

W.A(MD)No.869 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.06.2024

Pronounced on : 06.01.2025

CORAM :

JUSTICE N.SESHASAYEE
and
JUSTICE L.VICTORIA GOWRI

W.A(MD)No.869 of 2019
and
C.M.P(MD)No.7677 of 2019

1.P.Banumathi

2.A.Akilanda Bhagavathi

3.J.Mahalakshmi

...Appellants/Petitioners

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Social Welfare Department,
Fort St. George,
Chennai – 600 009.

2.The Director,
Directorate of Social Welfare,
Chinthathiripet,
Chennai – 600 002.

...Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent as against the order passed by this Court dated 18.06.2019 in W.P(MD)No.2362 of 2015.



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W.A(MD)No.869 of 2019

For Appellants : Mr.G.Karthick
For Mr.Lajapathi Roy Associates
For Respondents : Mr.N.Muthu Vijayan
Special Government Pleader

JUDGMENT

[Judgment was delivered by **L.VICTORIA GOWRI, J.**]

Challenging the order passed by the learned Single Judge in W.P. (MD)No.2362 of 2015, dated 18.06.2019, this Writ Appeal is filed by the appellants.

2.The appellants were appointed as temporary Cooks on consolidated pay and were posted at Government Service Home Higher Secondary Schools at various places. The first appellant was appointed on 27.03.1998, the second appellant on 17.05.1997 and the third appellant on 25.08.1998 respectively and they have been working without regularization for the past nearly 16, 17 and 16 years respectively till the date of filing the Writ Petition in W.P.(MD)No.2362 of 2015 before this Court. In the year 2006, the Government issued a Government Order in G.O.Ms.No.22, Personal and Administrative Reforms (F) Department, dated 28.02.2006, directing all the Departments to regularize the Government Servants, who were working for more than 10 years as on



W.A(MD)No.869 of 2019

01.06.2006 in the regular time scale of pay. In the year 2006, the appellants

have completed 8½ years service and later after completion of 10 year service in the year 2008, the appellants were persistently representing before the respondents seeking to regularize their services, but the same was not considered. Similarly placed persons were regularized, pursuant to the direction of this Court in various Writ Petitions, more particularly, W.P.Nos.4664, 4746, 4750, 4751, 4752 and 5057 of 2011. However, the case of the appellants were not at all considered. Hence lastly, on 22.11.2006, they made a representation to the first respondent. However, the same was not considered and hence, the Writ Petition, seeking to direct the first respondent to regularize their services in the post of Cook from the date of their appointment, in the light of G.O.Ms.No.22, Personal and Administrative Reforms (F) Department, dated 28.02.2006, was filed. The learned Single Judge dismissed the said Writ Petition on the following grounds:-

“(I)The Government Order issued in G.O.Ms.No.25, Adi Dravida and Tribal Welfare Department, dated 25.02.2011, stated that the consolidated pay employees shall be granted with the time scale of pay. On perusal of the same, the said G.O. was issued to grant special time scale of pay to the consolidated pay employees. However, the same is not connected with the grant of regularization and permanent absorption. Therefore, if at all the appellants are liable for special time scale of pay as per the said government order, their case shall be



W.A(MD)No.869 of 2019

considered only for grant of special time scale of pay. However, the grant of special time scale of pay would not confer any right on the candidate, who seek regularization or permanent absorption in the sanctioned post in the regular time scale of pay. Thus, the appellants if otherwise eligible for special time scale of pay, the same shall be considered as per the terms and conditions of the Government Order, that is, G.O.Ms.No.25, dated 25.02.2011, which is in force.

*(II)The benefit of regularization or permanent absorption cannot be granted against the recruitment Rules in force. All the appointments are to be made strictly in accordance with the Rules in force. Equal opportunity in public employment is the constitutional mandate. Thus, in the event of such regularization or permanent absorption in violation of recruitment Rules, constitutional rights of all those eligible candidates would be infringed. Thus, the Courts cannot issue direction of regularization or permanent absorption in violation of the recruitment Rules in force, following the mandates of the Honourable Supreme Court of India in the case of **Secretary, State of Karnataka and others versus Uma Devi (3) and others** reported in (2006) 4 Supreme Court Cases 1.”*

3.Challenging the said order passed by the learned Single Judge, the appellants are before us.

4.Heard the learned counsel appearing for the appellants, the learned Special Government Pleader appearing for the respondents and carefully



W.A(MD)No.869 of 2019

perused the materials available on record.

