

W.P.(MD) No.22301 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 01.08.2025

Pronounced On : 28.08.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P. (MD) No.22301 of 2018

1. P. Raja
S/o D. Padivi
No.7/225 Thiruvalluvar Street
N.G.O. Colony,
Nagamalai,
Madurai - 625 019.

2. A.Nizamudeen
S/o.P.Abdul Rahim
2/464, Kamban Street
Gandhi Nagar
Batlagundu - 624 202,
Dindigul District.

3. M. Sundararajan
S/o.S. Muruganandam,
Satyanathapuram,
Koduvillarpatti Post - 625 531,
Veerapandi (Via),
Theni District.

... Petitioners

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary,
Highways and Minor Ports Department,
Secretariat,
Chennai - 600 009.



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2. The Principal Director (Highways),
Office of the Principal Director (Highways),
Office of the Integrated Chief Engineer's Campus,
Highways Department,
Guindy, Chennai - 600 025.

3. The Divisional Engineer,
Highways C & M,
Highways Department,
Dindigul Division,
Trichy Road, Dindigul.

... Respondents

PRAYER in W.P.:

To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings in Memo No.4382/No.4(1)/2016 dated 29.01.2018 on the file of Respondent No.2 and quash the same as illegal and consequently to direct the Respondents to regularize petitioner service in the post of Junior Draughting Officer, with consequential benefits for the past service within the time stipulated by this Hon'ble Court and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstance of the case and thus render Justice.

APPEARANCE OF PARTIES:

For Petitioners	: Mr.G.Karthik, Advocate For M/s.T.Lajapathi Roy Associates
For Respondents	: Mr.J.Ashok, Additional Government Pleader

J U D G M E N T

Heard.



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2. The three petitioners, having jointly filed a single writ petition, seek to set aside the order dated 29.01.2018 issued by the 2nd Respondent, Principal Director of Highways. They further pray that, upon quashing the said order insofar as it concerns them, a direction be issued to regularize their services in the post of Junior Draughting Officer with all consequential benefits.

3. The writ petition was admitted on 01.11.2018 and, pursuant to notice issued by this Court, a counter affidavit was filed on behalf of all the respondents on 20.03.2019. This writ petition marks the third round of litigation by the petitioners. Earlier, all three petitioners had filed separate writ petitions in W.P. (MD)Nos. 10675, 10676, and 10677 of 2009, seeking the same relief. Those petitions were disposed of by a common order dated 26.10.2009, wherein it was held as follows:

“5. In view of the limited prayer, now made by the learned counsel appearing for the petitioners in all the Writ Petitions, this Court, without going into the merits of the representations of the petitioners dated 08.10.2009 and 09.10.2009, is constrained to direct the first respondent herein to consider the representations of the petitioners dated 08.10.2009 and 09.10.2009 by giving an opportunity to the petitioners and pass order on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order. It is made



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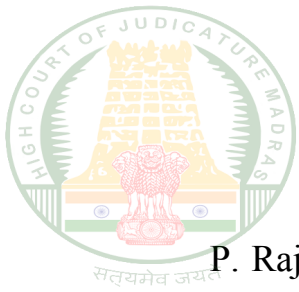


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clear that till the disposal of the representation of the petitioners dated 08.10.2009 and 09.10.2009 within a stipulated time as stated above, the first respondent herein is also directed to keep each one post of Junior Draughting Officer vacant for the petitioners provided, if there is any vacancy as on date.”

4. Pursuant to the said direction, the 2nd Respondent informed each of the petitioners regarding their service particulars. It was stated that the 1st petitioner, P. Raja, had worked from July 1997 to September 2006 for a total of 1,498 days, that too on daily wages and with intermittent breaks. Similarly, the 2nd petitioner, A. Nizamudeen, had rendered service from November 1999 to September 2006 for 1,131 days, also on daily wages and with intermittent gaps. The 3rd petitioner, M. Sundararajan, had worked from July 1988 to July 2006 for 1,200 days, again on daily wages with interruptions. Accordingly, they were informed that they were not entitled to the benefit of G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, which mandates completion of 10 years of continuous service on daily wages, and therefore their claim could not be considered.

