



W.P(MD)No.11069 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.07.2025

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**W.P(MD)No.11069 of 2025
and
W.M.P(MD)Nos.8243 & 8244 of 2025**

1.P.Murugeswari
2.S.Vasanthi
3.R.Murugeswari

... Petitioners

vs.

1.The Additional Registrar General,
Madurai Bench of Madras High Court,
Madurai – 23.

2.The Hon'ble Principal District Judge,
Theni District,
Theni.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the impugned proceedings issued by the second respondent vide impugned order in A.No.39/2025 dated 28.03.2025 and quash the same as illegal.



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For Petitioners : Mr.A.Manish Kumar

For Respondents : Mr.N.Tamil Mani
Standing Counsel

ORDER

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

The Writ Petition has been instituted challenging the proceedings of the second respondent dated 28.03.2025, wherein the petitioners were ousted from service on the ground of non-availability of vacancies.

2.It is not in dispute that the petitioners were appointed on a temporary basis under Rule 10(a)(i) and 16(a)(i) of the Tamil Nadu Judicial Ministerial Service Rules. As per the proceedings of the learned Principal District Judge, they were periodically ousted from service for want of vacancies. Whenever vacancies arose, considering the necessity and public interest owing to emergent circumstances, temporary appointments were made by the learned Principal District Judges. The question that arises is



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whether such temporary appointments under the Rules would provide a permanent absorption for such employees, who were engaged on temporary basis and ousted from service soon after the approved candidates through TNPSC are appointed.

3.Let us now consider the scope of the temporary appointments under Rule 16(a)(i) of the Tamil Nadu Judicial Ministerial Service Rules, which reads as follows:

“16.Temporary appointments – (a)(i) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of the service and there would be undue delay in making such appointment in accordance with these rules, the appointing authority may temporarily appoint a person, otherwise than in accordance with these rules.”

4.The Rules unambiguously stipulates that where it is necessary in the public interest, owing to an emergency, which has arisen to fill immediately a vacancy in a post borne on the cadre of the service and where



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would be undue delay in making such an appointment in accordance with these rules, the appointing authority may temporarily appoint a person, otherwise than in accordance with these Rules.

5.Rule 16(c) of the Tamil Nadu Judicial Ministerial Service Rules contemplates that a person appointed under sub-Rule (2) shall, whether or not he possesses the qualifications prescribed for the post to which he is appointed, be replaced as soon as possible by a member of the service or an approved candidate qualified to hold the post under these Rules.

6.A reading of the Rules would indicate that temporary appointments will not provide any right of confirmation or permanency in service. Temporary appointments are made to meet out the exigencies by the Principal District Judges. Such temporary appointments are not the method of appointment for the purpose of permanent absorption.



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7.All appointments to the permanent posts are to be made by following the procedures contemplated under the Service Rules.

8.In the present case, admittedly, the petitioners were appointed on temporary basis under Rule 16(a)(i) of the Tamil Nadu Judicial Ministerial Service Rules. Soon after regular candidates are appointed through the TNPSC, their services are ousted and that apart, these temporary employees are not continuously in service. Whenever a vacancy arises, temporary appointments are made and therefore, there is no continuity of service also. In other words, the petitioners did not serve continuously in these temporary posts.

9.The question that arises is whether a person, who is periodically appointed on a temporary basis, is entitled to permanent absorption. This issue is no more *res integra*. The Division Bench of this Court in the case of ***A.J.Ethiraj and others Vs. the Government of Tamil Nadu*** reported in ***2024 MHC 2974***, has settled the issue by following the



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Judgment of the Constitution Bench and the relevant paragraphs are extracted hereunder:

*“9. The governing principles in the matter of appointment and regularization are settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of **State of Karnataka v. Umadevi and others**, reported in (2006) 4 SCC 1 and in subsequent judgments. Importantly, in the matter of judicial appointments, the Hon'ble Supreme Court has issued guidelines in the case of **Renu and others Vs. District and Sessions Judge and others** reported in AIR 2014 SC 2175. The above two judgments are binding precedents. Therefore, the appointments in judicial Administrations are to be made scrupulously following the procedures as contemplated and by following the principles established.*

