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W.P.(MD).Nos.29964 to 29967 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.29964 to 29967 of 2023

W.P(MD)No.29964 of 2023:

S.Balakrishnan

...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: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 2nd respondent in his proceedings in Na.Ka.No. 073047/A5/E1/2022, dated 23.06.2023 and quash the same and direct the respondents to regularize the service of the petitioner from the date of appointment i.e. from 28.08.1993 with all consequential benefits.



W.P(MD).Nos.29964 to 29967 of 2023

W.P(MD)No.29965 of 2023:

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K.Mariyappan

....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.

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W.P(MD)No.29966 of 2023:

S.Gurusamy

....Petitioner

Vs

1.The State of Tamil Nadu,
Represented by its Secretary,



W.P(MD).Nos.29964 to 29967 of 2023

School Education Department,
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Chennai-6.

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W.P(MD)No.29967 of 2023:

M.Rajan

....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.



W.P(MD).Nos.29964 to 29967 of 2023

4.The District Educational Officer,
Tenkasi,
Tenkasi District.

...Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 2nd respondent in his proceedings in Na.Ka.No. 073047/A5/E1/2022, dated 23.06.2023 and quash the same and direct the respondents to regularize the service of the petitioner from the date of appointment i.e. from 06.12.1993 with all consequential benefits.

For Petitioner : Mr.V.Panneer Selvam
(In all the cases)

For Respondents :Mr.N.Ramesh Arumugam
Government Advocate
(In all the cases)

COMMON ORDER

The present writ petitions have been filed to call for the records pertaining to the order passed by the 2nd respondent in his proceedings in Na.Ka.No.073047/A5/E1/2022, dated 23.06.2023 and quash the same and direct the respondents to regularize the service of the petitioners from the date of appointment with all consequential benefits.

2. The petitioners were appointed as part time Sweepers on 28.08.1993, 08.10.1993, 31.01.1994 and 06.12.1993 respectively. As per G.O.Ms.No.22



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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 writ petitioners approached the department for extending the said benefits to them also. Since the same was not considered, the writ petitioners and other similarly placed persons together preferred writ petitions to regularize their service by filing W.P(MD)No.11707 of 2006 and the same was disposed off by this Court to regularize the petitioners therein by extending the benefits of the said Government Order vide order, dated 22.12.2006. As against the said order, the department preferred a writ appeal in W.A(MD)No.391 of 2007 and the same was dismissed on 25.10.2007. Pursuant to the orders passed by the Hon'ble Division Bench, the service of the petitioners was regularized with effect from 16.12.2007 thereby providing them with time scale of pay. However, they were not regularized with effect from the date on which they completed 10 years of continuous uninterrupted service. Hence, claiming that the regularization order is against the orders passed by this Court, the petitioners made representations, dated 07.11.2020 to regularize the service of the petitioners from the date of completion of 10 years of service and take 50% of part time service for pension benefits. Since the same was not considered, the petitioners filed W.P(MD)No.20862 of 2022. This Court disposed the said writ petition vide order, dated 02.09.2022 with a direction



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to pass appropriate orders on the representation of the petitioners. Pursuant to the same, the respondents had considered the petitioners' representation, dated 07.11.2020 and rejected the petitioners' claim vide proceedings, dated 23.06.2023. Challenging the same, these writ petitions came to be filed.

3. The learned counsel for the petitioner submitted that the writ petitioners were appointed through employment exchange in the year 1993 and hence, their appointment cannot be counted as irregular appointment. At 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 continuous service. However, the petitioners were left out in the said exercise and their service came to be regularized only with effect from 06.12.2007. For the delay attributable to the respondent authorities, the petitioners cannot be penalized and hence, the petitioners are entitled to get 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.

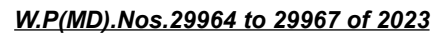


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4. Per contra, the learned Government Advocate appearing for the respondents denying the contention of the writ petitioners that similarly placed persons' service were brought under regular time scale of pay from the date of appointment in the part time service. He further submitted that it is a futile exercise to contend that one set of employees have already reaped the benefit and denial of benefits to the writ petitioners would amount to discrimination. For which, he relied upon the order passed by this Court in the case of ***State of Tamil Nadu Vs. M.Seeniammal & Others*** reported in ***2014 (5) CTC 474***. He also relied upon the judgments reported in ***2014 (4) SCC 769 (Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy & Others)***, ***2010 (13) SCC 448 (Union of India & Others Vs.A.S.Pillai)***, ***2015 (1) SCC 347 (State of U.P. and others Vs.Arvind Kumar Srivastava and others)***, ***2020 SCC Online SC 101 and 2009 (2) SCC 479 (SS.Balu Vs. State of Kerala)***.

5. Heard the learned counsels on either side and perused the materials available on record.

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***



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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] .

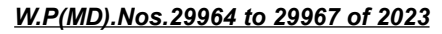
8. Coming to the facts of the instant case, there was a



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 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



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

10. The petitioners were forced to work and were denied the right of regularization from the date of completion of 10 years of service. Considering the fact that the petitioners had been in service for more than 10 years of service and they were appointed only on the sponsorship of the Employment Exchange, it is not open for the respondents to state that the petitioners are not entitled to regularization particularly in the light of the fact that the services of the similarly placed as the petitioners have been regularized in the past.



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11. In view of the same, the impugned order, dated 23.06.2023 is hereby quashed and consequently, the respondents are directed to regularize the service of the petitioners from the date of appointment.

12. With the above said observations, these Writ Petitions stand allowed. No costs.

21.02.2024

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

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L.VICTORIA GOWRI, J.

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