5. Subsequently, the petitioners once again approached this Court by filing individual writ petitions, namely W.P.(MD) No. 7919 of 2012 by



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P. Raja, W.P.(MD) No. 7921 of 2012 by A. Nizamudeen, and W.P.(MD)

No. 7922 of 2012 by M. Sundararajan, challenging the order passed by the

2nd Respondent dated 14.10.2011. These writ petitions were disposed of

by a common order dated 06.01.2016, wherein the Court, in paragraphs 9

and 10, made the following observations:

“9. It is an admitted case of the respondents in their counter affidavit that the artificial break was given by them alone to the petitioners and the petitioners cannot be blamed for that. Secondly, in an identical circumstance, this Court gave a direction in favour of similarly placed persons who have rendered more than three years of service for regularisation in ***W.P.No.36623 of 2004 dated 9.12.2005 (V.Kaliappan and others v. State of Tamil Nadu rep. by its Secretary to Government, Highways Department and Others)***.

10. In view of the above, although the petitioners have not satisfied the eligibility criteria of ten years service as on 1.1.2006 in the respondent department for consideration of their request for regularisation in terms of G.O.Ms.No.22 dated 28.2.2006, this Court is only inclined to observe that this order shall not preclude the respondents to consider the case of the petitioners for regularization on the basis of any other Government Order, since they are presently over-aged and had also served in the respondent department on daily wages basis for quite a long time, though with break in service. With this observation, all the writ petitions are disposed off.”

6. Pursuant to the said direction, each of the petitioners was informed by the 3rd Respondent, through order dated 11.02.2016, that their



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request had been forwarded for further action. Subsequently, the 2nd Respondent, by a common order dated 29.01.2018, informed all the petitioners that their claim could not be considered even under G.O. (Ms.)No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, which requires completion of 10 years of service as on 01.01.2006. It was further stated that the petitioners had neither been recruited through the employment exchange nor worked against approved vacancies, and therefore, they were not entitled to regularization.

7. Challenging the said order, the present writ petition has been filed. The petitioners placed sole reliance on the judgment of the Division Bench in W.A.(MD) No. 913 of 2015, dated 21.02.2017, wherein the appeal preferred by the State was dismissed. In paragraph 9 of that judgment, the Court observed as follows

“9. Yet another submission made by the learned Special Government Pleader is that as per G.O.(Ms) No. 74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, the services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and those who completed 10 (ten) years of service as on 01.01.2006 shall be regularized. However, we find that the said Government Order came into effect only on 27.06.2013 and it was issued by way of clarification of



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G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, G.O.Ms.No. 74, was issued only on 27.06.2013, whereas, the respondents were appointed in the year 1984, 1995 and 1998 respectively, that is to say, much earlier to the said Government Order. Therefore, the second submission made by the learned Special Government Pleader cannot be accepted. Therefore, we are of the opinion that absolutely, there is no infirmity in the order passed by the learned Single Judge warranting interference at the hands of this Court.”

8. In the counter affidavit filed by the respondents, it has been averred in paragraphs 3 and 4 as follows:

“3. It is submitted that the Petitioners have been engaged only as Daily Wage Employee / NMR without reference to Employment Exchange occasionally, as and when works existed and they have been paid daily wages at the rates approved in the Schedule of Rates then and there. The Petitioners had not worked for all the 365 days of the year and was not allowed any paid holidays, as per Government Orders in force. The Petitioners do not fall under the category of a Government Servant to claim service protection. Thus the question of regularization of their service does not arise. The Petitioners were not in continuous service in as much as they had worked only as and when there was any work to be done and was stopped when necessity ceased. They were stopped from being engaged as and when the works for which they were engaged ceased, since they were only Daily Wage Employee/NMR. The petitioners service details as follows:



