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W.P.No.5726 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

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1.The University Territory of Puducherry rep. By
The Secretary to the Government,
Personnel and Administrative Department,
Puducherry.

2.The Director of School Education,
Puducherry.

... Petitioners

Vs.

1.The Central Administrative Tribunal,
Rep. By the Registrar,
Additional City Civil Court Buildings,
High Court Campus,
Chennai – 600 104.

2.T.Ananth

3.R.Tamizhmani

4.V.Susairaj

5.A.Anand

6.P.Arul Onasis

7.D.Ramesh



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8.K.Sugumar

9.S.Palanivelu

10.S.Kamala

11.M.Aundy

12.M.Muthu

13.A.Arokiamarie

14.M.Vijaya

15.K.Valarmathi

16.D.Gowri

17.R.Malathi

18.M.Sarasu

19.Indira

20.Sathya

21.Sathyapriya

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records pertaining to the order passed in O.A. No.310/ 00129/ 2015 dated 05.12.2016 on the file of the Honourable Central Administrative Tribunal Madras and quash the same.



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For Petitioner : Mr.R.Syed Mustafa
Special Government Pleader (Puducherry)
For Respondents : Tribunal (R1)
Mr.P.Mohan (for R2,4,6,9-15 & 17)
No appearance (for R3,5,16,18-21)
R7 -died
R8- Disd vide Court order dt.02.04.2024

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

Under assail is the order dated 05.12.2016 passed in O.A.No.129 of 2015. The Union Territory of Puducherry is the Writ Petitioner before this Court. The respondents were initially appointed as Part time Causal Labourers in the year 1997 and thereafter, appointed as Full Time Casual Labourers in the year 2010.

2. The grievance of the respondents are that, one Smt.Sarasu appointed as Part Time Casual Labourer, subsequently was appointed as Full Time Casual Labourer in the year 2006. Therefore, the case of the respondents also to be considered on par with Smt.Sarasu for grant of Full Time Casual Labourer with effect from 27.07.2006.

3. Tribunal considered the issues and quashed the rejection order



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passed by the Writ Petitioner on 17.12.2014 and directed to grant the benefit of engagement on Full Time basis with effect from 27.07.2006 along with consequential benefits.

4. Mr.R.Syed Mustafa, the learned Special Government Pleader (Puducherry) would mainly contend that mistake committed by the Government in the case of Smt.Sarasu cannot be followed in perpetuity. In no other case, the benefit of Full Time employment was granted with retrospective effect. Admittedly, all the respondents were initially appointed as Part time employees in education department for more than 3 hours per day. Since their appointment itself is part time, grant of Full Time employment is a concession granted by the Government. All the respondents were already appointed as Full time staff and therefore, now they cannot seek retrospective benefit merely based on the case of Smt.Sarasu, who was granted benefit erroneously by the Government of Puducherry.

5. Mr.Mohanraj, the learned counsel appearing on behalf of the respondents would oppose by stating that, the respondents 2 to 17 were included and placed in the appropriate place with reference to their date of engagement on part time basis. The date of engagement on part time basis i.e.,



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the year 1997 was correctly mentioned in the order dated 09.10.2017. When the respondents were engaged on part time basis from the year 1997 onwards, the benefit granted to Smt.Sarasu as full time employee from the year 2006 is to be extended to all the respondents.

6. This Court considered the issues raised between the parties. The part time employment was granted to the respondents by the Writ Petitioner in G.O.Ms.No.85, Chief Secretariat (Education), dated 01.07.2003. The Government order reads as under,

ORDER

Sanction of the Lieutenant Governor, Pondicherry is hereby conveyed for the extension of services of 24 Part-time employees engaged in various schools under the control of the Education Department, Pondicherry as mentioned in the Annexure to this G.O. from stop-gap arrangement basis to continuous basis as Part-time staff (more than three hours) with immediate-effect.

2. In future, the Education Department, Pondicherry, should not resort to the engagement of Part-time staff, otherwise than through the Employment Exchange, Pondicherry.

3. The expenditure is debitable to the relevant Head



of Account under which their wages are claimed as laid down in G.O.Ms.No.92 dated 5.12.88 and G.O.Ms.No.3 dated 29.1.90 of Department of Personnel Administrative Reforms (PW), Pondicherry.

4. This issues with concurrence of the Finance Department vide U.O.No.44043/03/F4 dated 16.5.2003.

7. The Government order indicates that, the part time employment was provided as stop-gap arrangement (more than 3 hours). Therefore, it is a stop-gap arrangement made by appointing part time employees, till such time the regular appointments are made in accordance with the service rules in force. Such part time employment for more than 3 hours as stop-gap arrangement would not confer any right to claim full time employment or regularisation of services. However, in the present case, the Government itself considered and granted full time employment to the respondents. They are seeking retrospective full time employment by citing the case of one Smt.Sarasu.

8. Learned Special Government Pleader (Puducherry) would submit that the said Smt.Sarasu was working more than 3 hours even prior to the year 2003. However, the respondents were working more than 3 hours from 2003



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onwards. Therefore, the case of the respondents cannot be compared with

Smt.Sarasu.

9. In any case, the initial appointment of respondents were not in accordance with the service rules. Their initial appointment are irregular and illegal in some cases. Such illegal and irregular appointment would not confer any right to claim permanent appointment, which is otherwise is to be made by following the constitutional scheme of appointment.

10. All public appointments ought to be made strictly in accordance with service rules in force. Regularisation or permanent absorption cannot be granted in violation of rules. In the present case, the respondents were appointed in violation of the service rules and their initial appointments were irregular. However, the Government granted Full time employment by way of concession. Such concession cannot be claimed with retrospective effect from the date on which the respondents were initially engaged as part time employees on stop-gap arrangement.

11. In the present case, the case of the respondents were not considered for retrospective grant of full time employment, since the respondents have not



completed three years of continuous period of part time services, prior to 2003.

Regarding the claim of full time employment/regularisation of part time employees the Hon'ble Supreme Court of India in the case of ***State of Rajasthan & Ors. v. Daya Lal & Others***¹ settled the principles as follows,

“8. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization of services of an employee which would be violative of 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

¹ 2011 2 SCC 429



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(ii) Mere continuation of service by an temporary 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 regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization 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.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.



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(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.”

12. In any event, the appointment of the respondents as part time employees were on stop-gap arrangement basis. Such stop-gap arrangement would not provide any right to claim full time employment with retrospective effect. As per the Writ Petitioner, the case of the respondents were not considered for full time employment, since they have not completed three years of continuous period of service as part time employees. The service details of the respondents were considered for granting full time employment and on completion of three years of service, the benefit of full time employment was granted to all the respondents. That being so, citing one case of Smt.Sarasu, where the facts are distinguishable, the respondents cannot claim retrospective grant of full time employment, which is not in consonance with the legal principles settled by the Constitutional Court.



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13. We are of the considered opinion that the order of the Central Administrative Tribunal is not in consonance with the legal principles and therefore, we are inclined to interfere with the order of the Central Administrative Tribunal. Thus, the order passed in O.A. No.310/ 00129/ 2015 dated 05.12.2016 on the file of the Central Administrative Tribunal, Madras is hereby quashed.

14. Accordingly, the Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petitions, if any, are closed.

[S.M.S., J.]

[M.J.R., J.]

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Index: Yes/No

Speaking/Non-speaking order

gd

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