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W.P.No.23835 of 20..

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.02.2025

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.No.23835 of 2014
and M.P.No.1 of 2014**

P.Mohan

...Petitioner

Versus

- 1.The State of Tamil Nadu Rep. by
The Secretary to Government,
Municipal Administration and Water Supplies Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk, Chennai – 600 005.
- 3.The Commissioner,
Chidambaram Municipality,
Cuddalore District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for all relevant records pertaining to the order passed by the Commissioner, Chidambaram Municipality, the 3rd respondent herein vide his proceedings Na.Ka.62/2014/E1 dated 11.03.2014 and quash the same as illegal, arbitrary, unreasonable, being violative of principles of natural justice and thereby, direct the respondents herein to regularise the services of the



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petitioner in any one of the entry level posts from 23.02.2006 the date of issue of G.O.Ms.No.21 (Municipal Administration and Water Supply (MC.3) Department) dated 23.02.2006 with all consequential monetary and service benefits.

For Petitioner	:	Mr.A.R.Suresh
For Respondents – 1 & 2	:	Mr.R.Kumaravel, Additional Government Pleader
For Respondent – 3	:	M/s.M.E.Raniselvam

ORDER

The relief sought in this Writ Petition is to quash the Order dated 11.03.2014 bearing Na.Ka.62/2014/E1 (hereinafter referred to as “Impugned Order”) passed by the 3rd Respondent and direct the Respondents to regularise the services of the Petitioner in any one of the entry level posts from 23.02.2006 being the date of issuance of G.O.Ms.No.21 (Municipal Administration and Water Supply (MC.3) Department) with all consequential monetary and service benefits.

2. The case of the petitioner is that the Petitioner was appointed as General Servant/Gang Mazdoor (Public Works) in the 3rd Respondent Municipality on 01.07.1985. During the year 1989, the Petitioner was assigned the work of Wireman Helper. The Petitioner was working as Wireman Helper till 03.03.1997. While so, in the year 1997, the 3rd



Respondent Municipality terminated the service of the Petitioner and other Nominal Muster Roll workers due to want of vacancy in its Municipality.

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3. Thereafter, in the year 2000, the Petitioner was re-appointed as Wireman in the 3rd Respondent Municipality to maintain street lights and to attend the faults in the street lights in Chidambaram Municipal area. The Petitioner was assigned the work of Wireman on a daily wage basis at the rate of Rs.15/- per lamp post for 10 lamp posts per day. The said daily wage was gradually increased to Rs.20/- per lamp post, then Rs.30/- per lamp post and Rs.35/- per lamp post for 10 lamp posts per day till the year 2012.

4. During the year 1998, the 1st Respondent passed an Order in G.O.Ms.70 Municipal Administration and Water Supply Department dated 05.05.1998 which stipulates that employees joining the services after 01.01.1997 shall be paid wages under consolidated pay of Rs.1,700/- per month for 3 years and this consolidated pay will be increased by 5% every year and thereafter, shall be considered for bringing them into time scale of pay based on the estimation of work.



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5. Thereafter, in the year 1999, the 1st Respondent passed another Order in G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999, as per which, the services of daily wagers, except sanitary workers, drivers, street light maintenance and water supply workers who have put in more than 10 years of service as on 01.10.1996 in Municipalities are ought to be regularized.

6. The 3rd Respondent neither paid consolidated wages to the Petitioner as per G.O.Ms.70 Municipal Administration and Water Supply Department dated 05.05.1998 nor regularized the services of the Petitioner as per G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999.

7. While so, in the year 2006, the 1st Respondent issued an Order in G.O.Ms.No.21 Administration and Water Supply (MC.3) Department dated 23.02.2006 directing the appointing authorities viz., Municipal Commissioners, Grade III Municipal Commissioners and Commissioners of Municipal Corporations (except Chennai) to appoint the employees on consolidated pay and NMRs on daily wages on their roll as on 01.10.1996

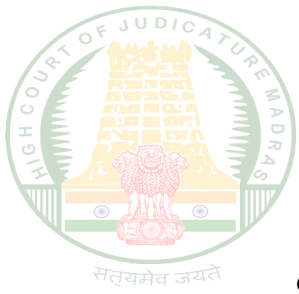


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in respect of Municipalities and Municipal Corporations (except Chennai) and as on 31.12.1996 in respect of Grade-III Municipalities in the vacant posts and to regularise their services in the regular post, from the date of issuance of their appointment order subject to the following conditions:-

- i) Sanctioned posts should be available
- ii) Persons should fulfill all Educational and other qualifications and
- iii) Establishment (Pay and Pension) expenditure of the Urban Local Body should not exceed 49% revenue after filling up of posts.

