



WEB COPY



WA No. 305 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-06-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

**WA No. 305 of 2023 AND
CMP NO. 3087 OF 2023**

E.Radha
S/o. Elumalai, Pallavada Village and Post,
Gummidipundi Taluk,
Thiruvallur District -601 202.

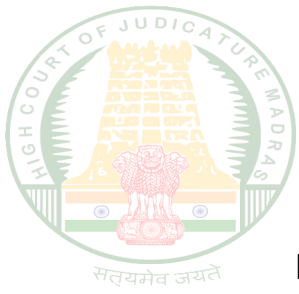
..Appellant

Vs

1. The State of Tamil Nadu
Rep by its Secretary to the Government, Adi-
dravidar and Schedule Tribe Welfare (ADW-4)
Department, Fort St. George, Chennai 600009.
2. Adi Dravidar And Schedule Tribe
Welfare Department, Rep by its Director
Chepauk, Chennai 600005.
3. The District Adi-dravidar And Schedule
Tribal Welfare Officer, O/o Collectorate,
Thiruvallur Distirct.
4. The Special Tahsildar (ADW)
Ponneri, Ponneri Taluk, Thiruvallur Distirct.

..Respondents

Prayer : Writ Appeal under Clause XV of the Letters Patent to set aside the order passed in WP.No. 23843 of 2021, dated 12.09.2022.



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For Appellant :
For Respondents :

Mr.G.Ethirajulu
Dr.R.Gouri
Government Counsel

Judgment

(Judgment of the Court was delivered by S.M.Subramaniam J.)

Under assail is the writ court order dated 12.09.2022 passed in W.P.No.23843 of 2021.

2. The facts in nut shell not controverted between the parties are that the writ petitioner / appellant herein was appointed as part time sweeper in a hostel under the Adi Dravidar and Scheduled Tribe Welfare Department. It is a part time employment and initially a consolidated pay on monthly basis was paid to the appellant. Since the part time employment continued for a considerable length of time and cleaning of the Adi Dravidar Boys and Girls Hostels are essential for the benefit of students staying in the hostels, the consolidated pay employees were granted special time scale of pay by the Government in G.O.Ms.No.81, Adi Dravidar and Scheduled Tribe Welfare Department dated 10.08.2020. The said Government Order provides special time scale of pay of Rs.6,300/- as basic pay along with other admissible allowances. Thus, the consolidated pay was converted as a special time scale of pay those part time employees working in the Adi Dravidar and Scheduled Tribe Welfare Department.



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3. The said Government Order in G.O. No.81 dated 10.08.2020 granting special time scale of pay came to be challenged in the writ petition. The writ Court, considering the issues found that regularisation or permanent absorption cannot be granted by the High Court in respect of the part time employees not appointed in accordance with the Rules in sanctioned posts. However, consolidated pay was converted as special time scale of pay and that being the factum, the writ Court declined the benefit of regularisation or permanent absorption. Thus, the present writ appeal came to be instituted.

4. Learned counsel appearing for the appellant would submit that the Government had considered similar cases. Therefore, the case of the appellant also is to be considered on the very same lines for grant of regularisation and permanent absorption.

5. Claiming equality comparing an illegality is impermissible. All public appointments are to be made strictly in accordance with the recruitment rules in force. Equal opportunity in public employment is constitutionally mandate. Regularisation and permanent absorption are to be granted in accordance with the service rules applicable to a post. In certain cases, temporary



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appointments are made against a sanctioned post and the procedure for selection also has been followed. In such cases, the Courts have taken a lenient view and granted regularisation and absorption. However, in respect of irregular or illegal appointments, regularisation and absorption cannot be granted in view of the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in ***State of Karnataka Vs. Umadevi reported in 2006 [4] SCC Page 1.***

6. Large scale irregular or illegal appointments would not only offend the constitutional provisions, but result in infringement of fundamental right of the eligible candidates who all are aspiring to secure public employment through open competitive process. It is exactly the reason why the Courts have exercised restraint in granting regularisation in violation of the recruitment rules as it would affect the rights of other citizens who are all longing to secure public employment.

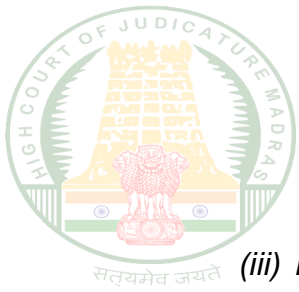
7. This principle has been reiterated by the Apex Court in several judgments. In Para 54 of the Constitution Bench judgment in ***Uma Devi's case***, it has held that any judgment counter to the legal principles settled by the Constitution Bench have denuded to lose its status as precedent. This being the legal position, the High Court in exercise of the powers of judicial



review cannot direct the Government authorities to regularise the services of irregular and illegal appointments. Confronting similar facts of part time sweepers appointment in the case of **Secretary to Government School Education Department, Chennai vs. R.Govindaswamy and others reported in 2014 [4] SCC 769**, the Hon'ble Supreme Court held that:-

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



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(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.

(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.” (Emphasis added)

8. Any exercise of discretion under constitutional powers conferred under Article 226 should not result in infringement of the rights of large number of citizens. Therefore, the High Court is expected to be cautious in such matters where illegal or irregular appointments are made. As far as part time employment or contract employees are concerned, terms and conditions are stipulated in the appointment order and having accepted the conditions, the employees cannot turn around and claim regularisation in violation of the



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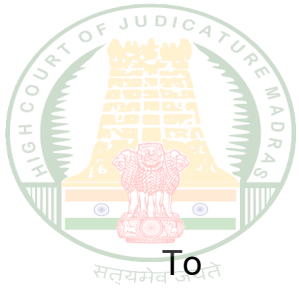
regularisation rules applicable to the post. If at all they wish to secure regular employment, they have to participate in the selection process whenever a notification is issued by the employer. Contrarily, such irregular or illegal appointees cannot secure permanent employment through litigious method which would affect the larger interest of the eligible candidates who are all waiting for public employment.

9. In view of the above factual and legal position, this Court is not inclined to interfere with the impugned order passed by the writ court. Thus the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.,J.) (N.S.,J.)
03-06-2026

Index: Yes
Speaking
Neutral Citation: Yes

KST



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To

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2. The Director
Adi Dravidar And Schedule Tribe
Welfare Department, Rep by its Director
Chepauk, Chennai 600005.
3. The District Adi-dravidar And Schedule
Tribal Welfare Officer, O/o Collectorate,
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**S.M.SUBRAMANIAM J.
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