



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

and

**W.M.P.(MD)Nos.20184, 20185, 2601, 2604 of 2022, 6795, 14179 of
2023, 5, 661 and 7754 of 2024**

W.P.(MD).No.26050 of 2022:

1.B.R.Srikanth

2.K.S.Raja Keerthi

3.S.Rajamani

4.A.Muthu Krishnan

5.M.Gopi

6.M.Anbumanikandan

7.K.Arun Joseph

8.S.Sathya Beeman

9.J.Kalirajan

10.R.Siva Stalin

...Petitioners

Vs

1.The Director of General Training,
The Ministry of Skill Development and Entrepreneurship,
Employment Exchange Building, IARI Campus,
New Delhi – 110 012.



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

2.The State of Tamil Nadu,
Represented by its Secretary,
Department of Labour Welfare and Skill Development (S1),
Secretariat, Fort St.George,
Chennai – 600 009.

3.The Director,
Directorate of Employment and Training,
Thiru.Vi.Ka.Industrial Estate,
Alandur Road,
Guindy,
Chennai – 600 032.

4.The Assisting Director,
Craftsman Training Scheme,
Directorate of Employment and Training,
Thiru.Vi.Ka Industrial Estate,
Alandur Road, Guindy,
Chennai – 600 032.

... 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 pertaining to the impugned order in G.O.(Ms).No. 133, Labour Welfare and Skill Development (S1) Department, dated 17.10.2022 on the file of the second respondent and quash the same as illegal and consequently direct the respondents to engage the petitioners as Instructors in the respective Government Industrial Training Institutes on consolidated pay within the time stipulated by this Court.

For Petitioners	: Mr.S.Louis
For R-1	: Mr.D.Saravanan
For R-2 to R-4	: Mr.S.Baskaran
	Additional Advocate General
	Assisted by
	Mr.M.Lingadurai
	Special Government Pleader



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

W.P.(MD).No.7204 of 2023:

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1.S.Balwin Joel

2.R.Balajee

3.S.Sundar Raj

...Petitioners

Vs

1.The Director of General Training,
The Ministry of Skill Development and Entrepreneurship,
Employment Exchange Building, IARI Campus,
New Delhi – 110 012.

2.The State of Tamil Nadu,
Represented by its Secretary,
Department of Labour Welfare and Skill Development (S1),
Secretariat, Fort St.George,
Chennai – 600 009.

3.The Director,
Directorate of Employment and Training,
Thiru.Vi.Ka.Industrial Estate,
Alandur Road,
Guindy,
Chennai – 600 032.

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Craftsman Training Scheme,
Directorate of Employment and Training,
Thiru.Vi.Ka Industrial Estate,
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call for the records pertaining to the impugned order in G.O.(Ms).No. 133, Labour Welfare and Skill Development (S1) Department, dated 17.10.2022 on the file of the second respondent and quash the same as illegal and consequently direct the respondents to engage the petitioners as Instructors in the respective Government Industrial Training Institutes on consolidated pay within the time stipulated by this Court.

For Petitioners : Mr.S.Louis

For R-1 : Mr.S.Karthick

For R-2 to R-4 : Mr.S.Baskaran
Additional Advocate General
Assisted by
Mr.M.Lingadurai
Special Government Pleader

W.P.(MD).No.12 of 2024:

R.Siva Stalin

...Petitioner

Vs

1.The Director of General Training,
The Ministry of Skill Development and Entrepreneurship,
Employment Exchange Building, IARI Campus,
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2.The State of Tamil Nadu,
Represented by its Secretary,
Department of Labour Welfare and Skill Development (S1),
Secretariat, Fort St.George,
Chennai – 600 009.



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

3.The Director,
Directorate of Employment and Training,
Thiru.Vi.Ka.Industrial Estate,
Alandur Road,
Guindy,
Chennai – 600 032.

4.The Assisting Director,
Craftsman Training Scheme,
Directorate of Employment and Training,
Thiru.Vi.Ka Industrial Estate,
Alandur Road, Guindy,
Chennai – 600 032.

... 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 pertaining to the impugned order in Na.Ka.No. 25291/Pa.A4/2022 dated 18.11.2023 on the file of the third respondent and quash the same as illegal and consequently direct the respondents to engage the petitioner as Instructors in the respective Government Industrial Training Institute (Women), Aundipatti, Theni on consolidated pay within the time stipulated by this Court.

