



W.A.(MD)No.166 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.10.2025

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

W.A.(MD)No.166 of 2021
and
C.M.P(MD)No.530 of 2021

1. The State Rep. by its Secretary,
Department of Education,
St.George Fort, Chennai-600 009.

2. The Director of School Education,
O/o.The Director of School Education,
Nungambakkam, Chennai.

3. The Chief Educational Officer,
O/o.The Chief Educational Officer,
Pudukkottai District.

... Appellants

Vs.

1. P.Amirthalingam

2. C.Sekar

3. M.Sumathi

4. Rajakanni

... Respondents



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PRAYER:- Writ Appeal is filed under Clause XV of Letters Patent Act, to set aside the order in W.P(MD)No.7134 of 2013 dated 03.10.2018 on the file of this Court and allow the Writ Appeal.

For Appellants : Mr.J.Ashok,
Additional Government Pleader

For Respondents : No appearance

JUDGEMENT

(Judgement of the Court was delivered by **C.KUMARAPPAN, J.**)

The present writ appeal is arising against the order of the learned Single Judge in the batch of writ petitions in W.P.(MD)Nos.7115, 7130 & 7134 of 2013, order dated 03.10.2018, in and by which, the learned Single Judge directed the authorities concerned to regularise the services of the petitioners therein.

2. The respondents in the writ petition are the appellants herein, and the writ petitioners are arrayed herein as respondents.

3. For convenience sake, parties will be referred to according to their litigative status before the writ Court.



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4. The learned Additional Government Pleader would vehemently contend that the order of the learned Single Judge is contrary to the dictum of the Hon'ble Supreme Court, as well as to the order of the Division Bench of this Court. It is his submission that the writ petitioners were not appointed by the Government in a sanctioned post, whereas they were appointed by the Parents Teachers Association on a consolidated pay. Therefore, he would contend that they are not eligible to be regularised.

5. In spite of the fact that the name of the respondents counsel is printed in the cause list, no one has appeared on behalf of the respondents.

6. We have given our anxious consideration to the appellants submissions.

7. The only point to be considered is, can there be any order for regularisation in respect of an employee who was appointed by the Parents Teachers Association. In this regard, the learned Additional Government Pleader relied upon the Division Bench Judgement of this



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Court in W.A.(MD)No.3562 of 2019, dated 17.12.2024, wherein, this Court in similar set of facts, in respect of watch woman appointed through Parents Teachers Association, by following the Supreme Court Judgement in *Secretary to Government, School Education Department vs. R.Govindasamy and others* reported in (2014) 4 SCC 769 allowed the appeal. For ready reference, we deem it appropriate to extract the relevant portion of the Division Bench Judgement hereunder,

"8. The issue in respect of regularisation based on G.O.Ms.No.22 was decided in several Writ Petitions and Writ Appeals and the issue was considered by the Hon'ble Supreme Court in the case of Secretary to Government, School Education Department V. R.Govindasamy and others ((2014) 4 SCC 769). The Hon'ble Supreme Court by referring to the earlier decisions in the case of State of Karnataka V.Umadevi (((2006) 4 SCC 1, Union of India V. A.S.Pillai ((2010) 13 SCC 448 and State of Rajasthan V. Daya Lal ((2011) 2 SC 429, ultimately held that part time employees in the Government institutions cannot claim parity and would not be entitled to seek regularisation.

9. The relevant portion in the case of R.Govindasamy (supra) reads as follows:

'5.The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularised. The issue is no more res integra.

6.In State of Karnataka v. Umadevi [AIR 2006 SC 1806], this Court held as under: (SCC p.40, para 48)



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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.”

7. In Union of India v. A.S.Pillai [(2010) 13 SCC 448], this Court dealt with the issue of regularisation of part-time employees and the Court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

8. This Court in State of Rajasthan v. Daya Lal [AIR 2011 SC 1193], has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under: (SCC p.435, para 12)

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



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or permanent continuance, unless 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 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.

(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 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.



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(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation 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."

10. Following the decision of the Hon'ble Supreme Court in the case of R.Govindasamy (supra), the Division Bench of this Court, where one of us (Dr.Anita Sumanth,J) was a party, in W.A.Nos.836 and 837 of 2014 (State of Tamil Nadu and others V. K.Rajakrishnan) vide order dated 05.07.2023, had held that since the post of Masalchi is not one sanctioned, the benefits extended to the order passed in the Writ Petition cannot be sustained and had ultimately allowed the Writ Appeal holding at paragraphs 7 and 14, as follows:

'7.The State also draws attention to the position that the post of Masalchi is not one sanctioned and hence, the benefit granted by the learned Single Judge fell far outside what is available under the applicable Rules and Regulations.

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14.The conclusion, as above, also finds support from the judgment of the Hon'ble Supreme Court in the case of Secretary to Government School Education Department, Chennai vs Thiru.R.Govindasamy and others [Civil Appeal Nos.2726-2729 of 2014], and the cases



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cited therein, rendered in the context of part time employees.'

11. Admittedly, in the instant case, the respondent was appointed as a part time employee through Parent Teachers Association. In such circumstances, the claim of the respondent seeking parity and benefits on par with other employees based on G.O.Ms.No.22 dated 28.02.2006 cannot be sustained. Hence, the order of the Writ Court needs interference."

8. According to the above Judgement, regularisation, absorption or permanent continuance cannot be ordered by the High Court while exercising the power under Article 226 of the Constitution of India, unless such employees are appointed in accordance with relevant recruitment rules in an open competitive process, that too, against the sanctioned post. Here in the present facts, admittedly, the petitioners were appointed on an adhoc basis by the Parent Teachers Association. Therefore, we are of the firm view that the order of the learned Single Judge directing to regularise the writ petitioner is contrary to the settled legal position of the Hon'ble Supreme Court in **Govindasamy's case** (cited supra). Hence, we find force in the submissions of the learned Additional Government Pleader. Accordingly, the order of the learned single Judge is liable to be interfered with.



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9. In the result, the writ appeal is allowed and the order dated 03.10.2018 passed in W.P.(MD)No.7134 of 2013 is set aside. No costs.

Consequently, connected Miscellaneous Petition is closed.

[A.S.M.,J.] & [C.K., J.]
24.10.2025

NCC : Yes / No
Index : Yes / No
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AND
C.KUMARAPPAN, J.

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