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SI. No	Name	Period of Service		
		From	To	No.of days Worked
1	2	3	4	5
1.	P.Raja	01.07.1997	30.09.2006	1498
2.	A.Nizamudeen	18.11.1999	23.09.2006	1121
3.	3.M.Sundararajan	01.07.1998	31.07.2006	1200

4. It is submitted that in G.O.(Ms) No. 74, Personnel and Administrative Reforms Department Dated 27.06.2013 only those full time Daily Wage Employees / NMRs, who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the functions of the post on the Tamil Nadu Basic Service and who had completed 10 years of service as on 01.01.2006, shall be regularized against regular vacancies within the sanctioned cadre strength. The Government has categorically stipulated that there cannot be relaxation in respect of educational qualification and the mode of recruitment and that there can be no regularization of full time daily wage employees who have completed 10 years of service after 01.01.2006. In the case on hand, the Petitioners herein had not been completed 10 years of service as on 01.01.2006 and not recruited through Employment Exchange based on their age and they were not engaged by following the Communal Roster System in any sanctioned, permanent.”

9. It was further contended that the two Government Orders providing for regularization of daily wage employees who had rendered 10 years of service are not in violation of the directions issued by the Hon’ble Supreme Court. The writ petitioners cannot claim any relief on the basis of



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orders passed in unrelated cases. The Court cannot be called upon to perpetuate any illegality or fraud, nor can the principle of negative equality be invoked. Since the petitioners do not fall within the ambit of the said Government Orders, they are not entitled to any relief.

10. Reliance was also placed on the judgment of the Division Bench in *Secretary to Government of Tamil Nadu, Highways Department vs. S. Amudha Devi & Others, W.A. No. 558 of 2021, dated 21.06.2024*. In that case, the Division Bench considered similar claims made by employees of the same department, as well as the two Government Orders referred to therein. In paragraphs 28 to 32 of the judgment, the Court observed as follows:

“28. In Govindasamy's case, in para.8, the Hon'ble Apex Court considered the principles laid down in the case of State of Rajasthan Vs. Daya Lal, reported in 2011 (2) SCC 429 wherein, clear directives are issued by the Hon'ble Apex Court as under:

“(i) The 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 the constitutional scheme.



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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 along 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.”

29. The legal position settled in Uma Devi's case has been reiterated by the Hon'ble Supreme Court of India in the subsequent judgment in Govindasamy's case and would squarely apply to the factual matrix of the case on hand.

30. The Judgments of the High Courts running counter to the legal principles settled by Uma Devi's case and in Govindasamy's case for granting the relief of regularization and permanent absorption cannot be followed as precedents nor any relief of regularization can be granted in violation of the Service Rules in force.”

31. The crux of the issue and the constitutionality involved in the matter of appointment, regularization and permanent absorption are that, all appointments are to be made under the Constitutional scheme and by following the due process. Equal opportunity in public employment is the constitutional mandate. Back door appointments cannot be regularized infringing the fundamental rights of the candidates aspiring to secure public employment through open competitive process. Daily wage, temporary and contractual appointments are made without following the due process and the Recruitment



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Rules applicable to the posts. Such appointments are mostly not made against the sanctioned posts. Selections are done either at the choice of the Authorities or based on the recommendations of VIP's and VVIP's. Such appointments, if end with an order of regularization and permanent absorption, this Court has no hesitation in arriving at a conclusion that the fundamental rights of lakhs and lakhs of youth of our great nation is infringed and we are dishonoring the constitutional scheme of appointments. Therefore, any appointments made in violation of the service rules cannot end with an order of regularization and permanent absorption. However, such candidates may be granted liberty to participate in the recruitment process for securing employment on merits and through rule of reservations as per the Service Rules in force.

32. In the present case, the writ court has not considered the legal position as settled by the Constitution Bench of the Hon'ble Supreme Court of India and in the case of Govindasamy.”

11. In light of the foregoing discussion, this Court is of the view that the petitioners are not entitled to any relief dehors the applicable law and binding precedents. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

28.08.2025

Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation : Yes / No
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DR. A.D. MARIA CLETE, J.

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Pre-delivery Judgment made in
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