



W.P.(MD) No.748 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No.748 of 2020

and

W.M.P.(MD) Nos.548 & 15761 of 2020

A.Krishnan

... Petitioner

-VS-

- 1.The State of Tamil Nadu
The Principal Secretary
to Government
School of Education Department
Chennai-600 009
- 2.The Director of School Education
DPI Complex
Nungampakkam
Chennai-600 006
- 3.The District Project Coordination
Chief Educational Officer
Sivagangai District, Sivagangai
- 4.The District Collector
Sivagangai District



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5.The Head Master
UT/RMSA Model School
S.Pudur, Sivagangai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of declaration declaring the G.O.MS No.321 of 22.12.2010 of School Education (C2) Department, Government of Tamil Nadu, is ultravires the constitution in respect of employment and fixing consolidated pay to the non teaching staff and quash the portion in respect of employment and pay fixation to the non-teaching staff and consequently direct the 1st respondent to sanction Equal pay for equal work of Laboratory Assistant post in Government Model Schools particularly sanction Equal pay at par with Laboratory Assistant working in Government schools on the time scale basis based on the petitioner's representation dated 21.02.2019 according to law.

For Petitioner : Mr.A.Krishnan
Party-in-Person

For Respondents : Mr.S.Shaji Bino
Special Government Pleader



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ORDER

This writ petition has been filed for a writ of declaration to declare G.O.(Ms) No.321, School Education (C2) Department, dated 22.12.2010, as null and void and ultra vires to the the Constitution.

2. The petitioner was appointed as a Lab Assistant on contract basis by the third respondent on 22.02.2012. He claims that from the date of his appointment, till date he has been working as Lab Assistant to the satisfaction of his superiors. According to the petitioner, the work allotted to the staff appointed on contract basis is equal to the work allotted to the permanent staff working in the Government Schools, Government Aided Schools and the Schools run by the Local Municipal Authorities. According to the petitioner, despite the same, there are disparities in the pay scale of the petitioner with that of the other staff, who are also doing very same work as that of the petitioner. According to the petitioner, G.O.(Ms) No.321, School Education (C2) Department, dated 22.12.2010, which is challenged in this writ petition, is ultra vires to the Constitution in respect of fixing consolidated salary to the non-teaching staff.



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3. Counter affidavit has been filed by the third respondent stating that the provisions of the Tamil Nadu State and Subordinate Service Rules or the Tamil Nadu Ministerial Service Rules or the Tamil Nadu Basic Service Rules shall not apply to the petitioner, since he was appointed as a Lab Assistant only on contract basis, having signed a contract with the respondents.

4. In Paragraph No.6 of the counter affidavit filed before this Court, the third respondent has categorically stated that the petitioner's appointment is a contractual appointment and it comes to an end at the end of the contract. According to the respondents, a contract employee cannot claim to be made permanent on the expiry of his term of appointment. It has also been stated that merely because a contract employee is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It has also been stated that the concept of 'equal pay for equal work's is different from the concept of conferring permanency on those who have been appointed on ad



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hoc basis, temporary basis or based on no process of selection as envisaged by the rules. The petitioner having accepted the terms of the contract, which are reflected in the contract signed by him, it is not open to the petitioner to claim regular time scale of pay, which is allowed for the regular employees in Government service.

5. The petitioner, who is appearing as a party-in-person, has placed on record before this Court a Division Bench Judgment dated 19.06.2024 in W.A.No.2513 of 2018, in the case of ***the Government of Tamil Nadu and others vs. C.Xavier and others***, reported in **2024:MHC:2433**. However, the said Judgment does not support the case of the petitioner. In the said decision rendered by the Division Bench of this Court, the directives of the Honourable Supreme Court in the case of ***State of Rajasthan & Ors. vs. Dayal Lal & Ors.***, reported in **2011 (2) SCC 429**, have been re-produced, which have also been followed by the Division Bench in the aforesaid decision. This Court is once again re-producing hereunder the directives of the Honourable Supreme Court in the decision reported in **2011 (2) SCC 429**:

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance,



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unless the employees claiming regularisation 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 regularisation of services of an employee which would be violative of the 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 regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

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



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6. As seen from the aforesaid decision of the Honourable Supreme Court as well as the aforesaid decision of the Division Bench of this Court dated 19.06.2024, it is clear that mere continuation of service by a temporary or ad hoc or daily-wage employee, who was appointed by not following the open competitive process against the sanctioned vacant post, would not confer upon him any right to be absorbed into regular service and therefore, his services cannot be regularised. It has been made clear in the aforesaid decision that fundamental rights of the eligible candidates cannot be allowed to be infringed by regularising the other appointments, which were not made through open competitive process against the sanctioned vacant post.

7. In the case on hand, the petitioner was admittedly appointed only on contract basis. Due to the long period of employment, he now claims regularisation and also seeks for a prayer that G.O.(Ms) No.321, School Education (C2) Department, dated 22.12.2010, by which the petitioner was appointed, is ultra vires to the Constitution and has to be declared as null and void. Having joined employment with open eyes on contract basis knowing fully well that the petitioner is only a temporary employee, the question of



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granting regularisation of service to him does not arise, in view of the well settled law rendered by the Honourable Supreme Court, referred to supra.

8. For the foregoing reasons, this Court does not find any merit in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

08.09.2025

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

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To:

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to Government,
School of Education Department,
State of Tamil Nadu,
Chennai-600 009.
- 2.The Director of School Education,
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Nungampakkam,
Chennai-600 006.
- 3.The District Project Coordination,
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ABDUL QUDDHOSE, J.

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