



W.P.(MD) No.5013 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD) No.5013 of 2019

K.R.Vijaya Kumar ... Petitioner

-vs-

- 1 The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-9.
- 2 The Commissioner,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-9.
- 3 The District Collector,
Thoothukudi District.
Thoothukudi. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, to direct the respondents to regularize the services of the petitioner with other candidates who were recruited through employment exchange taking into consideration of the



W.P.(MD) No.5013 of 2019

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For Petitioner : Mr.C.Venkatesh Kumar,
for M/s.Ajmal Associates.

For Respondents : Mr.G.V.Vairam Santhosh,
Addl. Govt. Pleader.

ORDER

The present Writ Petition has been filed to issue a writ of mandamus, directing the respondents to regularize the services of the petitioner with other candidates, who were recruited through employment exchange, taking into consideration of the length of service of the petitioner, in the light of Judgment, dated 28.11.2017, of the Honble Division Bench of this Court, made in W.A.No.1594 of 2017.

2. The case of the petitioner is that he was initially appointed as Computer Assistant in the year 2008 on consolidated pay. The third respondent issued a paper publication in a daily newspaper on 14.03.2008. The petitioner participated in the interview and, it was only on that basis, appointment order was issued under National Rural Employment Guarantee



W.P.(MD) No.5013 of 2019

WEB COPY

Scheme (NREGS). The said appointment was made in a sanctioned post. While he was working as Computer Assistant, the third respondent terminated his services, vide proceedings, dated 31.07.2008, on account of administrative reasons. He was again appointed, but, his appointment seemed to have been made on the basis of outsourcing, as if he was recruited through private agencies. But, the fact remained that he was originally appointed on the basis of paper publication. He rendered more than ten years of service. While so, the Government issued G.O.Ms.No.37, Rural Development and Panchayat Raj (E5) Department, dated 22.03.2017, for absorption of 906 Computer Assistants, working under MGNREGS, as Junior Assistants. The said G.O. would go to show that that there were as many as 1791 posts of Computer Assistant, out of which 906 alone were sought to be absorbed. The petitioner was not brought within the purview of the said G.O. The mode of absorption was to the effect that those 906 Computer Assistants should be allowed to participate in special qualifying test, conducted by TNPSC exclusively, and, thereby, they would be absorbed. The petitioner sent a representation, dated 21.02.2019, but the same was not considered by the respondents. Similarly placed persons filed a writ petition in W.P.28961 of 2014 before the Principal Seat of this Court and this Court, by its order, dated 27.04.2017, directed the respondents to consider the representation of the



W.P.(MD) No.5013 of 2019

WEB COPY

petitioners therein. In this regard, the writ petitioner states that the Government filed a writ appeal in W.A.No.1594 of 2017 and the same was dismissed on 28.11.2017, with an observation that the petitioner could be treated on par with Computer Assistants, who were recruited through employment exchange. Hence, this Writ Petition.

3. Learned counsel, appearing for the petitioner, would submit that G.O.Ms.No.37, Rural Development and Panchayat Raj (E5) Department, dated 22.03.2017, was not acted upon and absorption was directed to be made without special qualifying test. The sole reason for differentiating the candidates was that they were recruited through employment exchange and the petitioner was not recruited through employment exchange. The petitioner also rendered more than ten years of service and, after having long length of service, the petitioner should not be discriminated, that too without any reason, and, if the same was allowed to proceed, it would only result in violation of equality clause, namely, Article 14 of the Constitution of India.

4. Per contra, learned Additional Government Pleader, appearing on behalf of the respondents, would submit that the petitioner was appointed on consolidated pay on contract basis through a Non-Governmental



W.P.(MD) No.5013 of 2019

WEB COPY

Organisation. He would further submit that only 906 Computer Assistants, who were appointed through employment exchange and had completed five years of service as on 30.09.2015 and were working in District Rural Development Agencies and Blocks under MGNREGS, were recruited, following due procedures and communal roster. The other persons, who were not recruited through employment exchange by following rule of reservation, like the petitioner herein, were not entitled to be absorbed as Junior Assistants in approved vacancies. He would also submit that a policy decision was taken vide G.O.Ms.No.37, dated 22.03.2017, to create posts to absorb 906 Computer Assistants as Junior Assistants, as they were recruited through employment exchange under MGNREGS and their services were regularly used in Unit offices and, as such, their services were absolutely necessary and hence the Government was pleased to take a policy decision to appoint them under regular vacancies in the said Government Order.

5. Learned Additional Government Pleader has drawn the attention of this Court to G.O.Ms.No.92, Rural Development and Panchayat Raj (E5) Department, dated 13.07.2023, and submitted that Tamil Nadu Public Service Commission had not concurred to conduct special qualifying test to absorb 906 Computer Assistants working under Mahatma Gandhi



W.P.(MD) No.5013 of 2019

WEB COPY

National Rural Employment Guarantee Scheme (MGNREGS) as Junior Assistants, by following the ratio laid down by the Hon'ble Supreme Court in *State of Karnataka & Others v. Umadevi*, 2006 (4) SCC 1, and *State of Rajasthan v. Daya Lal*, 2011 (2) SCC 429. He would further submit that the Government, after careful examination, decided to accept the request of the Commissioner of Rural Development and Panahayat Raj and thereby cancelled the orders issued in G.O.Ms.No.37, Rural Development and Panahayat Raj (E5) Department, dated 22.03.2017.

6. The Hon'ble Supreme Court has consistently taken a view that Rules provide for a method of recruitment and those Rules are binding on the Government and its agencies and, therefore, there cannot be a new method of appointment, namely, regularisation or absorption, in service, without following the process contemplated by the laws.

7. At this juncture, it is relevant to refer to the decision of the Supreme Court in the case of *State of Karnataka & Others v. Umadevi*, 2006 (4) SCC 1, wherein it is held as under :

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement



W.P.(MD) No.5013 of 2019

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48... There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The



W.P.(MD) No.5013 of 2019

WEB COPY arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution."

8. In *State of Rajasthan v. Daya Lal*, 2011 (2) SCC 429, the Hon'ble Supreme Court has held as under :



W.P.(MD) No.5013 of 2019

WEB COPY

"8. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization of services of an employee which would be violative of 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

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

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



W.P.(MD) No.5013 of 2019

WEB COPY

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.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in Government run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with Government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

9. In view of the ratio laid down by the Hon'ble Supreme Court in the above rulings, this Writ Petition is devoid of merit and dismissed. No costs. Consequently, the connected W.M.P.(MD) Nos.3983 and 3984 of 2019 are closed.

17.02.2025

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

dixit



W.P.(MD) No.5013 of 2019

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W.P.(MD) No.5013 of 2019

M.JOTHIRAMAN, J.

dixit

W.P.(MD) No.5013 of 2019

17.02.2025