10. Equal opportunities in public employment is the constitutional mandate. Illegal, irregular and back door appointments would result in infringement of the fundamental rights of lack and lack of eligible candidates, who all are aspiring to secure public employment through open competition process. The constitutional principles in public appointments are well narrated and settled in Umadevi's case [cited supra] and reiterated by the Hon'ble Supreme Court in Renu's case [cited supra]. The relevant paragraphs of Renu's case are extracted hereunder:-



“8. As Article 14 is an integral part of our system, each and every State action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments rendered by this Court in Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386] , State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] , Prabhat Kumar Sharma v. State of U.P. [(1996) 10 SCC 62 : 1996 SCC (L&S) 1331] , J.A.S. Inter College v. State of U.P. [(1996) 10 SCC 71 : 1996 SCC (L&S) 1339] , M.P. Housing Board v. Manoj Shrivastava [(2006) 2 SCC 702 : 2006 SCC (L&S) 422] , M.P. State Agro Industries Development Corpn. Ltd. v. S.C. Pandey [(2006) 2 SCC 716 : 2006 SCC (L&S) 434] and State of M.P. v. Sandhya Tomar [(2013) 11 SCC 357] .

9.

10. In Suresh Kumar v. State of Haryana [(2003) 10 SCC 276] this Court upheld the judgment of the Punjab and Haryana High Court wherein 1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. The High Court reached the conclusion that process of selection stood vitiated because there was no



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advertisement and due publicity for inviting applications from the eligible candidates at large.

11.

12. *The principles to be adopted in the matter of public appointments have been formulated by this Court in M.P. State Coop. Bank Ltd. v. Nanuram Yadav [(2007) 8 SCC 264 : (2007) 2 SCC (L&S) 883] as under :*

“(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.



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(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.”

13. A similar view has been reiterated by the Constitution Bench of this Court in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753 : AIR 2006 SC 1806] , observing that any appointment made in violation of the statutory rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. “Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.” The Court further rejected the prayer that ad hoc appointees working for long be considered for regularisation as such a course only encourages the State to flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.

14.



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15.

16. *Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.*

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35. *In view of the above, the appeal stands disposed of with the following directions:*

(i) All the High Courts are requested to re-examine the statutory rules dealing with the appointment of staff in the High Court as well as in the subordinate courts and in case any of the rule is not in conformity and consonance with the provisions of Articles 14 and 16 of the Constitution, the same may be modified.

(ii) To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance with the statutory rules so made. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab initio irrespective of any class of the post or the person occupying it.

(iii) The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the



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vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab initio and would remain unenforceable and unexecutable except such appointments which are permissible to be filled up without advertisement e.g. appointment on compassionate grounds as per the rules applicable. Before any appointment is made, the eligibility as well as suitability of all the candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc. if any.

(iv) Each High Court may examine and decide within six months from today as to whether it is desirable to have centralised selection of candidates for the courts subordinate to the respective High Court and if it finds it desirable, may formulate the rules to carry out that purpose either for the State or on zonal or divisional basis.

(v) The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the menace of ad hocism.”

11. In concluding paragraph 35, the Hon'ble Supreme Court in unequivocal terms reiterated that all the vacancies ought to be



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*filled up in strict compliance of the statutory Rules so made. **In case, any appointment is made in contravention of the statutory Rules, the appointments would be void, ab initio irrespective of any class of the post or the person occupying it.** In paragraph 35(iii) of the judgment stipulates that “**the post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State**”. Any vacancy filled up without advertising as prescribed in the judgment, shall be void ab-initio and would remain unenforceable and inexecutable except such appointments which are permissible to be filled up without advertisement. The exception provided by the Hon'ble Supreme Court would indicate that the appointment on compassionate grounds as per the scheme applicable is to be given without publishing any advertisement. Therefore, the only exception to the Constitutional scheme of appointment is the scheme of compassionate ground and all other appointments including daily wages, contract, temporary and regular are to be made by scrupulously following the recruitment Rules and by following the principles established by the Constitution Bench judgment and the ratio laid down in Renu's case [cited supra].*

*12. In paragraph 14 of Renu's case [cited supra], the Hon'ble Supreme Court relied on the decision rendered in the case of **State of Orissa and another Vs. Mamata Mohanty** reported in (2011) 3 SCC 436, wherein the Apex Court held that “**Therefore, it is a settled legal proposition that no person can be appointed even on temporary or ad hoc basis without inviting applications from all eligible candidates**”. The direction was issued in order to meet out the*



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constitutional requirement under Article 14 and 16 of the Constitution of India. The Apex Court further reiterated that **“a person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment, mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merits.”**

13.....

14. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily the law thus laid down. The Hon'ble Supreme Court said that the orders, which are inconsistent with the legal conclusions arrived at by the Courts in the judgment not only create confusion, but also tend to user in arbitrariness highlighting the statement, that equity tends to vary with the Chancellors Court. It was also held that the fact that some persons had been working for a long time would not mean that they had acquired a right for permanent absorption.

15. Regarding the temporary, contract, daily wages, casual employments, the Apex Court in the case of **State of Rajasthan and others Vs. Daya Lal and others** reported in (2011) 2 SCC 429 settled the principles in paragraph 8 as under:-

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



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the employees claiming regularisation 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 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 dailywage 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.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of



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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.”

16. In paragraph 47, the Constitution Bench reiterated that when a person enters a temporary employment or gets engagement as a contractual or a casual worker and the engagement is not based on a proper selection as recognised by the relevant Rules or procedures, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post would be made only by following a proper procedure for selection and in cases concerned in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees.”

10. The Judgment of the Division Bench of this Court in the case cited supra ie., ***A.J.Ethiraj and others Vs. the Government of Tamil Nadu*** reported in **2024 MHC 2974**, has been confirmed by the Hon'ble Supreme Court of India in Special Leave Petition (Civil) Diary No.38375 of 2025, dated 06.09.2024.



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11.The Hon'ble Apex Court time and again reiterated that permanent appointments are to be made in accordance with the constitutional scheme by providing equal opportunity in public employment. It is not as if a person temporarily appointed for a specific period can claim permanent appointment which would result in infringement of the rights of the other candidates, who are all aspiring to secure public employment through an open competitive process. Contrarily, there is no bar for these temporary candidates to participate in the regular selection process and secure appointment. Whether an opportunity is available to these temporary employees to participate in the open competitive process and secure employment is a matter of policy. However, courts cannot grant regularization by way of judicial orders, which would result in unconstitutional and violative of the principle of equality enshrined in the Constitution.

12.The Courts have time and again held that misplaced sympathy in such matters would result in the deprivation of opportunities to



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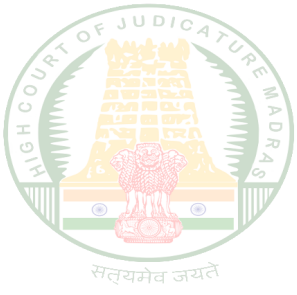
numerous eligible and meritorious candidates who are all longing to secure public employment.

13.Pertinently, these temporary employees joined the service temporarily accepting the terms and conditions of their appointments with reference to the Rules and the order of appointment would clearly indicate the following conditions:

“2.The individual is informed that the appointment is purely on temporary basis as per Rule 16(1) (a) of the Special Rules for the T.N.J.M.S and they have no right for future regular appointment.

4.She is hereby informed that the temporary services will be terminated as quickly as possible by securing candidates from the Tamil Nadu Public Service Commission.

5.She is further informed that the service is liable to be terminated at any time without assigning any reasons, if found to be unsatisfactory.”



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14.Once the employees have accepted the conditions and joined the service, they cannot subsequently turn around and claim permanent appointment in violation of the statutory Rules and the prescribed method of regular appointment.

15.For all these reasons, the petitioners are not entitled for the relief. For securing permanent employment, they will have to participate in the process of selection, if any, notified for open competitive process.

16.With these observations, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

[S.M.S.,J.] & [A.D.M.C.,J.]
17.07.2025
(1/2)

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

- 1.The Additional Registrar General,
Madurai Bench of Madras High Court,
Madurai – 23.
- 2.The Hon'ble Principal District Judge,
Theni District,
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S.M.SUBRAMANIAM, J.
and
DR.A.D.MARIA CLETE, J.

ps

ORDER MADE IN
W.P(MD)No.11069 of 2025

DATED : 17.07.2025
(1/2)

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