8. However, the 3rd Respondent did not regularise the services of the Petitioner as per G.O.Ms.No.21 Municipal Administration and Water Supply (MC.3) Department dated 23.02.2006. Hence, the Petitioner made a representation to the Chief Minister's Cell on 31.07.2006, in response to which, the 2nd Respondent vide Proceedings dated 21.08.2007 replied that if an employee has worked as on 01.10.1996 and continues to work till that day, then regularisation would be considered as per G.O.Ms.No.21 Municipal Administration and Water Supply (MC.3) Department dated 23.02.2006 and if any Court case is pending, then his/her regularisation will be considered only after the disposal of the said Court case.

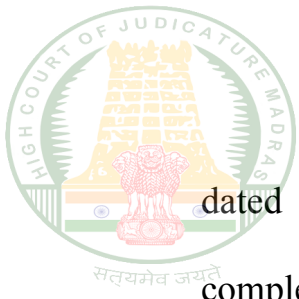


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9. Once again, the Petitioner made a detailed Representation dated 30.11.2010 to the 2nd Respondent, but, the same is pending. Hence, the Petitioner made a Representation dated 06.01.2014 to the 3rd Respondent, for regularization of his services. However, the 3rd Respondent vide Impugned Order dated 11.03.2014, rejected the Petitioner's Representation. Therefore, left with no other alternative, the Petitioner has filed this Writ Petition for the relief stated *supra*.

10. The learned counsel for the Petitioner submitted that the issue involved herein is no longer *res integra* and is squarely covered by the decision of the Division Bench of this Court in its Judgment dated 16.08.2023 in W.A.Nos.606 of 2019 & etc. batch.

10.1. It is submitted that in the aforesaid case, the Division Bench of this Court has allowed the Writ Appeals preferred by the Appellants therein and directed the Government to regularise the services of the Appellants therein in accordance with G.O.Ms.No.74 Personnel and Administrative Reforms (F) Department dated 27.06.2013 by taking the date of Notification



dated 27.06.2013 as to be the cut off date for fixing the period of completion of 10 years of service.

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10.2. For better appreciation, operative portion of the Judgment dated 16.08.2023 in W.A.Nos.606 of 2019 & etc. batch passed by the Division Bench of this Court is extracted hereunder:

“17. It is also not the case of the Government that they had not regularised any such casual labourers/NMRs subsequent to the decision made in Uma Devi's case. It is true that similarly placed persons cannot seek equality by relying upon a decision which is illegal. In the present case, the Government Orders regularising similarly placed persons was on a conscious policy decision taken by the Government, which the Government had decided to be not disturbed in G.O.Ms.No.74 dated 27.06.2013. The said Government Orders have also not been put to challenge before this Court. A policy decision taken by the Government cannot be interfered with by the Court unless or until, it is challenged on the ground of lack of jurisdiction, arbitrariness or colourable exercise of power. It is not the case that such Government Orders, had been issued on any of the afore-stated grounds and infact the Government itself stands by such Government Orders. Therefore, we are of the considered view that the private individuals in these Writ Appeals cannot be non-suited by relying upon the Hon'ble Apex Court judgment in Uma Devi's case (supra) and they have to be suited on par with the similarly placed persons, who have been regularised by the Government in their policy decision taken in G.O. Ms.No.334 Public Works (C2)Dept., dated 19.10.2007, G.O.Ms.No.134 Public Works (C2) Dept., dated 07.05.2010 and G.O.Ms.No.202 Public Works (C2) Dept., dated 01.08.2012.

18.In the light of the above reasoning and findings, we are of the considered view that the order passed by the learned Single Judge which had been impugned in all these Writ Appeals would have to be interfered with and accordingly they are set aside and as a sequel, the Government is directed to consider the claim of the appellants herein and shall be regularised their services in accordance with G.O.Ms.No.74 dated 27.06.2013 by taking the date of notification, dated 27.06.2013, as to be the cut off date for fixing the period of completion of 10 years of service.



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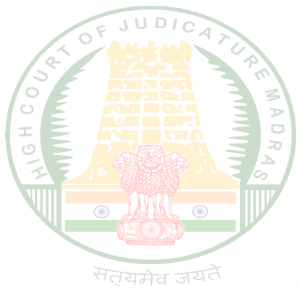
19. In the result:-

- a) *W.A.No.606 of 2019 is closed.*
- b) *All other Writ Appeals are allowed and the impugned order passed by the learned Single Judge is set aside.*
- c) *Consequently connected Miscellaneous Petitions are closed. However there shall be no order as to costs."*

10.3. Therefore, the learned counsel for the Petitioner prayed this Court to allow this Writ Petition and issue appropriate direction to the Respondents herein to regularise the services of the Petitioner.