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5.The matter in hand is no more *res integra* and the same has been settled by the Hon'ble Full Bench of this Court in the case of ***M.Sivappa versus the State of Tamil Nadu and others*** reported in **2024 (2) CTC 1**. The Government Order in G.O.Ms.No.22, dated 28.02.2006, was issued by the Personal and Administrative Reforms Department, directing regularization of all temporary employees who had completed 10 years of service as on 01.01.2006. Subsequently, another Government Order in G.O.Ms.No.74, dated 27.06.2013, was issued which restricted the operation of G.O.Ms.No.22, dated 28.02.2006, to certain categories of employees only. Since the said exercise of the Government led to the filing of various Writ Petitions across the State, both the Government Orders were tested by this Court by the Hon'ble Full Bench in the aforesaid case. The operative portion of the same is extracted as follows:-

“36. Having considered the entire literature that is available in the form of various pronouncements of this court, as well as the Hon’ble Supreme Court, we find it difficult to accept the judgment of the Division Bench in State of Tamil Nadu. by its Secretary, Public Works Department. and another vs. S. John Charles and others, as one laying down the law to the effect that the Government is free to appoint persons either in part-time or on a full-time temporary basis to permanent posts and oust them out at its whims and fancies and we



W.A(MD)No.869 of 2019

conclude that such unbridled exercise of indiscretions by the State Government would amount to exploitation.

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37. We are of the considered opinion that wherever the posts are permanent in nature and they come within 86 categories of posts which form the Tamil Nadu Basic Service, temporary or part-time employment should be avoided and those persons, who have been appointed to such posts and who have completed 10 years of service as on 28.02.2006 would be entitled to regularisation de hors the nomenclature that is given to the appointment.

38. In fine, we hold -

(a) If it shown that the appointment is made to anyone of the 86 categories of posts enumerated in the Tamil Nadu Basic Service immaterial of the fact that whether such appointment is part-time or fulltime, the employee would be entitled to the benefit of regularisation dehors G.O.Ms.No.74 dated 27.06.2013.

(b) If it is shown that the nature of employment is temporary and the requirement will cease to exist after a particular time, like those appointments that are made under various welfare schemes, it will then be open to the Government to engage temporary employees or part- time employees.

39. We conclude that the judgments in State of Tamil Nadu. by its Secretary, Public Works Department. and another vs. S. John Charles and others, and State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and



W.A(MD)No.869 of 2019

others vs K.Rajakrishnan, cannot be taken as laying down an inflexible rule of law that any part-time or temporary employee who has completed 10 years of service on 28.02.2006 will not be entitled to Regularisation. The benefit of Regularisation will depend on the nature of the job and the fact that whether the post falls within any one of the 86 categories mentioned in the Special rules for Tamil Nadu Basic Service.”

6. Fully fortified by the aforesaid judgment, which held that if the appointments though made temporarily would fall under the posts, which are permanent in nature which would come within the 86 categories of the posts which form the Tamil Nadu Basic Service, those persons who have been appointed to such posts and who have completed 10 years of service as on 28.02.2006, would be entitled to regularization *de hors* the nomenclature, that is, given to the appointment. In the instant case, the petitioners were appointed to the post of temporary Cook on consolidated pay at various Government Service Home Higher Secondary Schools in various places. However, as on 28.02.2006, they have not completed 10 years of service. No doubt, the post of Cooks is included in Class 4 Category 2 in the Schedule consisting of Classes and Categories of Government servants under the Tamil Nadu Basic Service Rules. But even according to their own affidavit in the Writ Petition, the appellants have not completed 10 years of service on the date of issuance of



W.A(MD)No.869 of 2019

G.O.Ms.No.22, dated 28.02.2006.

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7. Accordingly, even in terms of the full judgment in *Sivappa's* case, neither the directions issued by this Court in *Sivappa's* case nor the mandates of G.O.Ms.No.22, would come to the rescue of the appellants. It is pertinent to mention here that G.O.Ms.No.22, dated 28.02.2006, was issued by the Government as an one time measure for the purpose of regularization of the various categories of employees who were appointed temporarily in various Departments following the mandates in Para 53 of *Uma Devi's* case. However, the benefit of the G.O.Ms.No.22, cannot be extended to those employees, who have not completed 10 years of service on the date of the said G.O. that is, 28.02.2006.

8. In view of the above, the Writ Appeal fails and the same is dismissed. There shall be no order as to costs. Consequently, miscellaneous petition is closed.

(N.S.S., J.) (L.V.G., J.)
06.01.2025

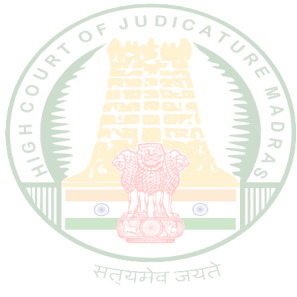
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Neutral Citation : Yes / No
Mrn



W.A(MD)No.869 of 2019

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- 1.The Principal Secretary,
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- 2.The Director,
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W.A(MD)No.869 of 2019

N.SESHASAYEE, J.
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Pre-delivery Judgment made in
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