For Petitioner : Mr.S.Louis

For R-1 : Mr.S.Karthick

For R-2 to R-4 : Mr.S.Baskaran
Additional Advocate General
Assisted by
Mr.M.Lingadurai
Special Government Pleader



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

W.P.(MD).No.2580 of 2024:

1.S.Dinesh Babu

2.D.Gopinathan

3.R.K.Anu

4.S.Livingston Gnana Selvin

5.V.Imrankader

6.R.Muthu Lakshmi

7.L.Lagil Herin

8.D.Manickaraj

9.J.Sajin

...Petitioners

Vs

1.The Director of General Training,
The Ministry of Skill Development and Entrepreneurship,
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2.The State of Tamil Nadu,
Represented by its Secretary,
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Chennai – 600 032.



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

4.The Assisting Director,
Craftsman Training Scheme,
Directorate of Employment and Training,
Thiru.Vi.Ka Industrial Estate,
Alandur Road, Guindy,
Chennai – 600 032.

... 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 pertaining to the impugned order in G.O.(Ms).No. 133, Labour Welfare and Skill Development (S1) Department, dated 17.10.2022 on the file of the second respondent and quash the same as illegal and consequently direct the respondents to engage the petitioners as Instructors in the respective Government Industrial Training Institutes on consolidated pay within the time stipulated by this Court.

For Petitioner : Mr.S.Louis

For R-1 : Mr.S.Karthik

For R-2 to R-4 : Mr.S.Baskaran
Additional Advocate General
Assisted by
Mr.M.Lingadurai
Special Government Pleader

COMMON O R D E R

Heard Mr.S.Louis, learned counsel for the petitioner, Mr.S.Karthik & Mr.D.Saravanan learned counsel for the first respondent and Mr.S.Baskaran, learned Additional Advocate General, Assisted by, Mr.M.Lingadurai, learned Special Government Pleader for the respondents 2 to 4.



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

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2. The petitioners were appointed in the year 2013 as Instructors in Government ITI's on contract basis in pursuant to the Government Order in G.O.(Ms).No.314 Labour and Employment Department dated 30.12.2013, through which 44 posts were sanctioned in the cadre of Language cum Soft Skill Lab Instructors. The petitioners were got appointment only pursuant to the said Government Order and they have been given with the consolidated pay of Rs.20,000/-. The petitioners have been relieved in the year 2022, 2023 respectively from service. Subsequently, the Government had issued Government Order in G.O. (Ms).No.133 Labour Welfare and Skill Development (S1) Department dated 17.10.2022 to out source the Language cum Soft Skill Lab Instructor through open tender by following the Tamil Nadu Transparency Tenders Act, 1998. Now, the above Government Order is put to challenge by these petitioners.

3. Mr.S.Louis, learned counsel for the petitioner submitted that introduction of tenders system by following the Tamil Nadu Transparency Tenders Act, 1998 for filling up the post of Instructors in the Education Department is highly erroneous and misconceived.

Replacing one set of temporary employees with another set of temporary



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

employees is illegal, unless the Government prefers to fill up those posts through regular employment. Even though the petitioners have been appointed on contractual basis initially for a period of 11 months, the contract is being renewed for atleast 10 years and the petitioners have rendered 10 years of service continuously with a break of 2 days every year, which is a formality to show that they have not been engaged continuously.

4. So, the learned counsel for the petitioners submitted that the State being the model employer has put the livelihood of the petitioners at stake by adopting unfair labour practice. Hence, the petitioners have filed these Writ Petitions challenging the above said Government Order and seeking consequential direction to the third respondent to continue to employ them in the contractual services instead of filling up the said posts with another set of temporary employees.

5. Mr.S.Baskaran, learned Additional Advocate General submitted that the petitioners are not the employees of the Government and they have been outsourced through an out sourcing agency viz., ICT Academy of Tamil Nadu and hence they cannot compel the Government authorities to continue to engage their services. He further submitted



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

that there is no privity of contract between the petitioners and the Government. The petitioners have entered into agreement with the out sourcing agency. The said agreement also contains a clause for arbitration and if the petitioners are so aggrieved, can invoke the arbitration clause and workout their remedy against the out sourcing agency.

