



W.P.No.41655 of 2016

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2025

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.41655 of 2016
and
W.M.P.No.35638 of 2016

K.Ganesan

... Petitioner

Vs

- 1.The Secretary to Government of Tamil Nadu,
Health and Family Welfare Board,
Fort St.George,
Chennai – 600 009.
- 2.The District Collector,
Dharmapuri District,
Dharmapuri.
- 3.The Dean
Government Dharmapuri Medical College Hospital,
Dharmapuri.
- 4.The Directorate of Medical Education,
Kilpauk,
Chennai – 600 010.
- 5.The Chairman,
Medical Service Recruitment Board,
Chennai – 6.



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6.The District Employment Officer,
Dharmapuri District,
Dharmapuri.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent dated 23.02.2016 and made in Proceeding No.3950/Nee.4/3/2016 and quash the same and direct the 4th respondent to regularise the petitioner based on the representation dated 30.06.2016.

For Petitioner : Mr.G.Paramasivam

For Respondents : Mr.K.Tippu Sulthan
Government Advocate
for R1 to R4
Mr.L.Murugavel
for R5

ORDER

This Writ Petition has been filed to call for the records of the 4th respondent dated 23.02.2016 and made in Proceeding No.3950/Nee.4/3/2016 and quash the same and direct the 4th respondent to regularise the petitioner based on the representation dated 30.06.2016.



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2. The learned counsel for the respondents submits that the petitioner can be accommodated within the purview of the Tamil Nadu Basic Service Rules. The law has attained clarity in terms of the decision of the Full Bench of this Court in W.P.No.23823 of 2023 vide order dated 26.02.2024. Relevant Paragraphs from the said order reads as under:-

34.A reference was made to the judgment of the Hon'ble Supreme Court in ***Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others***, reported in (2014) 4 SCC 769, which we had already pointed out, did not deal with the two Government Orders that were subject matter of consideration before the other Division Benches of this Court. In fact the Division Bench in ***State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others Vs. K.Rajakrishnan***, recorded a finding that the employee therein had not completed 10 years as on 20.08.2006. The fact whether he was a part- time employee or a temporary full-time employee is not available in the report. We are therefore, unable to take the judgment of the Division Bench, in ***State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others Vs. K.Rajakrishnan***, as a precedent to conclude on the retrospectivity or otherwise of G.O.Ms.No.74 dated 27.06.2013.

35. The other judgment, which is cited in the order of reference as one that would support the view that



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G.O.Ms.No.74 dated 27.06.2013 is retrospective, of the Division Bench in ***State of Tamil Nadu by its Secretary, Public Works Department, and another Vs. S.John Charles and others***. The Appeal arose out of a judgment of the learned Single Judge of this Court, which had quashed Clause 6 of G.O.Ms.No.74 dated 27.06.2013, which restricts the operation of G.O.Ms.No.22 dated 28.02.2006 only to full time employees. The power of the Government to change its policy was upheld and in the course of the order, the Division Bench has observed that the Government has not taken away the right to regularise the services subsequently provided those persons had completed 10 years of service as on 28.02.2006. The Division Bench described the action of the Government in passing G.O.Ms.No.74 dated 27.06.2013 as an attempt to streamline the scheme relating to regularisation. Even the other judgments of this Court, which have been referred to by us earlier, reaffirm the view that parity should be maintained, there should be no exploitation by the Government which is a welfare State and temporary or part-time employment to permanent posts should be stopped.

36. Having considered the entire literature that is available in the form of various pronouncements of this court, as well as the Hon'ble Supreme Court, we find it difficult to accept the judgment of the Division Bench in ***State of Tamil Nadu. by its Secretary, Public Works Department and another Vs. S.John Charles and others***, as one laying down the law to the effect that the Government is free to appoint persons either in part-time or on a full-time temporary basis to permanent posts and oust them out as it whims and fancies and we conclude that such unbridled exercise of indiscretions by the State Government would amount to exploitation.

37. We are of the considered opinion that wherever the posts are permanent in nature and they come within 86 categories of posts which form the Tamil Nadu Basic



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Service, temporary or part-time employment should be avoided and those persons, who have been appointed to such posts and who have completed 10 years of service as on 28.02.2006 would be entitled to regularisation *dehors* the nomenclature that is given to the appointment.

38. In fine, we hold

(a) If it is shown that the appointment is made to anyone of the 86 categories of posts enumerated in the Tamil Nadu Basic Service immaterial of the fact that whether such appointment is part-time or full-time, the employee would be entitled to the benefit of regularisation *dehors* G.O.Ms.No.74 dated 27.06.2013.

(b) If it is shown that the nature of employment is temporary and the requirement will cease to exist after a particular time, like those appointments that are made under various welfare schemes, it will then be open to the Government to engage temporary employees or part-time employees.

39. We conclude that the judgments in ***State of Tamil Nadu. by its Secretary, Public Works Department. and another vs. S. John Charles and others***, and ***State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others vs. K. Rajakrishnan***, cannot be taken as laying down an inflexible rule of law that any part-time or temporary employee who has completed 10 years of service on 28.02.2006 will not be entitled to regularisation. The benefit of regularisation will depend on the nature of the job and the fact that whether the post falls within any one of the 86 categories mentioned in the Special Rules for Tamil Nadu Basic Service.”



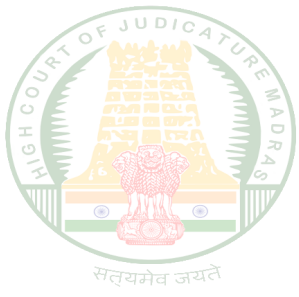
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3. In view of the above, this Writ Petition is disposed of by directing the respondents to pass a fresh order in the light of the above decision within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

30.04.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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