Thus, the time has come to stop the situation where Umadevi (3) [State of Karnataka v.Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] 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 (3) [State of Karnataka v.Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] 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/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi (3) [State of Karnataka v.Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] .

8. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularisation of the appellants. However, regularisation was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2-10-2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission



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raised by the learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms”.

*8. That apart, the Hon'ble Division Bench of this Court has dealt with a similar case in **W.A(MD)No.1377 of 2023** vide order, dated 28.08.2023 (**The State of Tamil Nadu Vs. A.Perumal**), wherein the entire crux of the issue in the lis in hand had been elaborately considered by the Hon'ble Division Bench and a favourable order was passed to the petitioners therein and the relevant portion of which is extracted as follows:*

*“7. Therefore, when the said order has become final, it is too late in the day for the appellants to contend that the petitioner is not entitled for regularization. This apart even the judgment relied upon by the learned Additional Government Pleader in **R.Govindasamy and Others** cannot be pressed into service in the instant case because the appellants/respondents themselves have prepared a regularization panel proposing to regularize with effect from 07.08.2001. But however due to some administrative delay, the order could not be given effect. The service of the respondent/writ petitioner as a scavenger has to be more carefully considered and given the nature of the work, the argument about part time employment is untenable. This apart, it can be seen that the learned Single Judge has also taken into consideration, the later Division Bench Order in **W.A.(MD)No.457 of 2018** fixing a time limit and therefore, considering the fact that the petitioner was directed to be regularised in the service and considering the fact that several other*



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similar cases also the benefit has been granted, the ratio in the judgment of Uma Devi Case cannot be pressed into service when the government itself has framed a scheme and similarly placed employees have regularised.”

9. Another case with respect to the persons similarly placed as the petitioners has been dealt by this Court in W.P(MD)No.430 & 431 of 2019 and this Court by an order, dated 01.04.2019 has passed favourable orders to the petitioners therein and the relevant portion of which is extracted as follows:

“15. Despite the same, the Secretary to Government has come forward with the present Government order, wherein it is stated that the services of the petitioners will be notionally regularised with effect from 25.04.2008 and they will be entitled to monetary benefits only from the date of the Government Order namely, 03.08.2017. This action of the respondents, in my considered opinion, amounts to noncompliance with the directions of this Court made in WP No.4101 of 2007. In fact the services of V.Balaganesan, who was also the petitioner in WP No.4101 of 2007 were regularised with effect from the date on which he completed 10 years of service by the proceedings of the District Education Officer, Cheranmahadevi, dated 15.12.2017. While so, it is not known as to how the petitioners could be treated differently.

17. Hence, the Writ Petitions are allowed, there will be a direction to the respondents to regularise the services of the petitioners with effect from 09.04.2002 (In WP No.430 of 2019) and 28.04.2004 (in WP No.431 of 2019) along with all monetary and other benefits and



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pass suitable orders within a period of 8 weeks from the date of receipt of a copy of this order.”

6.Considering the fact that the petitioner had been in service for more than 10 years and he was appointed only on the sponsorship of the Employment Exchange, it is not open for the respondents to state that the petitioner is not entitled for regularization particularly, in the light of the fact that the services of the similarly placed persons as that of the petitioner has been regularized in the past. Fully fortified by the dictum of the case as discussed supra, the impugned order, signed on 26.03.2018 is hereby quashed. The respondents are directed to regularise the service of the petitioner from the date of completion of ten years of service from the date of appointment.

7.With the above observations, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

26.03.2024

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

1. The Secretary, State of Tamil Nadu,



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School Education Department,
Secretariat, Chennai.

2. The Commissioner of School Education,
Chennai - 6.
3. The Chief Educational Officer,
Tenkasi District..
4. The District Educational Officer,
Tenkasi, Tenkasi District.



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L.VICTORIA GOWRI, J.

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ORDER IN
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