11. On the other hand, the learned Additional Government Pleader for the Respondents 1 & 2 submitted that based on the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court in **Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors.** 2006 (4) SCC 1, the Government has passed an order in G.O.Ms.No.131 Personnel and Administrative Reforms (F) Department dated 28.11.2020, wherein, particularly, in Clause 5, it has been stated as follows:

"5. It is hereby reiterated that in case of posts governed by Rules, in all the Services, including Tamil Nadu Basic Service, appointment shall be made only with reference to the existing rules. While selecting candidates for appointment, the claim of the contesting candidates shall be weighed with reference to the rules, in force, as emphasized in the "Umadevi Case" [State of Karnataka Vs. Umadevi (2006) 4 SCC 1]."



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11.1. Further, the learned Additional Government Pleader for the Respondents referred to a decision of the Division Bench of this Court in W.A.Nos.2138 of 2019 & etc. batch dated 13.06.2024, wherein, it has been held as under:

“11. The Government has implemented the judgment of the Constitution Bench in Uma Devi's case. Therefore, grant of regularisation, permanent absorption in violation of the legal principles settled by the Hon'ble Supreme Court is impermissible. However, the Government in respect of daily rated employees granted special time scale of pay subject to eligibility. In this regard, the respondents are at liberty to submit a fresh representation for grant of special time scale of pay if they are otherwise eligible under the Government orders. In the event of submitting any such representation, the same is to be considered strictly in accordance with the Government orders and the Government policy in the matter of grant of special time scale of pay to the daily rated / causal employees engaged by Government Department.

12. Therefore, the respondents are not entitled for regularisation or permanent absorption, since their initial appointments were not in accordance with the recruitment rules in force. In view of legal principles settled by the Hon'ble Supreme Court of India, we are not in agreement with the findings of the learned Single Judge in the writ order impugned. Consequently, writ order dated 23.01.2019 passed in W.P.Nos.2739 to 2753, 2856 to 2870 and 2920 to 2934 of 2017 is set aside and the Writ Appeals are allowed. Connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.”

11.2. Therefore, the learned Additional Government Pleader for the Respondents 1 & 2 submitted that this Writ Petition is liable to be dismissed in the light of the decision of the Division Bench of this Court in W.A.Nos.2138 of 2019 & etc. batch dated 13.06.2024.



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12. Heard the learned counsel for the Petitioner and the learned Additional Government Pleader for the Respondents 1 & 2.

13. In the present case, the Petitioner was initially appointed as Gang Mazdoor in the 3rd Respondent Municipality on 01.07.1985. Thereafter, during the year 1989, the Petitioner was assigned the work of Wireman Helper. As on 30.06.1995, the Petitioner completed 10 years of service. Even after the completion of 16 years of service, the services of the Petitioner was not regularized by the 3rd Respondent.

14. In this background, the Petitioner made a Representation dated 06.01.2014 to the 3rd Respondent, seeking to regularize his services in any one of the entry level posts in terms of G.O.(Ms).No.74 Personnel and Administrative Reforms (F) Department dated 27.06.2013, but, the same was rejected by the 3rd Respondent vide Impugned Order dated 11.03.2014. Hence, this Writ Petition.

15. The Petitioner's request for regularization of his services in any one of the entry level posts in terms of G.O.(Ms).No.74 Personnel and



Administrative Reforms (F) Department dated 27.06.2013 cannot be denied.

The 1st Respondent being the State has to act as a model employer and it should not exploit the life of a gullible employee.

16. In **Umadevi's case** (referred to *supra*), the Constitution Bench of the Hon'ble Supreme Court held that irregularly appointed employees do not have a fundamental right to claim regularization or permanent employment based on their service period, whereas, the issue involved in the present case is that by way of the following Government Orders, the Government issued specific directions to the 3rd Respondent to regularise the services of the daily wage workers in the respective Municipalities:

- (i) G.O.Ms.70 Municipal Administration and Water Supply Department dated 05.05.1998
- (ii) G.O.Ms.No.21 Municipal Administration and Water Supply (MC.3) Department dated 23.02.2006
- (iii) G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department dated 28.02.2006
- (iv) G.O.Ms.No.74 Personnel and Administrative Reforms (F) Department dated 27.06.2013



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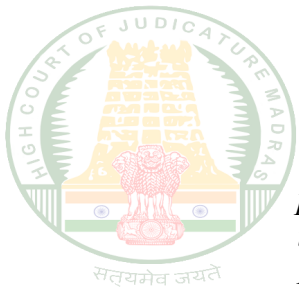
17. Despite the aforesaid directions of the Government, the 3rd Respondent did not regularize the service of the Petitioner.