6. Mr.S.Baskaran, learned Additional Advocate General further submitted that the Government Order in G.O.Ms.No.133 dated 17.10.2022 has been issued to select the out sourcing agency, who can provide the services by entering into contract with the interested persons who apply. The relevant part of the Government Order would reads as under:

Labour Welfare and Skill Development (S1) Department

G.O.(Ms)No.133

Dated: 17.10.2022

ORDER:

....

3. After careful examination of the proposal, the Government hereby accords permission for the following:-

i. To select an agency through open tender duly following Tamil Nadu

Transparency in Tenders Act, 1998.



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

ii. *To enter into contract with the agency for a period of 1 year and to*

further renew the contract period for a period of 2 years based on satisfactory performance of the agency.

iii. *The Principal of the concerned ITI shall enter into agreement with the selected agency and outsource suitable candidates with relevant qualifications prescribed by DGT, New Delhi for a period of 11 months.*

iv. *The Principal of the concerned ITI shall make payment to the agency based on the attendance in the first week of next month.*

.....

7. It is brought to the notice of this Court that similarly placed persons including some of the petitioners herein had filed W.P.(MD).No. 12208 of 2022, claiming the relief of regularization of their services in the respective respondent institution, wherein, the Court vide order dated 05.01.2024 has observed as under:

“8. Since the petitioners were sponsored through outsourcing agency on contractual basis, their claim for permanent absorption could not be considered as they were not recruited adhering the communal reservation or norms prescribed by the Government in G.O.Ms.No.44, Labour and Employment Department, dated 11.03.2015, at the time of initial appointment.

9. Further consequent to the 167th meeting of the Board of Directors of the fifth respondent held on



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

22.12.2021, it was informed by the communication dated 20.01.2022 that the fifth respondent shall not engage contract employees directly henceforth and they have stopped the engagement of contractual staff through outsourcing of contractual staff directly to the government departments with effect from 22.12.2021. Therefore, on expiry of period of contract, the petitioners were discharged from their services as per the terms and conditions in the contract.

10. Therefore, they cannot claim appointment as a matter of right or they cannot seek permanent absorption which has to be made in accordance with the service rules in force. That apart, the writ petitions filed by the similarly placed persons were dismissed by this Court in W.P.Nos.18889, 18875 & 18876 of 2017. Hence, the prayer sought for in this writ petition cannot be considered and the writ petition itself devoid of merits and liable to be dismissed.

11. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed. There shall be no orders as to costs.”

8. Having failed to get an order for regularization, the petitioners have now challenged the Government Order in G.O.(Ms).No.133, Labour Welfare and Skill Development (S1) Department, dated



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

17.10.2022. As rightly pointed out by the learned Additional Advocate General, the order has been issued just to select an agency through open tender for the purpose of entering into contract with the agency for a period of one year or to renew the contract for the period of two years based on their services.

9. The Government Order further empowers the Principals of concerned ITIs to enter into agreement with the selected agency and outsource suitable candidates with relevant qualifications prescribed by DGT, New Delhi for a period of 11 months and make payments to the agency.

10. It appears from the above Government Order that the policy of the Government has been shifted to outsourcing from direct recruitment. If the petitioners are interested in engaging themselves in the service so given by the outsourcing agency to the individual ITI institutions, they can apply to the outsourcing agents and continue to get their services engaged. The petitioners' past experience would earn them brownie points in case they apply to the outsourcing agents selected by the Government.



W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

11. The Government availed the services of the petitioners and fulfilled all the demands by engaging them in temporary services through outsourcing and calling it as contractual services. It is a matter of concern that a model employer like the Government resorting to such a practice, knowing well that certain class of services are needed on permanent basis in certain Departments. As the impugned Government order is a policy decision of the Government, this Court has a limited scope for interference. However, the Government has to consider the plight of the community, which acquired qualifications on the hope of getting employment in Government services.

12. With the aforesaid observations, these Writ Petitions stands **disposed of**. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

13.06.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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To:

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W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

R.N.MANJULA, J.

Nsr

W.P.(MD).Nos.26050 of 2022, 7204 of 2023, 12 and 2580 of 2024

13.06.2024