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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2025

PRONOUNCED ON : 24.03.2025

CORAM:

**THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.A.No.2569 of 2022
and C.M.P.No.20290 of 2022**

- 1.The Secretary to Government,
Education Department,
Fort St.George,
Chennai - 9.
- 2.The Commissioner / Director,
Director of Technical Education,
Chennai - 25.
- 3.The Principal,
Thanthai Periyar Government Institute
of Technology,
Vellore - 632 002.
- 4.The District Employment Officer,
District Employment Office,
Vellore District, Vellore. ...

Appellants /
Respondents

versus



1.M.Kamalanathan
2.K.Ramesh Kumar
3.S.Ashok Kumar
4.K.Elumalai
5.M.Pichandi

...

Respondents /
Petitioners

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 27.07.2021 in W.P.No.33454 of 2015.

For Appellants : Mr.D.Ravichander
Special Government Pleader

For Respondents : Ms.R.T.Sundari

JUDGMENT

[*Judgment* of the Court was made by **G.ARUL MURUGAN, J.**]

The State is on appeal challenging the order of the writ court dated 27.07.2021 made in W.A.No.33454 of 2015, whereby the services of the respondents were directed to be regularised with effect from the date of their initial appointment.

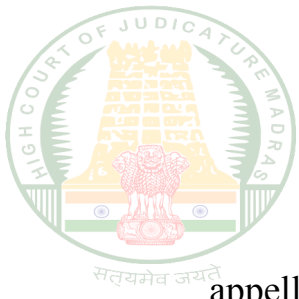
2. The respondents herein who are working in the third appellant institution, since without their services being regularised, attempts were made by the respondents to issue a notification to fill up several posts, have



approached the writ court seeking to quash the notification dated 02.09.2015 and direct the appellants for regularisation of their services.

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3. The writ court by considering the decision of the Hon'ble Supreme Court in *Sheo Narain Nagar & Others Vs. State of Uttar Pradesh & Orthers* reported in (2018) 13 SCC 432 wherein the Hon'ble Supreme Court had distinguished the back door appointments and employment process by fair means holding that the employment cannot be on exploitative forms and also observing that the decision of the Hon'ble Supreme Court in *Secretary, State of Karnataka and others Vs. Umadevi and others* reported in (2006) 4 SCC 1 cannot be used only to deny the benefits of regularisation, held that the appointment of the respondents could either be regular or irregular, but no means it could be illegal. Arriving at such a conclusion, the writ court have extended the benefits covered under G.O.(Ms.)No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and had directed the appellants to regularise the services of the respondents from the date of their initial appointment. Assailing the impugned order, this intra-court appeal is preferred.



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4. Mr.D.Ravichander, learned Special Government Pleader for the appellants mainly contended that even though the first respondent was sponsored through the Employment Exchange, respondents 2 to 5 have not been recruited through the Employment Exchange and they have not undergone the regular selection process to claim regularisation. He further contended that their services were not continuous and they had been given a break in service once a year for 5 days.

5. It is his vehement contention that since the respondents have not completed 10 years of service as on 01.01.2006, the benefits under G.O.(Ms.)No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and G.O.(Ms.)No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, cannot be extended to them.

6. In support of his contentions, the learned Special Government Pleader relied on the decisions in *Secretary, State of Karnataka and others Vs. Umadevi and others* reported in (2006) 4 SCC 1 and *Secretary to Government Vs. Thiru.R.Govindaswamy and Others (Civil Appeal Nos.2726-2729 of 2014 dated 21.02.2014)* and contended that the order



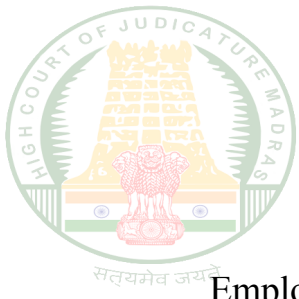
directing regularisation of services of the respondents cannot be sustained and sought for indulgence of this Court.

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7. Ms.R.T.Sundari, learned counsel for the respondents argued that the respondents who have been working from 1999, 2003, 2002, 1995 and 2008 respectively have nearly put in 2 decades of service and when similarly placed employees throughout the State have been regularised, the respondents alone are given a differential treatment.

8. The learned counsel further contended that the respondents are working in the posts that are enumerated under the Tamil Nadu Basic Service and when they are permanent posts, the appellants cannot extract work from the respondents for decades together by simply keeping them as temporary employees.

9. Heard the rival submissions and perused the materials available on record.



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10. Admittedly, the first respondent was sponsored through the Employment Exchange and was appointed as Sweeper on 11.01.1999 and is working on a daily wage basis in the third appellant institution. The respondents 2 and 3 were appointed in January 2003 and October 2002 in the third respondent institution and are working as Office Assistants. The respondents 4 and 5 were appointed as Gardeners on a daily wage basis in the years 1995 and 2008 respectively. As such, all the respondents had rendered more than 10 years of service in the third appellant institution.

11. The Government had issued G.O.(Ms.)No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, wherein the daily wage employees, who had completed 10 years of service as on 01.01.2006, were sought to be regularised. Further, another order was issued in G.O.(Ms.)No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, in respect of the regularisation of the services of the full time daily wage employees working in all Government Departments.

12. The respondents, by placing reliance on these Government Orders, had sought for regularisation of their services. However, it is the



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contention of the respondents that they have not been continuously in service, but every year they have been given a break of 5 days. Further, even though the third appellant institution has sanctioned posts in the category of Office Assistant, the respondents were not appointed through the Employment Exchange. Insofar as the first respondent is concerned, even though he has been appointed through the Employment Exchange, it is the stand of the appellants that there is no sanctioned post of Sweeper. Further, the main reason for the appellants to deny the claim of the respondents is that they have not completed 10 years of service as on 28.02.2006.