18. In fact, while dealing with an identical issue, the Full Bench of this Court passed an Order dated 26.02.2024 in W.P.No.23823 of 2023, wherein, it has discussed about the decision of the Constitution Bench of the Hon'ble Supreme Court in **Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors.** 2006 (4) SCC 1.

19. For the sake of clarity, relevant portion of the Order dated 26.02.2024 in W.P.No.23823 of 2023 passed by the Full Bench of this Court is extracted hereunder:

“22. We shall now refer to the judgments of the Hon'ble Supreme Court on the issue of regularisation. We have already referred to the judgment in Umadevi's case, which led to G.O.Ms.No.22 being passed on 28.02.2006. The introduction of the said Government Order led to a spate of applications for regularisation, which led the Government, which was already facing serious financial constraints, to look for avenues to get out of the situation brought about by passing of G.O.Ms.No.22 dated 28.02.2006. This, however, took more than eight years for the Government to come up with G.O.Ms.No.74 on 27.06.2013, which attempted to dilute the rigour of G.O.Ms.No.22 dated 28.02.2006.

23. Both these Government Orders, namely G.O.Ms.No.22 dated 28.02.2006 and G.O.Ms.No.74 dated 27.06.2013 were subject matter of



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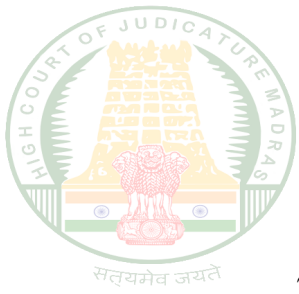
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proceedings before the Hon'ble Supreme Court in State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another v. A.Singamuthu, reported in 2017 (4) SCC 113. The Hon'ble Supreme Court considered the case of temporarily appointed part-time masalchis in the said case and concluded that G.O.Ms.No.22 dated 28.02.2006 would enable regularisation of only full-time employees and not part-time employees. The Hon'ble Supreme Court, however, did not go into the question of the nature of employment in Singamuthu's case.

24. From the report, we do not find that the nature of employment or the duties assigned to such part-time employees are the question whether such posts were constituted under the Tamil Nadu Basic Service Rules were not addressed and we do not find any argument made in that regard. However, subsequently in Sheo Narain Nagar and others vs. State of Uttar Pradesh and others, reported in 2018 (13) SCC 432, the Hon'ble Supreme Court considered the impact of the judgment in Umadevi's case and after noticing the observations made in paragraph 53 of Umadevi's case, concluded that such temporary appointments made particularly by the Government are invariably on exploitative terms with no guarantee of livelihood. The Court also observed that such exploitative employments are amount to clear contravention of the constitutional provisions and aspirations of the downtrodden class.

25. We must also point out that we find such temporary employments only in the lower grade posts and as pointed out by a Division Bench of this court in WA No.536 of 2022 such employment amounts to slavery. As we had already pointed out the object that was sought to be achieved by the judgment of the Hon'ble Supreme Court in Umadevi's case has not been achieved, despite 17 years having passed by. The statistics disclosed by the Chief Secretary of the Government of Tamil Nadu in the affidavit filed pursuant to our directions discloses that nearly a sum of Rs.776 crores have been paid as consolidated pay for the period from April 2023 to December 2023. This demonstrates the fact that the Governments of the day are continuing with the practice which has been decried by the Courts."

20. In view of the above facts and circumstances of the case, this Court is of the opinion that the Impugned Order passed by the 3rd Respondent is unsustainable in law and the same is liable to be quashed.



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21. Accordingly, the Impugned Order dated 11.03.2014 passed by the 3rd Respondent is hereby quashed and this Writ Petition is allowed with a direction to the 3rd Respondent to regularize the service of the Petitioner strictly in accordance with G.O.(Ms).No.74 Personnel and Administrative Reforms (F) Department dated 27.06.2013, with all attendant benefits, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

17.02.2025

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

- 1.The Secretary to Government,
Municipal Administration and Water Supplies Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk, Chennai – 600 005.
- 3.The Commissioner,
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C.SARAVANAN, J.

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