13. The issue regarding the completion of 10 years of service as on 28.02.2006 has been considered by a Division Bench of this Court in *M.Mahalingam Vs. The Engineer in Chief, Water Resources Department, Public Works Department and others [W.A.Nos.606 & 2830 of 2019 & W.A.Nos.416, 871 to 883 of 2018 dated 16.08.2023]* and has held that if the employees had completed 10 years of service as on 27.06.2013, they are entitled for the services to be regularised.



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14. Insofar as the objections that some of the respondents were not appointed through the Employment Exchange and therefore their appointments being irregular cannot be regularised is no longer *res integra*. The issue was considered by the Division Bench in which one of us (G.Arul Murugan,J.) is a party in ***S.Jayalakshmi Vs. State and others [W.A.No.825 of 2025 dated 20.02.2025]*** had allowed the claim for regularisation, by following the decision of the Full Bench of this Court in ***M.Sivappa Vs. The State of Tamil Nadu*** reported in ***2024 (2) CTC 1***, wherein it is held that if the post is one enumerated in the Special Rules for Tamil Nadu Basic Service, then de hors the nature of appointment, the employee will be entitled to the benefits of regularisation as per G.O.(Ms.)No.22 dated 28.02.2006 de hors G.O.(Ms.)No.74 dated 27.06.2013.

15. The relevant paragraph is extracted hereunder:-

“3. The Writ Court dismissed the writ petition on the ground that the appellant was not appointed through the Employment Exchange and her appointment being irregular, she cannot claim the benefit of regularization. The issue relating to regularization is no longer res integra. A Full Bench of this Court in M.Sivappa v. The



WEB COPY

W.A.No.2569 of



State of Tamil Nadu, reported in 2024 (2) CTC 1, to which one of us (R.Subramanian, J.) was a party, has held that if the post is one enumerated in the Special Rules for Tamil Nadu Basic Service, de hors the nature of appointment, the employee will be entitled to the benefits of regularization as per G.O.Ms.No.22 dated 28.02.2006 de hors G.O. No.74 dated 27.06.2013.”

16. In the instant case, the admitted facts are that the first respondent had been sponsored through the Employment Exchange on 11.01.1999 and is working as Sweeper in the third appellant institution. The second respondent was appointed on 11.01.2003 initially as Cleaner and later appointed as Lab Assistant and is now working as Office Assistant. The third respondent was appointed on 10.10.2002 as Cleaner and is now working as Office Assistant.

17. The fourth respondent was initially appointed in the Public Works Department on compassionate ground and later absorbed by the third appellant institution as Gardener in the year 1995. The fifth respondent was initially appointed in the Public Works Department and subsequently was absorbed in the third appellant institution as Gardener in the year 2008. It is

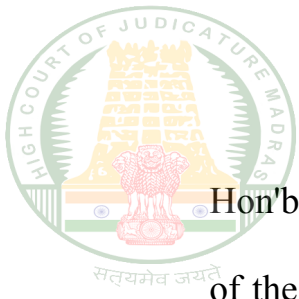


also not in dispute that the salaries of these respondents have been paid by the Institution from out of the funds provided by the Government.

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18. When the respondents have been in service of the third appellant institution continuously, their employment cannot be termed to be seasonal and when they have been allowed to work for nearly 2 decades, the appellants cannot deny to regularise their services by relying on the decision in *Umadevi's* case.

19. In fact, the Hon'ble Supreme Court in the case of *Shripal and another Vs. Nagar Nigam, Ghaziabad* reported in *2025 SCC OnLine SC 221* has held that *Uma Devi* cannot serve as a shield to justify exploitative engagements persisting for years without the employer undertaking legitimate recruitment. The Hon'ble Supreme Court by considering the decision rendered in *Jaggo Vs. Union of India* reported in *2024 SCC Online SC 3826*, wherein the misuse of the word 'temporary' was noted as 'employees engaged for work that is essential, recurring and integral to the functioning of an institution are often labelled as 'temporary' or 'contractual', even when their roles mirror those of regular employees'. By noting so, the



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Hon'ble Supreme Court had directed the employer to regularise the services of the workmen and even to create sanctioned vacancies for that purpose to accommodate them.

20. The writ court, by taking note of the above aspects and also considering the decision rendered by the Hon'ble Supreme Court in ***Sheo Narain Nagar***'s case stated supra, had directed the appellants to regularise the services of the respondents from the date of their initial appointment.

21. We find no error or infirmity in the decision arrived at by the learned Judge, but however, we are only inclined to modify the order to the extent that the respondents are entitled for regularisation of their services only on completion of 10 years. The first respondent having been appointed on 11.01.1999 will be entitled for regularisation of his service w.e.f. 10.01.2009; the second respondent having been appointed on 11.01.2003 will be entitled for regularisation of his service w.e.f. 10.01.2013; the third respondent having been appointed on 10.10.2002 will be entitled for regularisation of his service w.e.f. 09.10.2012; the fourth respondent having been appointed in the year 1995 will be entitled for regularisation of his



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service from the year 2005; and the fifth respondent having been appointed in the year 2008 will be entitled for regularisation of his service from the year 2018.

22. The appellants shall pass appropriate orders in regularising the services of the respondents from the dates as mentioned above with all consequential benefits within a period of eight (8) weeks from the date of receipt of a copy of this order.

23. With the above modification, this Writ Appeal stands *disposed of*. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[A.S.M.J.,] [G.A.M.J.,]
24.03.2025

Speaking order

Index : Yes

Neutral Citation : Yes

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Dr. ANITA SUMANTH, J.
AND
G.ARUL MURUGAN, J.

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Pre-Delivery Judgment made in
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and C.M.P.No.20290 of 2022

24.03.2025